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Summary

Amendment of legislation

On 1 October 2000 the general ban on brothels was lifted. The core of the amendment to the law on prostitution is that those forms of prostitution in which adult prostitutes are voluntarily engaged are no longer illegal. At the same time, this legislation is also intended to make it possible to crack down on unacceptable forms of prostitution (i.e. involuntary prostitution and prostitution by minors). Six main objectives underlie the above amendment:

- 1 To control and regulate voluntary prostitution, through the introduction of a municipal licensing policy amongst other things;
- 2 To improve the combating of forced prostitution;
- 3 To protect minors against sexual abuse;
- 4 To protect the position of prostitutes;
- 5 To separate prostitution from crime-related marginal phenomena;
- 6 To reduce the level of prostitution offered by illegal foreign nationals (individuals without a valid residence permit enabling them to work in the Netherlands).

Evaluation

The WODC is responsible for overseeing the evaluation of prostitution policy. The object of this evaluation is to obtain information about the (side) effects resulting from the lifting of the general ban on brothels, in order to obtain clarity in respect of any need for new ancillary policy, legislation or regulations to be developed. In the framework of the evaluation, six sub-studies were set up and supervised. These were designed to collect information from different groups, using different methods, about the situation in the prostitution sector more than one year after the amendment of legislation and any consequences resulting from this amendment. The studies were conducted by various organisations. The most important results obtained from the various sub-studies have been collated in the present comprehensive report and classified according to the objectives underlying the amendment made to the law on prostitution. For reasons of practicality, it has been necessary to limit this report to a number of main points. For more information, see the separate sub-reports.

An important part of the sub-studies conducted was based on interviews. The individuals interviewed included several hundred prostitutes (a substantial number of whom were of foreign origin), dozens of licensees, members of the police force, key informants (for example, employees from support agencies and shelters, employees from interest groups, taxi drivers, and employees

from hotels, restaurants and cafés), more than two hundred representatives from business service organisations, representatives from municipalities and municipal services and, finally, a sample of the Dutch population. The sub-studies conducted focus on the objectives underlying the amendment made to the law on prostitution and its possible side effects.

At this stage, it is still too early to be able to draw any conclusions on the actual consequences of the amendment to law on prostitution. This is partly due to the fact that the sub-studies conducted constitute the first in a number of measurements applicable during an evaluation process and very little (reliable) data are available on the situation prior to the amendment in question. Future measurements must provide more clarity on developments and consequences. In addition, at the time of this study, licensing has not yet been completed in many areas. As such, the agencies in question have often not yet been able to commence implementation of supervision and enforcement activities. As a result, the changes envisaged by the amendments made to the law have not yet been implemented in full, and it is too early to be able to draw any conclusions on consequences. Another factor complicating the assessment of possible consequences resulting from the amendment of legislation is the fact that the prostitution sector is also being affected by other developments. This includes the increased logistical possibilities presented by mobile phones and the Internet, but also developments in the field of migration, foreign nationals policy and the supervision of foreign nationals.

However, the report does provide a clear picture of the situation in the field of prostitution more than a year after the amendment of legislation and, where possible, it also describes the relevant developments.

The control and regulation of prostitution

Administrative responsibility for the control and regulation of legal prostitution has been placed primarily with municipal services. Most municipalities pursue a policy on the regulation of the number of prostitution businesses. As regards members-only sex clubs, most municipalities have opted for one or another form of maximum policy, which often amounts to a status quo policy. This restricts opportunities for the renewal of the sector (and may also affect any corresponding improvement in the position of the prostitutes themselves).

It became clear that a large number of municipalities had not yet completed the licensing process at the time of the study. Due to the decentralisation of prostitution policy, national implementation of the new legislation and the corresponding enforcement is not simultaneous or uniform.

One consequence of the lack of congruence is the relocation of punishable forms of prostitution (involuntary prostitution, prostitution by minors and prostitution by prostitutes without a valid residence permit) to municipalities

where fewer inspections are carried out or where inspections are less stringent. It is important that the licensing process be concluded as soon as possible and that a start be made with supervision and enforcement across the country.

In the framework of (administrative) enforcement, responsibility for supervisory and control activities have been placed with a large number of agencies, i.e. the police and a number of municipal services and national agencies, such as the Health and Safety Inspectorate and the tax authorities. Various agencies claim to be focusing actively on prostitution, but often have not formulated any specific policy in this respect and few activities geared specifically towards prostitution are being undertaken. At the time of the study, there was very little actual enforcement.

Protection of the position of the prostitutes

The sub-study conducted into the position of prostitutes focused chiefly on prostitutes in the regulated sector. Changes in the regulated sector are only visible to a limited extent, but the field is certainly in movement. Physical working conditions would appear to be changing for the better. However, as regards both employment conditions and employment relationships, it would appear justified to conclude that although much is being done, actual changes are barely visible at the current time. The sector would appear to be vigorously debating the correct shape to be given to employment relationships, with great confusion resulting from the requirements to be met by them if prostitutes are to be considered to have some form of 'independence'. It is still too early to comment on changes to the physical and emotional well-being of prostitutes in the regulated sector. As it stands, it would appear that their well-being is still under far more pressure than is the case for women employed in other professions.

The accessibility of service organisations for workers in the prostitution sector could still be improved. Business service companies acknowledge that there are obstacles preventing the provision of services to the prostitution sector. The most important causes for this are the poor image of the prostitution sector and the fact that service providers find it difficult to estimate the risks involved. It seems that a 'normal' relationship between service organisations and the prostitution sector is something that will only be achieved in the long term.

Incidentally, the sub-studies conducted show that licensees, prostitutes and a whole variety of other interviewees are, in principle, positive about the (objectives underlying) the lifting of the general ban on brothels.

Punishable forms of prostitution

Causing a person to enter into, or continue to be engaged in, involuntary prostitution is punishable, as is deriving any gain from involuntary prostitution, causing minors to enter into, or continue to be engaged in prostitution, and recruiting women abroad for prostitution. It is also punishable to be engaged in prostitution without a valid residence permit entitling the holder to work, or to employ prostitutes without these permits. As a result of the above punishability, these forms of prostitution are often encountered in those prostitution sectors that are subject to the least supervision and that are more difficult for (support) agencies to access, for example street prostitution, home prostitution, escort prostitution and 06-prostitution. This makes it more difficult to collect reliable data on the number of involuntary, underage and illegal prostitutes engaged in prostitution in the Netherlands.

The amendment of legislation has resulted in the relocation of punishable forms of prostitution to locations and municipalities where enforcement is less strict. Besides these relocations, shifts have been observed in punishable forms of exploitation of prostitution from the regulated sector to prostitution sectors that are not regulated (street prostitution and 06-prostitution, for example) or to those sectors that are regulated but virtually impossible to monitor or control (for example, home workers and escorts in a large number of municipalities). Shifts such as these are happening, but the studies conducted have been unable to shed any light on the extent to which this is the case. No confirmation was found for the exodus that was often supposed would happen to the unregulated sectors, nor can it be concluded that all illegal prostitutes that have left the regulated business have ended up in the unregulated sectors.

The police play an important role in monitoring and enforcement. At the time of the study, police forces in most places are primarily occupied with inspections in the *regulated* sector (in the framework of administrative supervision), as a result of which it lacks the capacity to play a major monitoring and investigative role with regard to punishable forms of prostitution outside the regulated sector. An additional problem in terms of enforcement is the discrepancy between the level at which enforcement is carried out and the level at which prostitution is organised. Monitoring and enforcement occur at a local level. This type of regulation does not apply to those forms of prostitution that are not, or barely, bound to a specific location. Therefore, a purely local approach is not adequate for these forms of prostitution.

1 Introduction¹

On 1 October 2000 the amendment of legislation came into force, lifting the general ban on brothels. The core of the amendment is that those forms of prostitution in which adult prostitutes are voluntarily engaged are no longer illegal. At the same time, this legislation is also intended to make it possible to crack down on unacceptable forms of prostitution (i.e. involuntary prostitution and prostitution by minors). The monitoring and evaluation of the new legislation introduced and of the national and local prostitution policy based on it must show the extent to which these objectives will be achieved.

The field of prostitution is broad and complex. The main objectives underlying this particular amendment of the law fall under the responsibility of six departments. In principle, responsibility for monitoring and evaluation lies with the Minister of Justice. The WODC has been asked to oversee the evaluation of the lifting of the ban on brothels.

This report is the first comprehensive, evaluative report to be published since the amendment of legislation and is based on data obtained from a number of sub-studies commissioned by WODC. The scope of this report will be limited to the main points derived from the study results. More detailed information can be found in the separate sub-reports.

Structure of the report

The structure of this report is based on the objectives underlying the amendment of legislation. Chapter 2 first briefly discusses the amendment and monitoring. Chapter 3 describes the various sub-studies that form the basis for this report. Chapter 4 focuses on the control and regulation of prostitution. Chapter 5 is dedicated to the protection of the position of prostitutes. In Chapter 6, attention is paid to punishable forms of prostitution and to crime-related marginal phenomena. Finally, Chapter 7 sets out a number of conclusions and recommendations.

In the Netherlands, the vast majority of prostitutes are female. Although male prostitutes are not explicitly excluded from the study, they are a relatively limited group and do not feature significantly in the study conducted. Where results relate to male prostitutes in particular, this will be indicated explicitly.

¹ Special thanks for comments on an earlier version of this report go to E. Bleeker, F. Bronner, A.C.E. Clijnk, R.H. Haveman, L. van Mens, P. Naber, M. Smit en J.J. Wiarda.

2 Amendment of legislation

2.1 Amendment of legislation

After a long period of (social) discussions and preparations, the general ban on brothels was lifted on 1 October 2000. In July 1997, the government submitted a proposed amendment of legislation to the Lower House, and in October 1999, the Upper House accepted the legislative proposal. After consultation with the Association of Netherlands Municipalities [*Vereniging van Nederlandse Gemeenten (VNG)*], the then Minister of Justice decided to allow the legislation to enter into force on 1 October 2000. This date was prompted partly by the preparation time required by the various municipalities. In order to enable municipalities to apply their municipal bye-laws or licensing policy to various sex businesses (escort services, for example), Section 151 of the Municipalities Act [*Gemeentewet*] was extended.

Six main objectives underlie the above amendment²:

- 1 To control and regulate voluntary prostitution, through the introduction of a municipal licensing policy amongst other things;
- 2 To improve the combating of forced prostitution;
- 3 To protect minors against sexual abuse;
- 4 To protect the position of prostitutes;
- 5 To separate prostitution from crime-related marginal phenomena;
- 6 To reduce the level of prostitution offered by illegal foreign nationals (individuals without a valid residence permit enabling them to work in the Netherlands).

One of the ideas underlying the amendment of legislation is that by creating a distinction between punishable and non-punishable forms of prostitution, the prostitution sector can be reorganised and freed of crime-related marginal phenomena. Another idea is that it will become possible to take a harder line against the exploitative use of others in prostitution (in the form of involuntary prostitution or underage prostitution). The amendment legalises a situation in which non-punishable forms of prostitution have already been tolerated for a considerable number of years now.

The amendment of legislation lifts the general ban on brothels and the ban on pimping. The articles in question have been deleted from the Criminal Code [*Wetboek van Strafrecht*]. At the same time, the penalisation of undesirable forms of prostitution and the rules regarding the sexual abuse of

² See the explanatory memorandum, TK 1996-1997, 25 437, no. 3 and the Official Reports 28 January 1999, TK 45.

minors has been tightened. This tightening is evident in three areas of the new legislation:

- Prison sentences for involuntary prostitution and the abuse of minors have been increased to a maximum of six years, or a maximum of eight or ten years in prison in the event of (a combination of) aggravating circumstances (Article 250a of the Criminal Code);
- Clients of prostitutes aged sixteen or seventeen have become liable to punishment (Article 248b of the Criminal Code); clients of prostitutes younger than sixteen were already liable to punishment;
- The complaint requirement previously applicable where a client had engaged in sex with a prostitute aged between twelve and sixteen has now ceased to apply (Article 245 of the Criminal Code).³

In addition, regulations have been modified in line with the amendment of legislation in a number of areas. For example, the Criminal Records Information Decree [*Besluit inlichtingen justitiële documentatie*] has been modified, making it possible for municipalities to check the antecedents of sex establishment licensees. Besides this, the former B-17 procedure from the Aliens Act Implementation guidelines [*Vreemdelingencirculaire*] has been modified and has now been replaced by the B-9 regulation. The aim of the B-9 regulation is to offer facilities for the tracing and prosecution of offenders, the investigation of sex trafficking and to provide shelter and protection for the victims of this crime.

2.2 Monitoring consequences

When considering the proposals for the amendment of legislation, the then Minister of Justice indicated that developments in prostitution would be monitored following the lifting of the ban on brothels.

The National Prostitution Consultation was created in order to monitor developments in prostitution and includes relevant representatives from the field and from the government. Each of the parties involved observes signals and developments in prostitution from their specific position and activities. The Consultation, which meets at least four times per year, offers the organisations involved the opportunity to keep each other abreast of recent experiences and developments in the field of prostitution and raise any problems observed. This information is vital for the further development of ancillary policy. Based on the information presented, a decision may be made to implement additional measures.

Six ministries are participating in the monitoring consultation, as well as three large municipalities, the Association of Netherlands Municipalities, the project leader of the Prostitution and Trafficking in Human Beings Project

³ For more information on the new legislation, see Part 1 of the Handbook Local Prostitution-policy [*Handboek Lokaal Prostitutiebeleid*], for instance.

Group of the Dutch Police, the Public Prosecutions Department [*Openbaar Ministerie*], the tax authorities, the UWV [*Uitvoeringsinstituut Werknemersverzekeringen (UWV)*], the Health and Safety Executive [*Arbeidsinspectie*], the Immigration and Naturalisation Service [*Immigratie- en Naturalisatie Dienst*], the national human trafficking report bureau [*Bureau Nationaal Rapporteur Mensenhandel, (Bureau NRM)*], the Netherlands Foundation for STD Control [*Stichting soa-bestrijding*] and the Mr. A. de Graaf Foundation [*Mr. A. de Graafstichting*]. The Mr. A. de Graaf Foundation is also chairing the National Prostitution Consultation [*Landelijk Prostitutie Overleg*]⁴.

In addition, WODC was asked to oversee the evaluation of prostitution policy. The field of prostitution is extremely broad and complex: the main objectives of the amendment of legislation fall under the responsibility of six departments, relate to more than ten different forms of prostitution and fall within the sphere of activity of a large number of implementing and/or enforcing authorities. What is more, various interest groups concern themselves with the prostitution sector. As such, WODC has drawn the conclusion that it would not be realistic to conduct one large study into the consequences resulting from the lifting of the ban on brothels; it should be broken down into a number of practically feasible sub-studies. In this framework, WODC has set up and supervised a number of sub-studies, in which efforts have been made to collect information from different groups, using different methods, about the situation in the prostitution sector more than one year after the amendment of legislation and any consequences resulting from this amendment. WODC has collated the knowledge collected during the sub-studies in the present comprehensive report.

This report provides an overview of the most important results obtained from the various sub-studies, which results have been combined and classified according to the objectives underlying the amendment of the legislation in question. Please note that it has been necessary to limit the scope of this report to a number of main points. For more information, see the separate sub-reports. The various sub-reports will be discussed in more detail in Chapter 3.

The object of the evaluation is to provide information about the (side) effects resulting from the lifting of the general ban on brothels, in order to provide clarity on any need for the development of new ancillary policy, legislation and/or regulations. Since in many areas no data are available on the situation prior to the amendment of the legislation in question, this in fact constitutes the first in a number of measurements. Therefore, this result primarily provides a description of the situation in the prostitution sector more than a

⁴ The National Prostitution Consultation includes the Mr. A. de Graaf Foundation, the Netherlands Foundation for STD Control, the Foundation Against Trafficking in Women [*Stichting Tegen Vrouwenhandel*], the Prostitution Information Centre [*Prostitutie Informatie Centrum*] and representatives acting for prostitutes, licencees and clients.

year after the entry into force of the amendment of the legislation in question. Where possible, this report will present conclusions on developments. However, in many cases, this will not be possible, due to the lack of information on the situation prior to the amendment of the legislation in question⁵ and the fact that the change envisaged (the introduction of a licensing system, licensing and the implementation of inspections) has not yet been implemented in its entirety. Attention will be paid to the implementation of inspections, amongst other things, in Chapter 4.

⁵ Where possible, results are compared with the results of earlier studies, such as those obtained from the two studies conducted by the Mr A. de Graaf Foundation in 2000 and the study conducted by Nisso amongst prostitutes in 2000.

3 Research Methods used in sub-studies

This Chapter will look briefly at the various sub-studies that form the basis for this report and the research methods used in them.

3.1 Approach

As already stated in the previous chapter, a number of sub-studies were conducted more or less simultaneously in the framework of the evaluation of prostitution policy. These sub-studies were conducted by different organisations commissioned and monitored by WODC. In addition, several other study reports have been published in recent years on studies conducted in the framework of the evaluation of prostitution policy or containing information relevant in this respect. Important examples are the study conducted by SGB0 into municipal prostitution policy⁶ and the first report published by the National Rapporteur on Trafficking in Human Beings [*Nationaal Rapporteur Mensenhandel*]⁷. This Chapter will not discuss these two reports, but reference will be made to them in other chapters.

When determining the objectives applicable for the sub-studies, practicability and the capacity available made it necessary to make a number of choices. As a result, some aspects of the prostitution sector and several of the parties involved have not been included within the scope of the studies or have been neglected to a certain extent. For example, neither the Public Prosecutions Department (OM) nor the clients were directly involved in the study. Nor were the organisations responsible for the implementation of legislation in respect of foreign nationals included in this first evaluation. The decision not to explicitly include the Public Prosecutions Department in the study was partly prompted by the attention paid to it in the report by the National Rapporteur on Trafficking in Human Beings.

The most important results obtained from the sub-studies have been collated and classified in this report, sometimes using literal texts from the study reports. The report is a comprehensive analysis of the data collected during the various sub-studies and is limited to a number of main points. The various sub-studies, the methods used in them and their scope will be discussed briefly below. For more detailed information about the sub-studies

⁶ See Smallegenbroek and Smits, 2001.

⁷ See NRM, 2002.

and the results obtained, reference is made to the separate study reports. The texts of these reports can be found on the WODC website⁸.

3.2 Study into prostitution by illegal prostitutes, involuntary prostitution and prostitution by minors

The Verwey-Jonker Institute conducted a study into prostitution by illegal prostitutes, involuntary prostitution and prostitution by minors. The study focuses primarily on those sectors in prostitution that are more difficult to access, such as street prostitution, home prostitution, escort prostitution and 06-prostitution, but information was also collected in clubs and from window prostitution.

Given the difficult accessibility, a qualitative approach was chosen for this sub-study. The researchers used various methods of data collection: face-to-face interviews with almost fifty prostitutes (including many foreign women), face-to-face and telephone interviews with licensees and key informants (including, for example, employees from support agencies and shelters, taxi drivers, members of the police force and employees from hotels, restaurants and cafés), observations and an expert meeting. In total, more than one hundred people were interviewed. Due to the labour-intensive, qualitative research method used, the study was limited to four regions: Groningen (city and surrounding area), Twente, Rotterdam and North Limburg. The regions to be included in the study were selected on the basis of diversity in terms of geographical location, enforcement efforts and the presence of certain forms of prostitution.⁹ The qualitative approach makes it impossible to arrive at firm numerical conclusions on observations made during the study, but the study does provide an insight into the situations that exist in respect of punishable forms of prostitution.

For more information about this sub-study and the results obtained, see: *Illegaliteit, onvrijwilligheid en minderjarigheid in de prostitutie een jaar na de opheffing van het bordeelverbod* [prostitution by illegal prostitutes, involuntary prostitution and prostitution by minors one year after the lifting of the ban on brothels], Verwey-Jonker Instituut, 2002.

3.3 Study conducted amongst prostitutes and licensees in the regulated sector

The Rutgers Nisso group conducted a study into the social position of prostitutes in regulated businesses. The study was restricted to professionally

⁸ The Internet address is www.wodc.nl

⁹ In various sub-studies, the area of study was limited to a number of specific regions (due to practical considerations). The decision was made to select regions that were as similar as possible, i.e. the other sub-studies have, in any event, consistently included these four regions in their studies.

organised prostitution and focused primarily on (private) clubs, window brothels, escort agencies and massage salons. Home workers who have applied for a licence were also included in the target group. The study was conducted in 17 regions throughout the country. The data obtained from the municipalities involved were used to take a sample of businesses in which 237 prostitutes (230 of whom female and 7 male) and 62 licensees were interviewed. The majority of the prostitutes interviewed (60%) were Dutch. Eastern European women form the next biggest group (10%).

As indicated by the researchers themselves, it is difficult to draw conclusions about the representativity of the sample for all prostitutes and licensees within the regulated sector, given the lack of knowledge about the population as a whole. The aselect approach used to include businesses was designed to achieve a sample that was as representative as possible, but the suspicion is that this is considerably weakened by the high level of non-response, which is probably selective. Just as in NISSO's study conducted amongst prostitutes in 2000¹⁰, it is expected that prostitutes from businesses where everything is relatively well organised will be over-represented.

The interviewers who approached the prostitutes and licensees in the workplace were mostly persons who had had some experience of the prostitution world, whether as a researcher, an STD nurse or ex-prostitute. The interviews were conducted verbally (face-to-face), using structured questionnaires.

For more information on this sub-study and the results obtained, see: *De sociale positie van prostituees in de gereguleerde bedrijven, een jaar na wetswijziging* [the social position of prostitutes in regulated businesses one year after the amendment to legislation in question], Rutgers Nisso Groep, 2002.

3.4 Study conducted amongst business service companies

Bureau Veldkamp conducted a study into the acceptance of the prostitution sector by and its image with service organisations, examining the extent to which service organisations contribute to the normalisation process and the areas in which problems occur in this context.

Different business service companies were involved in the study, broken down into five segments: banks, insurers, Chambers of Commerce, working conditions services and other business services (estate agents, accountants, tax advisers, bookkeepers, administrators).

¹⁰ See: *Er gaat iets veranderen in de prostitutie... De sociale positie en het psychosociaal welzijn van prostituees in prostitutiebedrijven voorafgaand aan de opheffing van het bordeelverbod* (something's about to change in prostitution ... the social position and psychosocial well-being of prostitutes in prostitution businesses), Liesbeth Venicz and Ine Vanwesenbeeck, NISSO, 2000.

The study was conducted in three phases: a qualitative preliminary phase, a quantitative main phase and a qualitative concluding phase. During the qualitative preliminary phase, service providers and representatives from the prostitution sector were interviewed in depth. Amongst other things, the information obtained was used to put together the questionnaire for the main phase. During this phase, electronic questionnaires were used, which were sent to respondents via diskettes. During the qualitative concluding phase, the most important results from the main phase were submitted to a number of individuals responsible for policy within business services.

The sample for the quantitative phase was taken from areas with an increased likelihood of contacts with the prostitution sector and, as such, is representative for those regions with at least a certain degree of prostitution. Ultimately, 225 representatives from service organisations (specialised in the prostitution sector, or their management) completed the questionnaire.

For more information about this sub-study and the results obtained, see: *De prostitutiebranche, acceptatie door dienstverlenende instellingen* [the prostitution sector; acceptance by service organisations], Veldkamp Marktstudie bv, 2002.

3.5 Study conducted amongst the Dutch population

In addition to the study conducted amongst business service companies, Bureau Veldkamp also conducted a study into the image that the Dutch population has of the prostitution sector.

From a large panel of individuals occasionally completing questionnaires for Veldkamp via their own PCs, a representative sample was taken on the basis of a number of characteristics (gender, age, education and region). In total, 505 people completed the questionnaire. The questionnaire was put together in line with the questionnaire used during the study conducted amongst business service companies.

The study resulted in the following report: *Het imago van de prostitutie* [prostitution: its image], Veldkamp Marktonderzoek bv, 2002.

3.6 Study conducted amongst municipal services

In collaboration with NIPO Consult, ES&E conducted a study into the way in which local partners give shape to their enforcement role in respect of prostitution and into the influence exerted on this role by the results obtained by these local partners. Local partners are primarily those services that operate at a municipal level, and lack any direct national access to data files. To be specific, the following municipal departments are concerned: the

Building Control Department, the fire brigade, Social Services and the municipal medical and health service (GG & GD).

In eight regions across the country (where the researchers ensured the presence of variation in terms of the degree of urbanisation and geographical spread), a total of twenty municipalities participated in the study. The size of the municipalities concerned varied from small to very large.

The number of municipalities and departments approached is too small to comply with the requirements applicable for a representative study. However, the selection method and data collection method used do provide a qualitatively good image of the various steps that are being taken by departments in large and small municipalities to give shape to and implement prostitution policy and the results achieved by them.

Data were collected through (face-to-face and telephone) interviews using semi-structured questionnaires sent to respondents in advance. In the 20 municipalities that took part in the study, officials were interviewed from the licence– issuing departments (20), from the Building Control departments (20), from fire brigades (20), from the municipal medical and health services (13, together serving 20 municipalities) and from Social Services (8).

For more information about this sub-study and the results obtained, see: *Handhaving prostitutiebranche door gemeentelijke diensten* [enforcement in the prostitution sector by municipal services], ES&E and NIPO Consult, 2002.

3.7 Study conducted amongst police forces, the tax authorities, the Health and Safety Inspectorate and the body implementing employee insurance schemes (UWV)

ES&E has analysed and described the data obtained from the sub-study conducted amongst police forces, the tax authorities, the Health and Safety Inspectorate and the UWV. Central to its analysis and description are the activities developed in respect of supervision, monitoring and enforcement in the prostitution sector and the results of these activities.

The scope of the study conducted was restricted to the collection of information using a written questionnaire. A questionnaire was distributed to all of the various police forces (and was returned by 22 of the 25 forces); the other organisations opted to complete one questionnaire at a central level.

This sub-study is reflected on in: *Handhaving prostitutiebranche door Politiekorpsen, Belastingdienst, Arbeidsinspectie en UWV/GAK* [enforcement in the prostitution sector by police forces, the tax authorities, the Health and Safety Inspectorate and the UWV (UWV/GAK)], ES&E, 2002.

4 The control and regulation of prostitution

The objectives underlying the amendment to the legislation in question demand government intervention at both an administrative and criminal law level. This chapter will focus on the administrative aspect. The criminal law aspect will be discussed in Chapter 6, while Chapter 5 will focus on aspects pertaining to employment law. Primary administrative responsibility has been placed with local authorities, but several bodies where policy is developed centrally (the tax authorities and the Health and Safety Inspectorate, for example) have administrative tasks relating to the exploitation of prostitution. Section 4.1 will look at control and regulation at a municipal level, and Section 4.2 at control and regulation at a national level.

In the interests of readability, any reference in this chapter to the 'municipality' will general mean the department issuing licences within the municipality.

4.1 At a municipal level

The data in this section originate chiefly from the sub-study conducted amongst local authorities and from the study conducted amongst municipalities¹¹.

4.1.1 Policy

According to the amendment of the legislation in question, municipalities are able to pursue a prostitution policy geared towards the control and regulation of the prostitution sector. A legal basis has been created for this and both the amendment and ancillary policy are geared towards an active contribution by the municipalities in prostitution policy, even where no prostitution exists within the boundaries of a particular municipality. However, municipalities are not obliged to pursue a specific prostitution policy.

In order to support the municipalities, the Association of Netherlands Municipalities has drawn up a model bye-law and (in collaboration with the Ministry of Justice and the Ministry of the Interior and Kingdom Relations) set up a temporary Prostitution Helpdesk. In addition, the Handbook Local Prostitution-policy [*handboek Lokaal Prostitutiebeleid*] has been published, as well as a Local Prostitution-policy newsletter [*nieuwsbrief Lokaal*].

¹¹ The latter study relates to the study conducted by the SGB0 in 2001.

Prostitutiebeleid], in which answers are given to frequently asked questions and an overview provided of recent case law, etc. The helpdesk has now been closed and the Local Prostitution-policy handbook is being published by the Association of Netherlands Municipalities.

The study conducted amongst Dutch municipalities shows that the majority of municipalities were pursuing some form of prostitution policy in the summer of 2001, which they have set out in a policy document. Most municipalities pursue a policy on the regulation of the number of prostitution businesses. This policy varies per type of prostitution business and per municipality. As regards the members-only sex clubs, most municipalities have opted for some form of maximum policy. As regards window prostitution, more than 80% indicate that a zero-tolerance policy is in fact being pursued. Home prostitution and escort agencies are the most hidden from the municipalities' view and are allowed the most freedom in the policy pursued. Approximately half of the municipalities indicate that prostitution policy has been coordinated at a regional level. In most cases, policy determined at a regional level concerns the agreement that a maximum system will be applied, with certain municipalities pursuing a zero-tolerance policy, while referring to the possibility to set up a prostitution business elsewhere in the region. The sub-study conducted amongst municipal authorities also shows that most municipalities involved in the study pursue a status-quo policy in respect of the prostitution sector. Other municipalities are pursuing a gradual extinction policy and prostitution businesses are kept at bay wherever possible. This certainly applies to new establishments. It is virtually impossible to start a new business.

In the study conducted amongst municipalities, the majority of municipalities claims to know exactly how many prostitution businesses there are in the municipality, while more than a quarter claim that they know more or less how many prostitution businesses there are. The sub-study conducted amongst municipal authorities reveals that the municipality's figures on the number of prostitution businesses do not always correspond with the figures held by municipal services, such as the municipal medical and health service. Other sub-studies also reveal that the municipal medical and health service sometimes has a more complete overview of the prostitution businesses than the municipality has.

4.1.2 Licensing, supervision and enforcement

Licensing

Pursuant to Sections 149 and 151(a) of the Municipalities Act [*Gemeentewet*], municipalities are able to lay down regulations in bye-laws about legal forms of prostitution. This entails the modification of general municipal bye-laws. With a few exceptions, all municipalities set out rules on prostitution and prostitution businesses in the general municipal bye-laws. When doing this, almost all municipalities have used the model general municipal bye-laws produced by the Association of Netherlands Municipalities, albeit in a

modified form. For example, in approximately half of the municipalities home workers are subject to the obligation to have a licence. Nor is policy on escorts uniform. In most municipalities, escort agencies are subject to the obligation to have a licence, while in other municipalities they are not.

In the summer of 2001, the municipalities were found to have a considerable backlog in terms of licensing, particularly with regard to members-only sex clubs and escort agencies. At the start of 2002, most of the municipalities are still in the initial phase of prostitution policy, with considerable attention being paid to administrative organisation and the issuing of licences. A large number of municipalities have still not completed the licensing process. Therefore, from a national point of view, licensing and enforcement are not simultaneous or uniform. At a national level, no one overall picture exists. Due to the decentralisation of the approach to a municipal level, differences have arisen between the different regions, but have also even resulted in variations between locations within one and the same police region (this is clear from the sub-study into involuntary prostitution, underage prostitution and illegal immigrants involved in prostitution).

Supervision and administrative enforcement

In the various municipalities, municipal services such as the Building Control Department, the fire brigade, the municipal medical and health service, Social Services and the police are responsible for conducting supervision and inspections to ensure that licence conditions are being met.

In most cases, the Building Control Department assesses the use of locations against zoning plans and checks planning permission and occupancy permits. The fire brigade focuses primarily on fire safety, and plays an advisory, explanatory and supervisory role with regard to the user requirements described in the municipal building regulations. The Building Control Department and fire brigade often work together and the majority have set out specific starting points for their activities in the prostitution sector. The policy set out by these departments focuses chiefly on ascertaining whether or not the licence conditions required have been met.

The municipal medical and health service has a preventative role in the field of public health and plays an important role in STD prevention and the promotion of safe sex policy. Most municipal medical and health services have developed a specific policy for the prostitution sector, setting out starting points and objectives in respect of prevention and information on the sector.¹² Various municipal medical and health services have also

¹² Incidentally, a survey held by the Netherlands Foundation for STD Control, referred to in the annual report 2001 for the foundation, show that municipal attention for STD prevention in prostitution has not resulted in more explicit attention for the field of prostitution in all municipal medical and health services. Approximately half of the municipal medical and health services has explicitly included STD prevention for the prostitution sector in its policy. The remaining municipal medical and health services place prostitution under general STD control.

formulated specific spearheads and focus on specific groups. The municipal medical and health services have considerable experience in approaching and communicating with both prostitutes and licensees. On the basis of their long-standing contacts with the sector, the municipal medical and health services usually have more complete policy-relevant information on prostitution in the municipality than the municipalities themselves do. This information often does not reach the municipality.

At the request of a municipality, the municipal medical and health service may also carry out technical-hygienic inspections in sex establishments. A considerable number of municipal medical and health services are now carrying out these inspections. However, both the municipal medical and health services and the municipalities warn against a combination of the information function (for which a bond of trust is essential) and the supervisory, monitoring function. As such, several municipal medical and health services refuse on principle to carry out technical-hygienic inspections and, for the same reason, some municipalities have explicitly opted, in the policy pursued by them, to have such inspections carried out by an organisation other than the municipal medical and health service. Other municipal medical and health services do carry out technical-hygienic inspections, but deploy other employees for the information function than those used for the inspection function.

The last municipal department to which explicit attention was paid in the study was Social Services, which implements the National Assistance Act [*Algemene Bijstandswet*]. At the time of this study, Social Services barely has any specific policy on prostitution and actually does not play any significant role. Just two Social Services have considered their role in respect of prostitution policy. Under certain conditions, they help (former) prostitutes to obtain benefit. The other Social Services have not agreed which response is to be given to prostitutes and prostitution. In general, the Social Services do not participate in interinstitutional links pertaining to the prostitution sector.

The police have both a criminal law and an administrative enforcement task. The 22 forces that took part in the study all indicate that explicit policy starting points have been formulated in respect of the prostitution sector. These relate particularly to the inspection of sex businesses for licences and for illegal prostitutes and the tackling of sex offences (the exploitation of minors and involuntary prostitution). According to half of the forces, the objectives set are feasible, while according to the other half they are not. Doubts concerning the feasibility of the objectives formulated are chiefly based on the inactive role played by municipalities, a lack of capacity to carry out the inspections and follow-up actions required and the criminality interwoven with prostitution that is difficult to combat.

Supervision and monitoring by the police chiefly occurs via general licence inspections on behalf of the municipalities (planned and unplanned). In addition, targeted inspections and criminal investigations are carried out into

illegal prostitutes, underage prostitutes and victims of human trafficking. Nineteen forces detect punishable forms of prostitution, in particular the presence of illegal prostitutes in sex establishments.

At the current time, the supervision and monitoring effected by local authorities is limited to the 'checking' of the conditions to be met before a licence can be issued. The validity of the licence is decisive for the frequency of checks made. The way in which checks are made varies per municipality and the registration methods used are not uniform either. In several small municipalities, barely any checks are carried out, or no checks at all, and no form of registration is undertaken. According to the researchers, more unity in terms of activities and registration could be a first step towards the actual monitoring of activities and results.

Incidentally, municipal services chiefly play a controlling and reporting role, not an enforcement role. This often falls upon the municipal administrative service. At the time of the study, there was barely any actual enforcement, since most municipalities had not yet completed the licensing phase. The step towards active monitoring and enforcement is still to be made.

In municipalities where licences have been issued, consultation between monitoring and enforcement agencies has been in place for some time. The municipal medical and health services in particular are used to involving licensees and the sex establishment proprietors in their consultations. Besides the inspection of licences, departments such as the Building Control Department and the fire brigade have barely any contact with the sector, or none at all. The following sub-section will look in more detail at the subject of communication with the sector.

4.1.3 Information and communication

The municipalities initiate little communication with prostitutes. Three quarters of the municipalities admit that neither municipal policy nor the consequences resulting from the amendment to the legislation in question were communicated to prostitutes. Approximately half say that they did communicate these matters to licensees. Even less communication with licensees and prostitutes occurs in the framework of information on working conditions and employment conditions.

Within the municipal services, policy on communication with those involved is not standard practice either. In some municipalities, the Building Control Department and the fire brigade do communicate with proprietors and licensees on policy, while other municipalities do not. The authorities that do carry out information activities chiefly do this after a licence has been issued, in a reactive sense. Informative contacts with the sector are few and far between. The municipal medical and health services, by contrast, have a tradition and experience of adopting a proactive approach to and communicating with both prostitutes and licensees. Where information is to

be provided to prostitutes who are foreign nationals, municipal medical and health services are able to use so-called *Voorlichters In de Prostitutie* (VIPs; information officials for prostitution). The VIP pool was set up by the Netherlands Foundation for STD Control in order to make it possible to reach migrant prostitutes.¹³

Prostitutes are not very well aware of their rights and obligations (in the field of benefits and employment relationships, for example). Licensees are more aware, but many of them still misunderstand or have a lack of knowledge of their rights and obligations. Therefore, prostitutes and licensees need more information about the consequences resulting from the amendment to the legislation in question. Prostitutes particularly need various types of information on rights and obligations and on the consequences of the amendment in general. For the licensees, there is a particular need, at a municipal level, for information on foreign nationals policy, guidelines for facilities companies, the powers possessed by supervisory authorities, zoning plans and case law.

4.2 At a national level

Although primary administrative responsibility for prostitution policy has been placed with local authorities, some agencies involved in prostitution policy develop policy centrally, despite often operating in local units. These agencies are the tax authorities, the Health and Safety Inspectorate and the UWV. This section will focus on these organisations, but also briefly touch on the role played by central government. The agencies responsible for the implementation of legislation in respect of foreign nationals were not involved in the study.

4.2.1 Policy

The tax authorities are responsible for ensuring that taxes and national insurance contributions are levied and collected, with responsibility for the actual levying falling upon various local units. A unit in Amsterdam with the greatest specialist knowledge in the field of the prostitution sector must ensure that the policy pursued is uniform. However, the tax authorities have not set out any specific policy for the prostitution sector. According to the tax authorities, the fiscal rights applicable for prostitutes and licensees have been formulated clearly in the various tax laws generally applicable in the Netherlands. However, each separate tax authority unit does have its own client manager for the prostitution sector. To help develop an effective

¹³ See the annual report 2001 published by the Netherlands Foundation for STD Control.

approach to the sector, cooperation was sought with the *Handhaven op Niveau* (HON)¹⁴ prostitution pilot.

The Health and Safety Inspectorate is responsible for the enforcement of the Working Conditions Act (*ARBO-wet*), the Working Hours Act [*Arbeidstijdenwet*] and the Labour Act for Aliens [*Wet arbeid vreemdelingen (Wav)*], amongst others. The Health and Safety Inspectorate has a national co-ordinator and a national project leader for the prostitution sector. According to the Inspectorate itself, its policy is geared towards achieving the sector's awareness of statutory rights and obligations generally applicable within the Netherlands. No active inspection projects will be set up in the prostitution sector, and inspections will only be carried out further to specific complaints and incidents. The Health and Safety Inspectorate also participates in a HON-pilot and, based on experiences gained within the pilot, will reconsider the role to be played by the Health and Safety Inspectorate in the future. An important policy rule when dealing with the prostitution sector is the extra care to be taken in respect of a complainant's identity within the general complaints procedure and the accelerated investigation of anonymous complaints in comparison with anonymous complaints relating to other sectors.

The core tasks of the UWV is to implement social security laws properly and on time for employers and for individuals entitled to benefit, and to help those on benefit to find work. The UWV has not developed a specific policy for the prostitution sector either. However, the emphasis placed on information during the initial phase and the gradual introduction of enforcement does make allowance for the fact that the sector is a newcomer to employed persons insurance schemes.

As already stated, administrative responsibility has primarily been placed with local authorities. Following the amendment to the legislation in question, the role of central government has been limited to the monitoring of developments in prostitution, evaluation of the policy pursued and (the co-ordination of) the identification of solutions for any problems observed. Incidentally, (the objectives underlying) government policy and the amendment to legislation enjoy support from both the Dutch population and from business service companies. A large majority of service providers feel

¹⁴ In the framework of the implementation of the recommendations made by the Michiels Committee in the report *Handhaven op Niveau* [a report on administrative and private law enforcement], activities are being undertaken and best practices developed in the field of the enforcement of legislation on safety in public spaces (in the field of prostitution, for example) in a number of places in the Netherlands. In a number of 'pilot' municipalities or regions, developments in the collaboration between various organisations involved in the enforcement of prostitution legislation, such as the police, the Public Prosecutions Department, the municipality, the Joint Administration Office (GAK), the tax authorities and the Health and Safety Inspectorate, will be monitored. A zero measurement will be carried out in the second half of 2002. The pilots will continue for several years.

that the government must do its utmost to ensure that prostitution becomes a normal industry.

However, licensees and prostitutes themselves are critical of various government agencies. Licensees in particular have a great need for a clearer, more workable and, most importantly, more uniform interpretation and implementation of regulations (in the field of taxation, for example). There is also an urgent need for the alignment of the rules formulated by (local) authorities with regulations produced by the Chambers of Commerce. According to the Chamber of Commerce, the Minister of Economic Affairs must consider excluding prostitutes from the Commercial Registers Act [*Handelsregisterwet*] in connection with privacy problems. After all, anonymity is of paramount importance for prostitutes.

4.2.2 *Supervision and enforcement*

The tax authorities have not formulated separate supervision and enforcement policy for the prostitution sector and say that, as a general rule, action will always be taken where the liability to pay tax is not met. Active enforcement in the prostitution sector is only evident in the framework of the HON pilots, where one pilot is geared specifically towards the escort industry. The tax authorities are unable to provide a clear answer to the question of the extent to which prostitutes and licensees meet the tax obligations imposed on them. Across the country, it has registered 1285 licensees and 921 prostitutes. A point of some concern in terms of enforcement is the interpretation of the relationship between the licensee and the prostitute, particularly in those cases where prostitutes claim to be self employed, while, according to the tax authorities, all of the elements applicable for employment are present.

As stated in Section 4.2.1, the Health and Safety Inspectorate will only carry out inspections in the prostitution sector further to a complaint or report (except where made in the context of an HON pilot). However, at the time of the study, it had not yet received any complaints and, as such, had not yet inspected any businesses. The Health and Safety Inspectorate did not make any business visits within the prostitution sector in the past either. However, on the basis of experiences gained within the HON pilot, the Health and Safety Inspectorate has been confronted with the same problem as that experienced by the tax authorities: it would appear to be particularly difficult within the prostitution sector to determine relationships of authority, or the absence of them, making it difficult to call 'employers' to account for their statutory obligations.

Incidentally, the lack of clarity on the definition of the term 'independent' is also pointed out by licensees and prostitutes. This lack of clarity is the case, for example, in respect of various schemes that actually amount to percentage-based schemes. Prostitutes and licensees are requesting that the

tax authorities provide more clarity, particularly in relation to the definition of the term 'independent'.

At the time of the study, the UWV is still not yet actively engaged in supervision and inspection activities within the prostitution sector, but has planned a limited number of inspections in collaboration with the tax authorities. The most important problem for this body is its unfamiliarity with the sector.

4.2.3 Information and communication

The tax authorities chiefly initiate communication with its external partners through various brochures, via collaboration within the HON pilots and via the National Prostitution Consultation.

The Health and Safety Inspectorate says that it is actively working on the communication of rights and obligations in the field of working conditions and working hours, to licensees and prostitutes, their interest groups and a number of other organisations. It is doing this with the aid of brochures, by telephone contact prompted by specific questions, and via participation in congresses and workshops.

The UWV also claims to be communicating with a number of organisations and with licensees and prostitutes. This occurs via information brochures, meetings and informative visits.

Although the various organisations indicate that they are (actively) communicating with the sector, Section 4.1.3 has shown that prostitutes and licensees have a limited awareness of their rights and obligations. The majority of prostitutes and licensees need more information on issues about which these organisations ought to be able to provide more clarity, such as social security, taxation and foreign nationals policy. Prostitutes' familiarity with various types of informative material relating to the amendment of legislation on prostitution is low and the group that has actually read these materials is very small. Therefore, in the study conducted amongst prostitutes and licensees, the conclusion is drawn that the information methods used (often written) are unsuccessful. Prostitutes get most of their information from their bosses, or at work, from the municipal medical and health service or the media. Strikingly, licensees often obtain their information from the municipal medical and health service.

In general, the lifting of the ban on brothels had resulted in considerable attention for the subject of prostitution in the media and throughout the period leading up to the study. As such, the majority of the Dutch population has heard about the amendment of legislation on prostitution, but say that they know little about it. Incidentally, the same applies for the business service companies, which have been found to possess knowledge of a very general nature.

The Dutch population (also including business service companies) chiefly see the amendment of legislation on prostitution as a way of combating crime and illegal acts, only in the second place as a way of better protecting the position of the prostitute and improving the regulation of prostitution. Researchers in the sub-studies in question concluded that information published by the government ought to increase the extent to which positive starting points for the amendment were put forward, since communication from the government has reached few business service companies.

Approximately four in ten prostitutes in the regulated sector have had contact with the tax authorities during the course of the last year. The majority of these prostitutes felt that they had been dealt with entirely properly, but a quarter felt that they have been dealt with incorrectly. The complaints made about the tax authorities relate particularly to a condescending attitude and to the incompleteness of the information received. As an essential source of information, the tax authorities would not (yet) appear to be accessible for prostitutes in any way whatsoever.

Local authorities are critical of information transfer by government. For example, building control departments and fire brigades are critical of the implementation of the amendment. They point to the need for more regular and specific information transfer about prostitution issues by central and municipal government. The municipal medical and health services are also critical of implementation and feel that the national government has provided insufficient and unclear information about the administrative regulations that apply to sex establishments, amongst other things.

4.3 Developments/expectations

Although it becomes clear from this chapter that many matters relating to the regulation and control of prostitution are still in the initial phase, ongoing developments can already be commented on at this stage.

For example, both licensees and prostitutes in the regulated sector would seem to be more prepared to comply with the new regulations than evade them. Particular behavioural changes in prostitutes detected by the licensees and the prostitutes themselves are the payment of tax, the keeping of proper accounts and the proper identification of their rights and obligations. Working from secret addresses or departure from the Netherlands is observed less. Changes are being observed in licensees by prostitutes and by licensees themselves as regards the payment of taxes and compliance with norms applicable for facilities companies.

A number of local authorities have also indicated that legalisation has resulted in the achievement of more control over the sector. Particularly as regards businesses that want to arrange their affairs properly, the

amendment of the legislation concerned here has, according to these authorities, had a positive effect. There is some concern about those businesses and licensees that continue to be involved in illegal forms of prostitution. The concern is whether or not it will be possible to achieve more of an insight into and control over the illegal side of the prostitution sector.

Various organisations are intending to intensify their involvement with the prostitution sector. For example, a number of building control departments are intending to increase the number of inspections carried out. The Health and Safety Inspectorate is intending to distribute information on working conditions on a large scale via various channels by means of a brochure focusing specifically on prostitution, but it will allow the realisation of these intentions to depend on the results obtained from the HON pilots referred to above. The tax authorities are intending to intensify their efforts in the field of supervision, enforcement, collaboration and detection.

Various authorities and agencies claim to recognise the importance of collaboration with each other and of establishing active contacts with the sector. However, in many cases, any actual action in these areas has not yet been initiated. However, these agencies do feel that more can be achieved by exchanging information and that more knowledge can be gained of case law. The municipal medical and health service is the only municipal service with long-standing, broad experience of prostitution policy. On the basis of this experience, emphasis is placed on the importance of establishing low-threshold, outreaching contacts with the sector in the framework of information and consultation. According to various agencies, local government could play a more active role in the development and support of policy implementation.

The HON pilots deserve special attention at this point. It is striking that a number of organisations, such as the Health and Safety Inspectorate, the UWV and the tax authorities primarily give shape to their plans in the framework of the HON pilots, and are even allowing future plans to depend on the results obtained from these pilots. Given the duration of these pilots (several years) and the limited number of HON pilots being developed, the researchers focusing on these organisations feel that there are few incentives for multidisciplinary enforcement in the short term and, as such, for the fiscal, financial and employment law-related normalisation of the sector. In addition, the tax authorities raise a separate point for concern where the far-reaching collaboration aimed for in the HON pilots is concerned, which point relates to the great importance placed on anonymity by prostitutes. The collaboration between various organisations could cause prostitutes to avoid all such organisations, fearing that they could lose their anonymity once known to the tax authorities. This could pose a threat to the low-threshold enjoyed by the municipal medical and health service, for example.

5 Protection of the position of prostitutes

One of the objectives underlying the lifting of the general ban on brothels is the 'protection' of the position of prostitutes. Although 'protection' cannot be equated with 'improvement', the latter has been taken as the starting point for policy. Where before the amendment to the Act, prostitutes were employed in an illegal sector (albeit tolerated under certain circumstances, although their work itself was not illegal), they are now employed in a sector in which checks are made to ascertain whether or not licensees are complying with legislation and regulations applicable for all citizens and businesses. It is anticipated that this will ultimately result in a reorganised and more transparent sector, accompanied by better protection of the position of the prostitute in the regulated sector, and broader acceptance of prostitutes in society. The position of prostitutes has different facets. A number of these are directly work-related, while a number of others relate more to contact with the outside world. A brief description of the conclusions that can be drawn further to the results obtained from the various studies into the position of prostitutes in the regulated sector is provided below. The position of prostitutes in the non-regulated sectors will be discussed in Chapter 6, where information is available on this subject.

5.1 Work-related aspects

5.1.1 *Conditions of employment and employment relationships*

Various sub-studies reveal that confusion exists in respect of a prostitute's 'independence' and in respect of the way in which this is to be interpreted in practice, by prostitutes, licensees and by agencies such as the tax authorities and the Health and Safety Inspectorate. More than half of prostitutes and even more licensees report the existence of an independent status for prostitutes in combination with the hire of facilities. In fact, this often amounts to a percentage-based scheme, thereby justifying doubts as to any actual independence. Indications of a discrepancy between the independence alleged by prostitutes and licensees respectively and the presence of elements of dependence that (may) point to an employment relationship are also being confirmed by the tax authorities and the Chambers of Commerce. The study conducted amongst prostitutes and licensees reveals that employment relationships that would probably fall under a legal definition of 'independence' may be supposed for approximately one-third of prostitutes in the regulated businesses. The percentage-based scheme would still appear to serve as the basis for

employment relationships, whether implicitly or explicitly, for at least half of all prostitutes in regulated businesses.

In general, prostitutes enjoy a considerable degree of autonomy in their work. However, while there are virtually no prostitutes claiming to be employees, autonomy is only the case for one-fifth of all prostitutes. Autonomy has increased in some areas, but is often not yet even complete for independent prostitutes and in some areas no progress has been achieved at all.

5.1.2 Working conditions

Formally, the Health and Safety Inspectorate is responsible for the enforcement of the Working Conditions Act, amongst other legislation. However, as already discussed in Chapter 4, no active inspection projects have been set up in the prostitution sector and the Health and Safety Inspectorate has not yet actually commenced enforcement in the prostitution sector. Therefore, the only information available on working conditions in the regulated sector has been obtained from prostitutes and licensees.

According to prostitutes in businesses in the regulated sector, hygiene in their businesses is good to very good and ongoing improvements are evident.

The same applies in respect of the sense of safety experienced. The vast majority of prostitutes in the regulated sector often or always feel safe. However, this does not mean that no room exists for improvement in this respect. In the study conducted in 2000¹⁵, a remarkable difference was observed in terms of objective and subjective safety. The percentage that had not experienced any violence during the year preceding the interview was lower than the percentage that felt safe. In the study conducted in 2002, approximately one-fifth of prostitutes in regulated businesses had experienced aggression from clients in the year prior to the interview. There are no indications at all that aggression from clients has fallen in comparison with 2000. What is more, it is striking that almost 12% of prostitutes in the regulated sector say that they sometimes feel threatened by the comments or the behaviour of the licensee.

5.2 Acceptance and image

Now the general ban on brothels has been lifted, the prostitution sector has become a normal business sector in the eyes of the law, with all of the corresponding rights and obligations. These obligations, such as the obligation to pay premiums and taxes, have made it more difficult for prostitutes and licensees to conceal their prostitution activities. As such, the

¹⁵ As indicated in Chapters 2 and 3, NISSO has already conducted a study amongst prostitutes in the past. Where comparisons are made with 2000 in this chapter, these are based on data from this study. For more information see Footnote 10 in Chapter 3.

attitude of the Dutch population towards prostitution and prostitutes has become even more important for the social position and well-being of prostitutes.

The sub-study conducted amongst the Dutch population has shown that prostitutes are generally regarded as 'pitiful' and 'victims', particularly in the eyes of women. In addition, people believe that most prostitutes are from abroad and in the country illegally. Licensees have a different, far more negative image than the prostitutes and the image of the sector as a whole is mostly influenced by the negative image that the population has of licensees. People are clearly more tolerant of prostitutes than they are of the sector as a whole and, according to the respondents themselves, the amendment of the legislation on prostitution has done little to change this. Despite the negative image, men in particular feel that prostitutes play a useful role in society and that prostitution is an acceptable industry.

What is striking is that both prostitutes and licensees in the licensed sector have estimated the image of the sector differently, since they do not feel that there is much difference between the image of prostitutes and that of the sector as a whole. Both prostitutes and licensees in the regulated sector believe that the average Dutch person is not very positive about prostitutes. As such, they are calling for the improvement of the image of and attitude towards the sector and its participants. The population feels that the sector itself must do more to improve its image.

Both prostitutes and licensees feel that the Dutch population is positive about the legalisation of the sector; this is an accurate estimation. Most Dutch people support the policy designed to make prostitution a normal industry and improve the position of prostitutes. The attitude is particularly determined by the image, which implies that an improved image will also generate more support for government policy.

The prostitution sector also has a poor image with business service companies¹⁶. In the eyes of service providers, the poor image of the prostitution sector is a pivotal concept, since this results in a vicious circle: due to its poor image, the sector is driven into the hands of 'shady' service providers, reinforcing its negative image. Image aspects of the prostitution sector, which, from the service providers' point of view, ought to be first in line for improvement, are its association with crime, the underworld, unreliability and poor working conditions. It is clear that the amendment of legislation on prostitution, which makes the prostitution sector a legal sector, is not sufficient to remove its associations with crime and the underworld. Incidentally, as regards the sector's image with business service companies, the old adage 'unknown, unloved' applies. Organisations that have contacts with the prostitution sector have a more positive image of it than

¹⁶ See 3.4 for details of the business service companies involved in the study.

organisations that do not. Once service provision contacts have been established, problems are only experienced in a limited number of cases.

5.3 Social provisions

In the period following the amendment to legislation, signals were received by the monitoring consultation, amongst other places, that prostitutes were experiencing difficulty accessing service organisations. Therefore, during the sub-studies, attention was paid to the question of the extent to which prostitutes utilise social organisations and facilities and the obstacles that they experience when doing so. Since the problems observed relate particularly to business service companies, a separate study was conducted amongst these providers. A number of results obtained from the study conducted amongst business service companies have already been discussed in the previous section, as regards acceptance and image. In this section, discussion will focus more on the accessibility of various service providers.

5.3.1 Business services

In the study conducted amongst prostitutes in regulated businesses, the problems observed with regard to the accessibility of service organisations are also evident. As regards business service companies, prostitutes from the regulated sector have most contact with bookkeepers and are satisfied with these contacts. There is less contact with banks, but more dissatisfaction, since in approximately four in every ten cases, prostitutes were refused bank accounts or loans. To a lesser extent, prostitutes are also refused insurance by insurance companies. Licensees have more contact with and more complaints about business service organisations.

Business service companies acknowledge that there are obstacles preventing the provision of services to the prostitution sector. The most important reasons for this situation are the poor image of the prostitution sector (which was discussed briefly in Section 5.2) and the fact that service providers find it difficult to calculate the risks involved. The main problem is the sector's association with crime, which presents a serious obstacle to the normalisation of the relationship. Service providers also mention a number of other problems (social taboo, little transparency, the safety and position of prostitutes), which, according to the researchers, are chiefly the result of the sector's image rather than hard facts. The majority of business service companies feel that doing business with the prostitution sector frightens off other clients and that the financial risk involved is greater when doing business with the prostitution sector than it would be with pubs, restaurants,

cafés or fitness clubs¹⁷. As such, service organisations respond to requests for service from the prostitution sector with extra caution, regardless of whether the request in question is made by an individual prostitute or by a licensee. More checks than usual are carried out and more consultation occurs with colleagues and/or the organisation's head office. A very big majority of the business service companies are of the opinion that a prostitute is given fewer opportunities to start her own business than other professional groups would be. Incidentally, business service companies have rarely formulated an explicit policy on contacts with clients from the prostitution sector.

Although business service companies are presented above as an homogenous group, differences do exist between them in terms of their attitude and behaviour towards the prostitution sector. The Chambers of Commerce know the most about the relevant legislation and regulations and are the most active in terms of policy and internal communication. Banks are also active to an extent, but have little trust and are cautious. Insurers are the same as the banks: careful and wary, but are less active in this area than banks are. They are not particularly inclined to change policy further to the amendment to legislation, especially given the difficulty expected in terms of adequate risk estimation and the limited size of the sector. The working conditions services are sympathetic but not active. They are awaiting any enquiries. Finally, in terms of attitude and activities, the other service providers (administration offices, tax offices, estate agents) are taking up a position between the Chambers of Commerce on the one hand and banks and insurers on the other hand.

The reproach made in recent years via the monitoring consultation, i.e. that service providers fail to treat data on prostitutes with the confidentiality required, is chiefly regarded as unjust by the service providers and, incidentally, was barely raised by any of the prostitutes that participated in the study. Only insurers recognise somewhat more often that this reproach is justified. The service providers do give examples of cases in which the government and the tax authorities have made blunders in the recent past as regards privacy. Privacy is often a shared interest: businesses do not want their other clients to know that they have prostitutes as clients, and prostitutes do not want to be entered in a business' customer base as a prostitute. However, the Chambers of Commerce indicate that it would be impossible to observe the privacy of prostitutes and licensees, given the obligations set out in the Commercial Registers Act.

¹⁷ To be able to place the image of the prostitution sector in a broader perspective, steps were taken during the qualitative initial phase to ascertain which sectors could provide comparison material. According to the persons interviewed, some complicating factors (in the image) for service providers, such as the lack of organisation, black money and crime were also more or less evident in pubs, restaurants, cafés and fitness clubs.

5.3.2 Health care

The study conducted amongst prostitutes in the regulated sector shows that (besides family doctors) the doctors affiliated to brothels (so-called club doctors) play an important role for prostitutes. More than a quarter of the prostitutes have had contact with a club doctor during the past year, and virtually all of them feel that they were dealt with properly. This is striking when compared with previous studies. It would seem that the attention paid to the performance of club doctors in the STD guidelines published by in recent years by the Netherlands Foundation for STD Control has paid off.

The limitation of accessibility to primary healthcare (due to the lack of medical insurance) would appear to apply particularly to foreign prostitutes.

5.3.3 Interest groups

At the time of the study, prostitutes have little opportunity in joining an interest group. The most important organisation representing the interests of prostitutes is the Red Thread [*Rode Draad*]. However this is (still) an organisation for which formal membership is not possible. However, given the initiatives of the Federation of Netherlands Trade Unions [*Federatie Nederlandse Vakbeweging (FNV)*] and the Red Thread, positive changes would seem to be in the pipeline. Licensees are able to join interest groups. Approximately one-third of licensees are members of the Excellent group and/or the association for operators of relaxation businesses [*Vereniging Exploitanten Relaxbedrijven*].

5.4 Job satisfaction and health

Many prostitutes in the regulated sector show clear ambivalence in respect of their work. Although three-quarters state that they enjoy their work, almost half say that they would, really, prefer to stop. More than 40% say that they do not enjoy the work but 'try to make the best of it'. More than a quarter are consistently trying to overcome their aversion, in order to be able to do the work. This is a considerably larger proportion than reflected in a control group of employees in other industries¹⁸.

When compared with a control group of female employees in various professions, prostitutes do not consider their work any more complicated, but they do more often experience it as emotionally and physically demanding. In accordance with the results of the study conducted in 2000, it has been found that the overall job satisfaction experienced by prostitutes is positively correlated to the degree of autonomy and support and negatively

¹⁸ Where possible, the researchers have compared data with data originating from studies conducted amongst female employees in the Netherlands and from studies conducted amongst women employed in various professions in the healthcare sector.

correlated to bad experiences with clients. Besides this, Dutch women report significantly higher job satisfaction than women from Eastern Europe and Latin America. Prostitutes are relatively more likely to experience distress¹⁹, which in turn is correlated to job satisfaction, autonomy and negative experiences with clients.

It would seem that a prostitute's lifestyle is relatively unhealthy when compared with the control group, amongst others. As regards physical complaints, there are indications that fatigue, stomach complaints and pain related to muscle tension in particular are being experienced relatively often by prostitutes. During the past year, 16% of prostitutes were treated for sexually transmitted diseases, a percentage that corresponds with figures issued by the Netherlands Foundation for STD Control and STD clinics.

5.5 Developments/expectations

In the sections above, results have been reported in respect of a number of aspects relating to the position of prostitutes in the *regulated sector*. They often provide only a random indication of the situation, at a particular moment in time, and it is very often unclear whether or not the amendment of legislation on prostitution has had any impact. However, a number of conclusions can also be inferred from the various studies that say more about current or past developments or about expectations for the future.

Changes in the regulated sector are only visible to a very limited extent, but developments are certainly happening within the field. Physical working conditions would appear to be changing for the better. However, both as regards the conditions of employment and employment relationships, the conclusion would appear to be justified that 'much is being done', but actual changes are not yet really very evident. However, one visible change is the fact that the percentage of prostitutes known to the tax authorities would appear to have doubled since 2000. Besides this, the sector seems to be involved in in-depth discussion about the correct shape to be given to employment relationships and is actively seeking to disentangle itself from its traditional illegal status. It is still too early to comment on changes in the physical and emotional well-being of prostitutes in the regulated sector. As it stands, it would appear that their well-being is still under far more pressure than is the case for women employed in other professions.

More than half of the prostitutes and licensees expect that the amendment to legislation on prostitution will result in the improvement of the social position of prostitutes in time. However, they are also critical, particularly as regards the increase in trafficking in women and injustice against foreign

¹⁹ The 16-item distress scale from the *Vier Dimensionale Klachtenlijst* test [four-dimensional complaints questionnaire] has been used as an indicator of emotional well-being. For more information, see Vanwesenbeeck, Höing and Vennix, 2002.

women that they expect to occur. At the current time, prostitutes in the regulated sector see an approximately equal improvement (legal status, greater self-determination) and deterioration (reduced earnings, extra administration) for themselves personally. Licensees place greater emphasis on the deterioration for them personally, arguing in particular that it has become more difficult to find personnel, that there are financial disadvantages and an enormous investment is required in terms of time. What is striking is that both licensees and prostitutes in regulated businesses report a reduction in activity and the number of clients, and some (licensees in particular) are afraid that the industry will collapse in the long term. As yet, it is unclear whether clients have moved to less visible prostitution sectors or whether client numbers have actually fallen. There are no hard indicators to show a substantial shift to less visible sectors.

There is still room for improvement as regards the accessibility of service organisations for workers from the prostitution sector, but there are indications that an improvement is being observed in the initial acceptance problems experienced. Partly under pressure from publicity surrounding the amendment of legislation on prostitution, banks have decided not to automatically reject the prostitution sector in future, but will still adopt a very reserved position towards the sector. A 'normal' relationship between service organisations and the prostitution sector is still a long way off. Two-thirds of service providers feel that the prostitution sector will never be a normal sector. What is more, many regard the sector as too small (and too much of a disorganised entity) to concern themselves with it. However, the positive co-operation experienced during the study conducted amongst service providers (better than usual for this professional group) does show their interest in the subject.

Business service companies feel that the prostitution sector could improve its image via PR activities and increased transparency. What is more, in their eyes, a strong trade association would contribute positively to the normalisation of its relationship with business service companies. Service providers say that they will have to put aside their prejudices and apply their standard assessment rules.

6 Punishable forms of prostitution and crime-related marginal phenomena

A number of the objectives underlying the amendment of legislation on prostitution relate to punishable forms of prostitution (involuntary prostitution, underage prostitution and prostitution by illegal immigrants) and crime-related marginal phenomena. These objectives form the basis for this chapter.

A number of study findings are the same for different forms of punishable prostitution, in particular involuntary prostitution and underage prostitution. For this reason, Section 6.1, entitled 'Trafficking in human beings', will discuss a number of these findings. Section 6.2 will take a brief look at involuntary prostitution, underage prostitution is central to Section 6.3, while Section 6.4 will focus on illegality in prostitution. Section 6.5 will examine crime-related marginal phenomena. Finally, Section 6.6 will describe several developments and expectations.

6.1 Trafficking in human beings²⁰

Trafficking in human beings constitutes a serious infringement of a human being's mental and physical integrity and of his or her personal freedom. As such, it is a serious offence. Although, in an international context, *any* form of exploitation of people for gainful purposes is increasingly falling under the term 'trafficking in human beings', in the Netherlands this offence will be restricted to trafficking in human beings for the purpose of *prostitution* for the time being.²¹ This often involves the crossing of borders, but is not always the case; trafficking in human beings is a reality in the Netherlands too. Since April 2000, the Netherlands has had a National Rapporteur on Trafficking in Human Beings (NRM). In the spring of 2001, the NRM's first report was published, and also included information on relevant legislation and regulations, victims, investigation and prosecution and support agencies.

²⁰ Since the amendment to the legislation in question and the replacement of Article 250ter of the Criminal Code by Article 250a, trafficking in human beings has ceased to be a separate offence. However, the term 'trafficking in human beings' is used in practice.

²¹ Upon the partial amendment of crimes against morality, due to enter into force on 1 October 2002, Article 250a of the Criminal Code will be extended to include other forms of sexual exploitation. In implementation of international regulations, legislation is being prepared in which trafficking in human beings, geared towards other forms of exploitation than sexual exploitation, is made an offence.

As already stated in Chapter 2 of the present report, the lifting of the general ban on brothels was accompanied by the amendment of Section 250a of the Criminal Code on trafficking in human beings. It is now punishable to coerce an individual into prostitution, to force an individual to continue to be engaged in prostitution, or to gain from this, just as it is punishable to involve minors in prostitution or recruit women for prostitution from abroad (please note that 'involuntary prostitution' is not one of the conditions necessary for punishability in the case of minors or women recruited from abroad).

The punishability of involuntary prostitution and underage prostitution means that these forms of prostitution often occur in those prostitution sectors subject to the least supervision and more difficult to access for (support) agencies, such as street prostitution, home prostitution, escort prostitution and 06-prostitution. This impedes the collection of reliable data on the number of victims of trafficking in human beings. However, NRM has collected figures on the number of victims of trafficking in human beings that have managed to reach support agencies or who have registered with the Foundation Against Trafficking in Women (*Stichting tegen Vrouwenhandel (STV)*). However, these figures are just the tip of the iceberg, since not nearly all victims reach support agencies and not nearly all victims are registered with the Foundation Against Trafficking in Women. Usually, victims are only registered with the Foundation Against Trafficking in Women once they have actually reported trafficking in human beings.

Other agencies also have little data on involuntary prostitution and underage prostitution. For example, the sub-study conducted amongst municipal services shows that most municipal departments issuing licences have just a general idea of the number of prostitutes working in sex establishments within the municipal boundaries, or of the nationalities of these prostitutes. Some large municipalities do occasionally receive reports of illegal forms of prostitution (usually from the police), both in respect of underage prostitution, women working illegally and enforced prostitution. The municipal medical and health services approached indicate that they are not responsible for monitoring forms of involuntary prostitution or underage prostitution. They see this primarily as a task for the police.

Reports received by the police on trafficking in human beings usually originate from the prostitution sector (tip-offs from licensees or prostitutes). In addition, the police trace trafficking in human beings through their own inspection and investigation activities. The police forces that took part in the study conducted in 2001 (22 of the 25 police forces) had written a total of 89 police reports on trafficking in human beings. At the time of this study, the total police figures for 2001 were not yet available. The same also applies for the Public Prosecution Department's figures.

Given the contradictory information occasionally provided by municipalities and various agencies during the study, the researchers have concluded that

reports of illegal prostitution practices do not always reach law enforcement agencies. As a result, it would appear that opportunities for administrative intervention and those for criminal law intervention will continue to be under-utilised.

In the sub-study geared entirely towards the issue of involuntary prostitution, underage prostitution and illegality in prostitution, emphasis lies on the unregulated sector (street prostitution, home prostitution and 06-prostitution) and on escorts²². Due to the limited overview that official agencies have of punishable forms of prostitution, researchers approached prostitutes and licensees working in these sectors and a number of key informants. This sub-study has revealed that involuntary prostitution, underage prostitution and illegal prostitution certainly do not constitute an exception to the rule in the unregulated sector more than one year after the amendment to legislation on prostitution. However, this does not mean that no legal forms of prostitution (prostitution in which adult prostitutes with the Dutch nationality, or with a valid residence permit entitling them to work in the Netherlands, are employed voluntarily) are to be found in the unregulated sector.

6.2 Involuntary prostitution

Involuntary prostitution is understood to mean prostitution carried out under duress, as described in Article 250a(1) of the Criminal Code²³. Involuntary prostitution is a fact, as evidenced by interviews conducted in various prostitution sectors (window prostitution, street prostitution, clubs, home prostitution and escort prostitution). The researchers themselves also encountered various coercion situations. Minors and illegal prostitutes are often confronted with coercion situations, but the study shows that the same also applies to adult Dutch prostitutes. The various studies have been unable to generate any clarity on the extent to which coercion situations occur. This is partly due to the fact that punishable forms of prostitution, as referred to above, are often less visible. In addition, involuntary prostitution is more difficult to trace, since coercion is often difficult to prove.

²² In most municipalities, escorts are subject to the obligation to have a licence, but not in all municipalities. As such, escorts are regulated in most municipalities, but in practice are difficult to trace and inspect and, consequently, difficult to control. As regards problems in terms of inspection and enforcement, escorts can be compared with the unregulated sector. Incidentally, some other forms of prostitution, such as home prostitution and couples clubs, do require a licence in some municipalities, but not in others.

²³ Amongst other things, Article 250a (1) discusses the punishability of 'the individual who forces another individual, through violence or otherwise, or through the threat of violence or otherwise, or who induces that person, through the abuse of power resulting from actual relationships or through deception, to make him or herself available for the performance of sexual acts with a third party for payment, or, under said circumstances, undertakes any act of which he or she knows or must reasonably suspect that, by doing so, the other person will make him or herself available for the performance of said acts'.

In the *regulated* sector (businesses with a licence) one-third of prostitutes estimate that colleagues are coerced into prostitution at least 'sometimes', one-tenth even 'often'. Almost half of the licensees in this sector estimate that the phenomenon of 'involuntary prostitution' occurs at least 'sometimes' in the prostitution businesses that they know. According to prostitutes, less obvious forms of coercion, such as 'interference' by the partner, are more frequent.

Although almost all police forces indicate receiving reports of punishable forms of prostitution, the vast majority of cases involve illegal immigrants. Although women without a valid residence permit may also be subject to coercion, this is not necessarily the case (also see Section 6.4).

6.3 Underage prostitutes

Little is known either about the presence of minors in prostitution. The most important reason for this is that minors chiefly work in the less visible circuits. The sanctions imposed when minors are found to be working in a prostitution business are tough, far tougher, for example, than the sanctions applicable to the presence of prostitutes without a valid residence permit. Therefore, businesses in the licensed sectors are taking a great risk with underage prostitutes. In addition, the presence of minors in the more visible prostitution circuits, where these exist, are of a very transient nature. Minors change workplaces often and quickly. Incidentally, minors were already working in circuits difficult for the police and welfare services to access before the amendment of the legislation in question. At this time, prostitution was tolerated under certain conditions, with action being taken by the police in certain cases. Police intervention was most stringent where underage prostitutes were encountered.

Another reason for the lack of data on minors in prostitution is the fact that their age is often difficult to prove, as a result of which people from the welfare services or other agencies are uncertain whether or not they are dealing with minors (this is sometimes difficult to tell from their appearance and these prostitutes often use forged papers with a false date of birth). Finally, minors that work for a pimp (loverboy) are under his continual, extensive control. This makes them particularly difficult to find for welfare services, and for researchers too.

The incitement of minors to enter into prostitution is punishable, even without the use of coercion. In practice, it appears that underage prostitutes are often confronted with coercion situations. Coercion is particularly frequent where minors work for a pimp, whether or not accompanied by abuse and threats.

A separate group amongst minors involved in prostitution is formed by homeless young people (boys in particular). Prostitution is not unusual

amongst this group. A previous study has shown that homelessness, combined with an acute financial crisis, is the chief reason why boys end up working in prostitution (also see Horn et al., 2001, for instance). An important difference between this group and other minors is that homeless young people often do not work in pimp-related constructions, and, as such, are less dependent on others and confronted less with exploitation and coercion.

So, although minors work chiefly in the less visible sectors, prostitutes in the regulated sector were asked how many of their colleagues are underage. One in ten prostitutes estimates that colleagues are underage at least 'sometimes'. Licensees were asked how frequently, to their knowledge, underage prostitutes are used in the prostitution businesses that they know (at the time of the study). Almost one-fifth of licensees estimate that underage prostitutes work in the businesses that they know at least 'sometimes'.

6.4 Prostitution by individuals without a valid residence permit

A large number of foreign prostitutes are working within prostitution in the Netherlands. This was already the case prior to the amendment of the legislation in question and is still a fact now. A considerable number of these prostitutes are working illegally, i.e. without a valid resident permit allowing them to seek work in the Netherlands.²⁴ In the interests of the report's readability, these prostitutes will be referred to hereinafter as 'illegal prostitutes'.

The researchers encountered illegal prostitutes. They encountered them in window prostitution, clubs, street prostitution, home prostitution and in escort prostitution. Trafficking in human beings certainly appears to play a big role, particularly amongst Eastern European women. There would appear to be a scale, at one extreme of which are serious forms of trafficking in human beings, and at the other very minor forms that could be classed as human smuggling. There are major individual differences between the situations in which prostitutes find themselves and the extent to which they are confronted with deception, violence and coercion. What is clear is that illegal prostitutes, regardless of the way in which they enter prostitution, are more prone to exploitation as a result of their illegal status.

In certain regions and municipalities, (criminal law and/or administrative) enforcement is less stringent and the policy pursued in respect of illegal prostitutes is more or less one of toleration. In these locations, the researchers also found prostitutes without valid residence permits in the visible forms of prostitution, such as window prostitution and clubs.

²⁴ Individuals from non-EU countries can work legally in prostitution provided they are in the possession of a residence permit that allows them to undertake paid employment without a work permit (for example, because they are married to a Dutch man). For more information about these regulations, see the report published by NRM, for instance.

Of all of the punishable forms of prostitution, prostitution by women without a valid residence permit would appear to be the most frequent. This may, perhaps, coincide with the greater visibility of the form of prostitution in which they are employed.²⁵ Reports received by police forces in respect of punishable forms of prostitution primarily concern illegal prostitutes.

One-third of prostitutes in the *regulated* sector estimate that 'some' colleagues at least are resident in the Netherlands illegally. Two-thirds of licensees estimate that this occurs at least 'sometimes' in the businesses that they know. These high numbers correspond with the finding that, for some licensees, a fine in the framework of criminal law enforcement would appear to be classed as just another business risk. According to the researchers, the employment of illegal prostitutes is, evidently, still profitable for some licensees.

Incidentally, both licensees and prostitutes in the regulated sector, the latter albeit to a slightly lesser extent, support work permits for non-EU women.

6.5 Crime-related marginal phenomena

One objective underlying the amendment of the legislation on prostitution is the separation of prostitution from crime-related marginal phenomena. In the vicinity of various forms of prostitution, the researchers were quite frequently confronted with crime-related marginal phenomena (for example, drug trafficking, arms trafficking, violence, tax fraud and money laundering). When amending legislation on prostitution, the expectation was expressed that the normalisation of the prostitution sector in the regulated and monitored sectors and its increased transparency would result in a decrease in crime-related marginal phenomena, partly due to increased enforcement in these areas. There is a risk that the marginal phenomena in question will shift to other areas or to the environment occupied by the less visible sectors of prostitution.

The extent to which these marginal phenomena were present prior to the amendment of legislation on prostitution is not known. Nor is it known to what extent this is now still the case. The problem here is that a whole variety of offences are concerned, and police records, amongst other things, do not specify whether these are in any way related to the presence of prostitution businesses or prostitutes.

²⁵ As stated in Section 6.3, a number of factors result in a situation where minors are chiefly employed (or forced to work) in the less visible circuits. The sanctions imposed in respect of (the use of) foreign prostitutes without a valid residence permit are less tough, as a result of which the need for them to work in less visible circuits or to put them to work in these circuits is less pressing. As regards involuntary prostitution, coercion is often difficult to prove, as a result of which this form of prostitution is also generally less 'visible'.

In the study conducted into the less visible forms of prostitution, the researchers encountered various crime-related marginal phenomena, such as the unlawful deprivation of liberty, deception, duress, financial exploitation, blackmail, violence and sexual violence against prostitutes, but also financial crime, drugs and arms trafficking, car theft and document fraud. The police and experts only indicate an increase in respect of document fraud. Besides this no other developments are known.

More than half of prostitutes in regulated businesses say that drug trafficking occurs often or sometimes in the prostitution businesses that they know, while more than one-sixth say this of arms trafficking. Almost half claim to know of public order problems and almost one-third of tax fraud or money laundering. Licensees are slightly more familiar with cases of tax fraud and money laundering.

6.6 Developments/expectations

As regards recent changes in the field of enforced prostitution, underage prostitution and illegal prostitution, the opinions of both prostitutes and licensees in the *regulated* sector are very much divided, and many often reply to questions with the answer 'do not know'. Some observe progress, others a deterioration, while most have not observed any changes at all. A number of prostitutes know prostitutes who are now working at illegal addresses or who have switched to escort prostitution due to the amendment of the legislation in question. Besides this, some prostitutes know colleagues who have left the country due to the amendment. A larger group knows prostitutes who have left prostitution altogether due to the amendment. Where coercion, underage prostitution and illegal prostitution is concerned, licensees observe that these would generally appear to have decreased rather than increased since the amendment of legislation, particularly as regards illegal prostitution. However, one-third to a quarter of the licensees suspect that no changes have occurred in these areas. According to the researchers the study conducted amongst prostitutes and licensees in the regulated sector offers no confirmation, all in all, of the often-alleged large-scale exodus to the black circuit further to the amendment of the legislation in question.

Added to the above, changes and relocations have always been a fact in the prostitution sector. Further to the study into illegal prostitution, involuntary prostitution and underage prostitution, the impression has arisen that the speed and necessity of the relocations (making it possible to continue punishable forms of prostitution), have increased as a result of the enforcement of the new prostitution policy. Relocations are taking place (faster) to locations where prostitution is tolerated and to forms of prostitution that are less visible. The amendment to legislation has clearly resulted in the relocation of trafficking in human beings, etc. to locations and municipalities where inspections are less stringent or less frequent. By

decentralising the enforcement of prostitution policy to a local level, demonstrable differences can be observed per location. Differences are evident both between regions and between municipalities within one region. Places where monitoring is less stringent ('free towns') are well known to prostitutes without a valid residence permit.

In addition to relocations, a shift to other forms of prostitution is also evident. Punishable forms of prostitution are shifting from the regulated sector towards forms of prostitution that are not regulated (or not regulated everywhere), such as street prostitution, unofficial prostitution areas (camper vans, cars, pubs, couples clubs and saunas, for example), escort prostitution and newer forms of prostitution, such as virtual prostitution via the Internet. The prostitutes working in these forms of prostitution are less visible and more difficult to trace for both the police and support workers (with the exception of street prostitution in official streetwalkers' zones).

The increase in escort activities observed by the researchers can be ascribed in part to the emergence of new forms and intermediate forms containing an element of escort prostitution. There is a broader range of manifestations, the 'classical' escort having been joined by various other manifestations of 'mobile working': via 06 telephone numbers and in all kinds of locations. In addition, the 'real' escort market has gained a number of new market segments. The term escort has become a sort of container concept. Not every prostitute is able to work in all of the various prostitution sectors, but this *is* possible in the mobile forms of prostitution.

So-called 'autonomous developments' are playing a role in both the shifts occurring to other forms of prostitution and in the emergence of new forms of prostitution. These developments are independent of the lifting of the general ban on brothels and influence prostitution in the Netherlands. Two examples of autonomous developments are technological developments (GSM and the Internet), resulting in increased logistical opportunities, and the arrival of economic refugees from Eastern Europe, etc., resulting in problems in terms of illegal foreign nationals and work permits. In addition, the tightening of the general foreign nationals policy may affect (those working in) the prostitution sector. The nature of these consequences is not known at the present time, nor the extent to which consequences such as these will reinforce or moderate any consequences resulting from the lifting of the ban on brothels. Given all of the above developments, it is unclear to what extent the shifts observed are a direct consequence of the amendment of the legislation in question.

As a consequence of the shifts and new forms of prostitution referred to above, new forms of organisation and a certain degree of disorganisation (mobile working, individualisation) are emerging. This may result in a reduction of the protection enjoyed by prostitutes, as former protection structures disappear. Partly under the influence of more intensive action by the police and technical and logistical opportunities, illegal prostitutes are

working in isolation to a certain extent. Relocations prevent prostitutes from putting down roots and familiarising themselves with their environment, as a result of which they are less accessible for the welfare services and more vulnerable to exploitation.

7 Conclusions and recommendations

This report brings together and classifies a number of results obtained from the sub-studies conducted in the framework of the evaluation of the lifting of the general ban on brothels according to the objectives underlying the amendment to the legislation in question. This final chapter will discuss a number of conclusions that can be drawn from these results. The conclusions are a selection from the most important, comprehensive conclusions. Other conclusions can be found elsewhere in this report and in the reports issued further to the various sub-studies.

7.1 Appreciation of the amendment

In general, much support exists for the amendment to the legislation in question and its underlying objectives. The amendment has proponents amongst prostitutes and licensees within the regulated sector, as well as amongst various government agencies, business service companies and the Dutch population. They see more advantages than disadvantages. As such, the majority of licensees and prostitutes in the regulated sector seem willing to conform to the new regulations.

It is still too early to be able to draw conclusions on the actual consequences resulting from the amendment of legislation on prostitution. This is partly due to the fact that the majority of the sub-studies conducted constitute the first in a number of measurements, and barely any (reliable) data are available on the situation prior to the amendment. Future measurements must provide more clarity on developments and consequences. Another reason making it impossible to draw firm conclusions at this stage is the fact that the licensing process has not yet been completed in a large number of areas at the time of this study. Therefore, the agencies in question have often not yet been able to commence supervision and enforcement activities. As such, the changes envisaged by the amendment have not yet been implemented in full, as a result of which it is too early to be able to draw conclusions on any consequences it may have had. In some municipalities, the licensing process *has* been completed and supervision and enforcement activities have commenced.

7.2 Policy

Although various (government) agencies claim to be focusing actively on prostitution, there is often no specific policy and general regulations are being applied. Very few steps geared specifically towards prostitution are being undertaken. A number of agencies, such as the Health and Safety Inspectorate and the tax authorities, have restricted their activities to those required by participation in the HON pilots²⁶. However, these pilots are long and subject to a delayed start. To be able to achieve the short-term resolution of a number of problems observed, the agencies in question must commence activities in their field independently of the HON pilots. Incidentally, according to various agencies, local government could play a more active role in the development and support of policy implementation.

A problem that has emerged from various sub-studies is the confusion that exists about the employment relationship between licensees and prostitutes, particularly in terms of the requirements to be met by this relationship if a prostitute is to be recognised as 'independent'. For various reasons (taxation in particular) it is in the interest of licensees that prostitutes be regarded as 'independent'. Prostitutes are often taken to be independent, despite the apparent presence of elements of a relationship of authority. All of the parties involved are wrestling with the definition of independence, and confusion exists about this amongst prostitutes, licensees and various agencies. Priority should be given to the formulation of a practical, widely applicable and verifiable definition of the term 'independence' in the context of prostitution. The tax authorities could take the lead here. Communication with other agencies and the prostitution sector will be necessary in order to achieve a workable definition. Incidentally, the confusion about independence and employment is illustrative of the lack of clarity that exists generally on the shape to be given to employment law standards within the context of prostitution.

The status quo policy pursued in many municipalities forms an obstacle to the possible renewal of the prostitution sector. It is virtually impossible to set up a new business. Almost all of the current businesses are owned by people who became active in the prostitution sector when prostitution was in fact still illegal. Now that the sector has been legalised, other individuals may perhaps be interested in starting up a business. However, given the licensing policy pursued, this is not feasible in many cases. As such, opportunities for the renewal of the sector (and any corresponding improvement of the position of prostitutes) are limited. By changing their policy, municipalities can encourage renewal and, by doing so, perhaps achieve the objectives underlying the amendment of legislation on prostitution earlier than would be possible by maintaining the status quo.

²⁶ For an explanation of the HON pilots, see Footnote 14 in Chapter 4.

7.3 Supervision and enforcement

Due to the decentralisation of prostitution policy, national implementation of the legislation in question and the corresponding enforcement is not simultaneous or uniform. As a result, major differences are arising between regions and even between municipalities within one and the same police region. Besides the uncertainty generated amongst workers in the sector, another consequence of this lack of uniformity is the relocation of punishable forms of prostitution (involuntary prostitution, prostitution by minors and prostitution without a valid residence permit) to municipalities where fewer inspections are made or where inspections are less stringent. It is important that the licensing process be completed as soon as possible and that supervision and enforcement commence across the country. A national minimum enforcement level is a necessary precondition if relocation effects are to be combated and the objectives underlying the amendment achieved.

The role played by the police deserves special attention. In most areas, the police bear primary responsibility for inspections (in the framework of administrative supervision) in the *regulated* sector, leaving them with no capacity to play a major monitoring and investigative role with regard to punishable forms of prostitution outside the regulated sector. It is recommended that it be considered whether some of the police's monitoring tasks could be transferred to other government institutions, enabling the police to concentrate more on criminal enforcement outside the regulated sector, in the field of involuntary prostitution, underage prostitution and prostitution by illegal immigrants.

An additional problem in terms of enforcement is the discrepancy between the level at which enforcement is carried out and the level at which prostitution is organised. Monitoring and enforcement occur at a local level. In principle, this makes it possible to ensure that location-bound establishments are regulated properly. However, in this manner, those forms of prostitution not bound, or barely bound, to one specific location are not being regulated. Some forms of prostitution have a regional scope, some a national scope and some even an international scope. Therefore, any approach geared solely towards the local level will be insufficient in respect of these forms of prostitution.

7.4 Image, information and communication

Significant improvements are still possible in the field of communication and information. Municipalities are initiating very little communication with the sector. Although various agencies, such as the tax authorities and the Health and Safety Inspectorate, do indicate that they communicate with the sector, this is barely noticed by prostitutes and licensees. Prostitutes and licensees are insufficiently aware of their rights and obligations and need more information. The written information methods often used to provide

information would not appear to be successful, which may partly be due to the large number of foreign prostitutes. Various agencies themselves need more regular and specific information transfer about prostitution issues from national and municipal government.

In general, the prostitution sector has a poor image with both the Dutch population and business service companies. Prostitutes are primarily viewed as victims. Licensees and the sector as a whole are often associated with crime and unreliability. This poor image is affecting the possibility for people working in the prostitution sector to 'do business' with business service companies and, as such, is pushing them towards more suspect service providers, thereby reinforcing the sector's poor image and creating a vicious circle. Business service companies acknowledge that obstacles are hampering the provision of services to the prostitution sector and that a vicious circle is the case. If this circle is to be broken, action will be necessary on the part of both the prostitution sector (increased transparency, the development of a different image) and the service providers (putting aside prejudices, applying standard assessment rules). The renewal facilitated by the change recommended to the status quo policy pursued by municipalities (see Section 7.2) may have a positive effect on the resolution of the vicious circle described above.

7.5 Shifts

In addition to the relocations between various municipalities described above, it is evident that punishable forms of prostitutions are shifting from the regulated sector to prostitution sectors that are not regulated (street prostitution and 06-prostitution, for example), or to sectors that *are* regulated but very difficult to inspect or control (home workers and escort prostitution in a large number of municipalities, for example). Shifts such as these are a fact, but the studies conducted have been unable to provide any clarity on the extent to which they exist. No confirmation has been found for the often expected large-scale exodus to sectors that are not regulated or impossible to monitor. Nor can it be concluded that all illegal prostitutes who have left regulated businesses have ended up in the unregulated sectors.

The various developments in the prostitution sector would appear to be resulting in a growing division in the prostitution world. This is partly inherent to the amendment of the legislation in question, since one of the objectives underlying the amendment is to create a distinction between punishable and non-punishable forms of prostitution, to reorganise the prostitution sector and make a stronger stand against exploitation in prostitution. In this manner, this results, on the one hand, in a regulated sector in which several changes gradually start to occur that may benefit the position of prostitutes. On the other hand, the combination of inspections in the regulated sector and the relatively limited number of enforcement and investigation efforts in the unregulated sector results in a situation where

involuntary prostitutes, underage prostitutes or illegal prostitutes are relocated from the regulated sector to the unregulated sector and forms of prostitution that are difficult to monitor. These forms of prostitution are characterised by a lack of supervision and by poor accessibility for support workers, leaving these prostitutes even more vulnerable to exploitation and making their position worse rather than better. They are more likely to be confronted with coercion situations, whether or not accompanied by abuse and duress. As already observed in Section 7.3, it is recommended that it be considered how best to expand investigation activities in the unregulated sector. Actions such as these should consider the more vulnerable position of the prostitutes working there. Incidentally, the various studies conducted have not been able to provide any clarity on the extent to which coercion situations occur. On the basis of the studies conducted, no conclusions can be drawn on an increase or decrease in the *number* of prostitutes in coercion situations.

A limited degree of reorganisation has been achieved within the prostitution sector. A number of (small) businesses have not bothered to apply for a licence, and some have been refused a licence. Besides this, licensees indicate that it has become more difficult to find personnel. However, their remaining personnel have not seen an increase in the number of clients. Both licensees and prostitutes in the regulated sector report a fall in activity and in the number of clients. Combined with the fact that the police inspections are concentrated in the regulated sector, this fall is causing support for the amendment to be undermined, particularly with licensees in the regulated sector.

The sub-studies conducted have been unable to provide any clarity on the causes underlying the fall in the number of clients using the regulated sector. There are no indications that large numbers of clients have turned their attention to the unregulated sector. At this moment in time it is only possible to speculate on why client frequency has fallen or why clients are choosing not to use regulated businesses. A study amongst clients may provide more clarity on movements in the prostitution sector.

Besides the lifting of the general ban on brothels, other developments are also affecting the prostitution sector. Due to the advent of mobile phones and the advance of the Internet, logistical opportunities have increased and the prostitution sector has become more varied and intangible. Developments in the field of migration and foreign nationals policy are also affecting dynamics within the prostitution sector. For example, the intensification of foreign nationals supervision may result in a reduction of the number of prostitutes without a valid residence permit. Given all of these developments, the extent to which the shifts observed in this report are a direct consequence of the amendment is unclear.

7.6 Recommendations for further study

As described in Chapter 2, a prostitution monitoring consultation was set up in order to monitor the consequences resulting from the lifting of the general ban on brothels. It is important that the partners in this consultation keep each other abreast of problems and reports of abuse. Besides this, further study is needed in order to further chart the legalisation situation and the consequences resulting from the amendment of legislation on prostitution. To this end, a number of sub-studies (whether or not in amended form) will have to be repeated at some point. Due to the complex and broad nature of prostitution and the large number of parties involved, studies in this area are complex, time-consuming and expensive. In addition, a number of the developments envisaged, such as the improvement of the position of prostitutes, are complex processes that require time to achieve. It is recommended, therefore, that the various sub-studies are not repeated in the short term but after several years. As such, serious responsibility will come to lie with the monitoring consultation in the intervening period. The consultation must raise and deal with any existing problems reported and the consequences resulting from them. Extra attention must be paid to vulnerable groups of prostitutes (minors, women without a valid residence permit, and individuals coerced into prostitution). Where insufficient information is generated on the above within the monitoring consultation, it is recommended that quick scans be used, where necessary, to attempt to keep abreast of the situation.

It is possible and would be useful to ensure that the study conducted amongst municipalities into the licensing situation is repeated in the short term. Based on the results of this study, a logical period for the repetition of other sub-studies can be considered (after all, the completion of the licensing phase forms the starting point for a number of other processes).²⁷ It is also recommended that the various agencies involved regularly (annually) be asked to report on policy developments, activities and actual findings.

Punishable forms of prostitution are often to be found in those prostitution sectors that are subject to the least supervision. These sectors are less easily accessible for (support) agencies and researchers. This hinders the collection of reliable data on the number of prostitutes working involuntarily, who are underage or do not have a valid residence permit. This lack of data makes it almost impossible to arrive at any kind of conclusion on developments in the extent of the phenomenon, now or in the future. When collecting data, a diversity of key informants was used wherever possible, but informants are not bottomless pits of information, and experience shows that rumours become reality if repeated often enough. It is recommended that clients also be included in the study in the future, since it is on them that the existence of

²⁷ Naturally, when repeating the sub-studies conducted, methods used to obtain the first measurements should be replicated wherever possible, in order to ensure that the data obtained are comparable and that conclusions can be drawn on developments observed.

prostitution relies. Prostitutes that make themselves inaccessible to the police, support workers and researchers must, in any event, have contact with their clients. What is more, clients may be able to provide an insight into movements in the prostitution market and the causes underlying them.

The study conducted is unique in the sense that prostitution has for the very first time been studied as work. Any follow-up study must build on this basis, including, for example, room for studies of a more managerial-sociological nature. Other subjects to which only brief attention has been paid in the present studies and about which an insight could be gained through further study are, for example, the way in which the autonomy and resilience of prostitutes could be increased, or the form in which information is to be provided in order to tap into prostitutes' perception of their environment. In addition, in connection with the complexity of the field and movements possible (in the future), it may be advisable to conduct a limited number of case studies, making it possible, for example, for a region to determine which consequences will result from the intensification of a police force's investigation and enforcement activities. Finally, it is important that any future studies do not lose sight of other developments that could affect the prostitution sector.

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