

# Transgender Europe (TGEU) – Sex Work Policy

## Introduction

TGEU's mandate is defined as working toward a Europe where every person can live freely, and without interference, according to their gender identity or gender expression. TGEU aims at taking full account of the needs and perspectives of further marginalised groups within the trans community. This policy is meant to guide TGEU's work in the field of sex work and to inform sex worker rights activists and allies of TGEU's position.<sup>1</sup> TGEU developed this document in consultation with its member organisations and other civil society organisations that focus on sex workers' human rights in order to highlight the common concerns trans people and sex workers face in various contexts, along with the most pressing issues for trans sex workers.

TGEU recognises that sex work is a multi-gendered phenomenon and sex workers of all genders in many countries face serious violence and human rights violations. While the majority of sex workers are cisgender women in many contexts, the large number of cisgender men and trans people working in the sex industry needs to be acknowledged. Violence against and murders of trans sex workers in particular, often by the hands of or with the complicity of state authorities and police, are revoltingly high and well-evidenced in TGEU's hate crime monitoring activities.<sup>2</sup>

Trans people engage in sex work for a variety of reasons, most commonly because they live in a transphobic environment and face structural barriers to education and employment, and thus have limited economic and employment opportunities.<sup>3</sup> The lack of quick, transparent, and accessible legal gender recognition is a further driving factor. Bullying in educational settings could be, at least partly, fended off by identification documents with name and gender matching gender identity or expression. Without this recognition school drop-out rates,

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<sup>1</sup> Sex work as a term is used in this document in accordance with the UNAIDS definition: sex work means that adult sex workers of all genders who are engaging in commercial sex have consented to do so (that is, are choosing voluntarily to do so), making it distinct from trafficking.

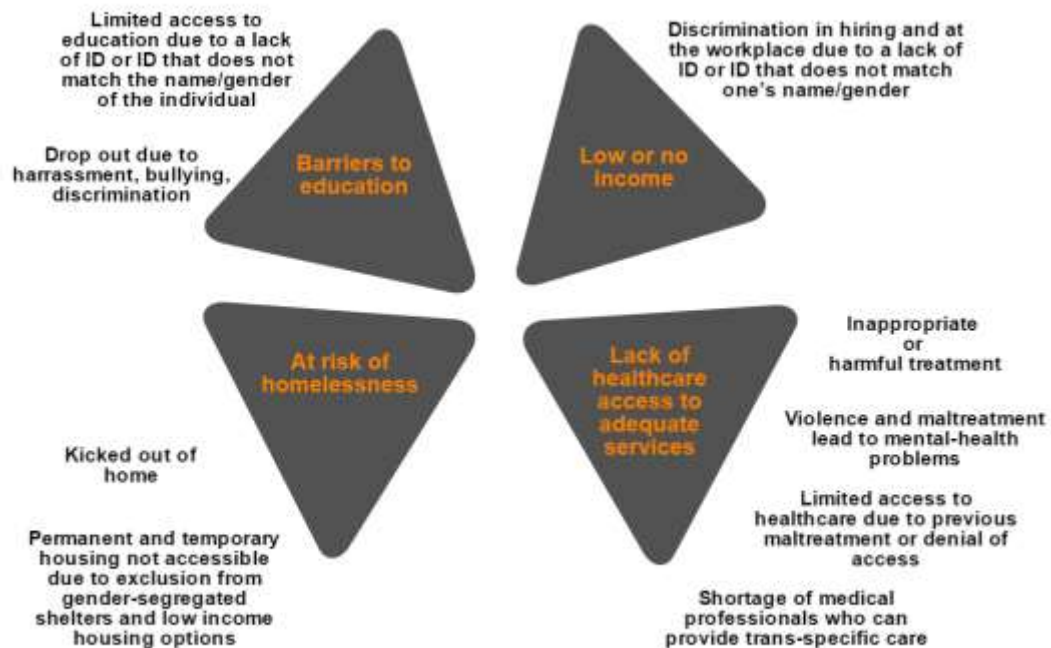
<sup>2</sup> See:

Trans Murder Monitoring project: <http://transrespect.org/en/research/trans-murder-monitoring/>

ProTrans project: <http://tgeu.org/pro-trans/>

<sup>3</sup> Global Network of Sex Work Projects (NSWP) Briefing Paper: The Needs and Rights of Trans Sex Workers. Available at: <http://www.nswp.org/resource/briefing-paper-the-needs-and-rights-trans-sex-workers>

underperformance, and suicidality remain a reality for many trans people in education. The low or no level of education and the perceived difference between a person's gender expression and data in personal documents also put legal employment and fair payment for many trans people out of reach. As a result, they are exposed to poverty, homelessness, and inadequate access to healthcare, including the inability to finance gender reassignment. These factors all contribute to the large number of trans people among sex workers in several contexts.<sup>4</sup>



*The interconnected system of different forms of structural and institutional violence. Adapted from the Disproportionate Poverty & Homelessness chart of the Sylvia Rivera Law Project.*

Available at: <http://srlp.org/resources/flow-chart-disproportionate-poverty/>

<sup>4</sup> In some countries, up to 43% of the transgender population have been estimated to have had experiences in sex work. See: Hounsfield, V.L., et al., (2007) Transgender people attending Sydney sexual health services over a 16 year period, *Sex Health*, 4. See also: Adebajo et al, Estimating the number of male sex workers with the capture-recapture technique in Nigeria (2013). HIV and STI Control Board, National Centre for AIDS and STD Control: Mapping and size estimation of most at risk populations in Nepal, Vol 1. Male Sex Workers, Transgenders and their Clients (2011).

Based on TGEU's consultation with its member organisations and sex work networks from May – June 2015 and studying the position of and evidence generated by other civil society actors, such as Human Rights Watch and Amnesty International, TGEU developed its policy to support the full decriminalisation of sex work. The full decriminalisation refers to an absence of any laws and forms of legal oppression that prohibit sex work itself or associated activities like facilitation of sex work and the purchase of sexual services.

## The common struggle of trans people and sex workers

Sex work has always been relevant to LGBT communities. Trans sex workers have been main driving forces in the LGBT movement, like in the Stonewalls riots. However, trans sex workers are often excluded from LGBT activism. For instance, Pride celebrations all over the globe frequently exclude trans sex workers and their organisations.

Trans people and sex workers share the experience of being over-policed but under-served. Criminalisation manifesting in formally existing laws and other legal measures have also marginalised the two communities, i.e. the trans and the sex worker communities, for far too long. Various aspects of consensual sex work are criminalised in European countries<sup>5</sup>, and even in legalised environments, state actors use other means to fine and harass sex workers, e.g. nuisance and public moral laws and non-sex work related administrative offences, such as violation of traffic regulations. Similarly, the criminalisation of 'crossdressing' and 'gender reassignment surgery' is still enforced in some countries in the Global South and East, along with anti-homosexuality laws that also frequently target trans women who are perceived as gay men by law enforcement and the judiciary system. Furthermore, in the absence of legal basis for criminalisation of trans identities, it has been reported that trans people are regularly prosecuted with laws designed for other purposes, such as anti-prostitution, loitering, or nuisance laws, like 'walking-while-trans'. Trans sex workers therefore are burdened by laws that are transphobic and anti-sex worker simultaneously, and being under extreme economic pressure they are unable to escape persecution. At the same time, non-sex worker trans people

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<sup>5</sup> See more on sex work legislation in Europe:  
<http://tampep.eu/documents/TAMPEP%202009%20European%20Mapping%20Report.pdf>

are still oftentimes perceived as sex workers and their social inclusion and acceptance are undermined by whorephobia.

Another common threat to both the trans and sex worker communities is the denial of agency and capacity to them. The “Swedish Model” advocates an *end demand* approach (criminalisation of sex workers’ clients) to eradicate sex work as a form of male violence against women. It defines all commercial sex as a form of exploitation. According to this model, it is impossible to consent to ‘exploitation’. Thus, sex workers are denounced the capacity and agency to sell sex out of choice and are depicted as victims who need to be rescued.

Trans people are also deprived agency over their body, privacy, sexuality, and gender by state control; in several European countries trans people have to undergo forced sterilisation, psychiatric examination, or dissolve their existing marriage as criteria for changing their officially registered name and sex.

Sex workers and trans people are disproportionately burdened by HIV globally. Prevalence rates among trans women are worrying: 19.1% of trans women worldwide are estimated to be living with HIV.<sup>6</sup> Available figures for trans sex workers in the Netherlands, Spain, and Italy indicate even higher prevalence rates of 20-27%.<sup>7</sup> The underlying factors include structural barriers to the full spectrum of HIV services, institutional discrimination, and high levels of stigma which both sex workers and trans people face.

Additionally, the pathologising attitude in medical settings and establishments manifests itself in trans people needing to obtain psychiatric diagnoses for their gender to become legally recognised and in sex workers being required to submit to mandatory HIV and STI testing (e.g. in Austria, Hungary, and Latvia). Forced testing also violates the human rights of trans people and sex workers, including street-based trans sex workers; several police raids have been

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<sup>6</sup> Baral, S. D. et al, Worldwide burden of HIV in transgender women: a systematic review and meta-analysis. *Lancet Infect Dis* 2013 Mar 21; 13(3):214-22.

<sup>7</sup> Platt, L. et al. (2013) HIV in the European region: using evidence to strengthen policy and programmes. Washington, DC : World Bank Group. Retrieved from: <http://documents.worldbank.org/curated/en/2013/05/17796656/hiv-european-region-using-evidence-strengthen-policy-programmes-vulnerability-response-synthesis-report>

documented in the region when sex workers and trans people were forced to undergo HIV testing.<sup>8</sup>

## The most pressing issues

According to the TGEU members who responded to our questionnaire, the following issues are the most pressing for trans sex workers:

- The interlocking system of transphobic and sex worker-phobic violence
- HIV, AIDS, sexual, and reproductive health
- Migrant trans sex workers
- Criminalisation of sex work

## The interlocking system of transphobic and sex worker-phobic violence

Between 2008 and 2015, 1,933 reported killings of gender-variant/trans people in 62 countries have been documented, including 104 in 15 European countries. Of those whose profession was known, 65 per cent were sex workers. In Europe, Turkey has seen 39 trans women, the majority sex workers, murdered in the last five years.<sup>9</sup> As noted by TGEU members, violence against trans people may overlap with other axes of oppression prevalent in society, such as anti-sex worker and anti-migrant sentiments and discrimination, resulting in trans sex workers being exposed to intersectional forms of abuse. This significantly increases trans sex workers' exposure to transphobic and whorephobic violence on the part of the police and other perpetrators.

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<sup>8</sup> In Thessaloniki, trans women and sex workers have been systematically subjected to arbitrary ID checks and forced HIV testing. More information: <http://tgeu.org/tgeu-statement-on-transgender-arrests-to-improve-image-of-thessaloniki/>

“In June 2014, more than 500 sex workers and men suspected of “homosexual behaviours” were arrested in raids in Dushanbe, Tajikistan’s capital, for committing “moral crimes”. Detainees were forced to have blood and smear tests and several reported beatings and humiliation by the police. Many sex workers reported being raped by the police, who demanded sex in exchange for their release. All were fingerprinted, filmed and photographed.” See for reference:

ICRSE (2015). Underserved. Overpoliced. Invisibilised. LGBT Sex Workers Do Matter. Retrieved from: <http://www.sexworkeurope.org/underserved-overpoliced-invisibilised-lgbt-sex-workers-do-matter>

<sup>9</sup> For more information, see Transgender Europe (TGEU) “Transrespect versus Transphobia Worldwide (TvT) research project” website. URL: <http://transrespect.org/en/research/trans-murder-monitoring/>; Global Network of Sex Work Projects (NSWP) “The Needs and Rights of Trans Sex Workers – A Summary” Retrieved from: <http://www.nswp.org/sites/nswp.org/files/Trans%20SWs%20Summary.pdf>; Global Network of Sex Work Projects (NSWP) “The Needs and Rights of Male Sex Workers – A Summary” Retrieved from: <http://www.nswp.org/sites/nswp.org/files/Male%20SWs%20Summary.pdf>

Police as one of the common perpetrator group of violence against trans sex workers have been documented in TGEU's ProTrans project.<sup>10</sup> The project recorded more than 100 hate-crime incidents between June 2014 and August 2015 in Serbia, Hungary, Moldova, Turkey, and Kyrgyzstan. In the incidents that involved physical and sexual assault and psychological violence at the hands of the police, the majority of the victims were trans-women sex workers. Other abusers included clients, people posing as clients, and gangs.

### HIV, AIDS, sexual, and reproductive health

Several TGEU members identified trans sex workers being at heightened risk for HIV and STIs as key areas of concern. This is confirmed by international evidence on trans sex workers being hit hard by HIV globally. The main reasons for a significant vulnerability to HIV are poor coverage and availability of affordable, confidential, and respectful HIV and health services, lack of access to information on trans-specific health care, criminalisation of trans identities, homosexuality, and sex work, punitive environments, social marginalisation, and continuing stigma, discrimination, and violence that often lead to high risk behaviour, including medically unsupervised hormone therapy and gender reassignment treatment. Frequently, these root causes are not addressed by public health policies; on the contrary, trans sex workers are targeted by abusive interventions, such as mandatory or forced testing and treatment. Condoms used as evidence to press charges against sex workers, including street based trans sex workers for prostitution-related offences, have also been documented in the European region, for instance in Serbia in the framework of the ProTrans project.

### Migrant trans sex workers

Several member organisations signalled that a large number of trans sex workers are migrants, often undocumented, among their constituencies. The high number of migrants among sex workers is confirmed by evidence collected through the TAMPEP network (European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers)<sup>11</sup>: it is estimated that about 70% of sex workers working in the Western-European countries are migrants. However, there is no reliable data on trans people among migrant sex workers in this region.

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<sup>10</sup> <http://tgeu.org/pro-trans/>

<sup>11</sup> The results presented were systematised by TAMPEP through 12 year-long mappings of the prostitution scene across Europe. The full reports can be read through: [www.tampep.eu](http://www.tampep.eu). There are no absolute data on sex work, even in countries that oblige sex workers to register. All data available is compiled by studies and outreach done by civil society and community-based organisations.

Respondents to TGEU's membership consultation report that besides language difficulties in the new country, lack of access to employment opportunities, housing, health care services, and state benefits push trans people into the sex industry. The (partial) criminalisation of sex work can further lead to police violence and being at-risk of detention or deportation. In face of growing anti-prostitution efforts and xenophobia in Europe, migrant sex workers are particularly affected by repressive measures. Criminalisation of sex work, sex workers, and their clients, is commonly accompanied by anti-immigration laws, which are intended to arrest and forcibly deport undocumented migrants.

Anti-trafficking and repressive migration policies are implemented in most European and Central Asian countries. More often than not, they are based on the conflation of human trafficking with sex work, as well as with growing anti-migrant sentiments. Police raids and rescue operations in sex work settings continuously undermine sex workers' safety, deprive them of their earnings, and force them to work underground or in isolation whenever their workplaces are shut down following police actions. Although actual victims of trafficking are rarely found, these kinds of actions continue, as illustrated by the Soho Raids in London in late 2013.<sup>12</sup> In 2009, 'the largest ever police crackdown on human trafficking' was carried out by 55 police forces in England, Wales, Scotland, and Northern Ireland, together with the UK Border Agency, the Serious and Organised Crime Agency, the Foreign Office, the Crown Prosecution Service, and various NGOs. They raided a total of 822 brothels, flats, and massage parlours over a 6 month period. The operation 'failed to find a single person who had forced anybody into prostitution.'<sup>13</sup> However, even if trafficked persons are found, their needs and vulnerabilities are typically addressed through so-called rehabilitation programmes, rather than empowerment through providing them with access to labour and civil rights. Moreover, it has been reported in many parts of the region that (undocumented) migrant sex workers working in exploitative settings who are apprehended in such rescue operations are in fact subject to arrest and deportation if they refuse to identify themselves as victims.

As a result, migrant sex workers are driven underground to more hidden sex work settings to avoid persecution and the risk of expulsion. This trend worsens sex workers' vulnerability to

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<sup>12</sup> See more: <http://prostitutescollective.net/tag/soho/>

<sup>13</sup> <http://www.theguardian.com/uk/2009/oct/20/government-trafficking-enquiry-fails>

human trafficking and reduces their ability to access support and health services, as well as justice and rights. With the increasingly racist and xenophobic public discourses prevalent in several countries, anti-migration laws are also being used as a justification to arrest and deport migrant sex workers, as in the case of Chinese sex workers in Paris in 2014, or even EU national sex workers threatened by deportation from Sweden.

Other laws have also deteriorated the situation for trans sex workers, particularly in Central and Eastern Europe. Anti-homosexuality bills in countries like Russia provoke more societal homo- and transphobia and less social acceptance of LGBTI people, which specifically affects male and trans sex workers.

### Criminalisation of sex work

Several states in Europe criminalise or penalise the selling of sexual services, thus exercising state control over bodies, privacy, and sexuality, which adds to the gender-policing – the enforcement of normative gender expressions - that trans people already experience. Various international organisations have highlighted<sup>14</sup> that repealing laws that prohibit consenting adults to buy or sell sex impact (trans) sex workers' wellbeing and access to services negatively whereas decriminalisation of sex work promotes health and human rights for sex workers by reducing police violence and abuse and increasing access to police protection and justice, safe working conditions, and health services. Removing criminal prosecution of sex work results in the recognition of sex work as work, thus benefiting the long-term social inclusion of sex workers, allowing them to report crimes to the police and seek redress and not face potential criminal and non-criminal offences.

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<sup>14</sup> References for the positions of international organisations:

Global Fund to Fight AIDS, Tuberculosis and Malaria:

<http://www.theglobalfund.org/en/about/humanrights/>

WHO (World Health Organisation), UNFPA (United Nations Population Fund), UNAIDS:

[http://www.who.int/hiv/pub/guidelines/sex\\_worker/en/](http://www.who.int/hiv/pub/guidelines/sex_worker/en/)

[http://www.who.int/hiv/pub/sti/sex\\_worker\\_implementation/swit\\_chpt2.pdf](http://www.who.int/hiv/pub/sti/sex_worker_implementation/swit_chpt2.pdf)

ILO (International Labour Organization): [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_142613.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142613.pdf)

OSF (Open Society Foundations): <http://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>

Amnesty International: <https://amnestysgprdasset.blob.core.windows.net/media/10243/draft-sw-policy-for-external-publication.pdf>

Human Rights Watch: <https://www.hrw.org/news/2013/05/14/china-end-violence-against-sex-workers>



It has to be noted that decriminalisation and legalisation are often conflated in debates around sex work. In a legalised environment, specific laws and policies that regulate sex work are designed to control and limit sex work; the laws are often enforced by the police, which can lead to many sex workers operating outside of these regulations. Decriminalisation opposes all forms of criminal and other laws that oppress sex workers and aims to remove all criminal laws that prohibit any operational aspect of sex work itself.

## Sex work in the international human rights agenda

There is growing evidence and support for decriminalisation in the international human rights arena, which has lately forced global human rights organisations to articulate their stance on sex work and favour decriminalisation, such as the Association of Women’s Rights in Development, Global Fund for Women, Global Alliance Against Traffic in Women, Mama Cash, Human Rights Watch, and most recently, Amnesty International.

UNAIDS (United Nations Joint Programme on HIV/AIDS) has also been supporting decriminalisation of sex work, recommending the following:

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*“States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal laws and penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers’ rights or dignity and that ensure their enjoyment of due process of law.”*

*UNAIDS Guidance Note on HIV and Sex Work<sup>15</sup>*

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From the information received from SWAN (Sex Workers’ Rights Advocacy Network), we also see that the UN CEDAW Committee (United Nations Committee on the Convention on the Elimination of Discrimination Against Women) also increasingly addresses sex work issues from a perspective of sex workers’ human rights, even though they don’t have an official position on sex work. In 2008, the CEDAW Committee issued ground-breaking recommendations on sex

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<sup>15</sup> [http://www.unaids.org/sites/default/files/sub\\_landing/files/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf)

workers' rights following a submission from TAIS PLUS (Kyrgyzstan). In response to a submission from SWAN member SZEXE (Hungary), the CEDAW Committee recommendations for the first time recognised sex workers' right to workplace health and safety in 2013.

The World Health Organisation also recommends decriminalisation of sex work and regards it as an enabling environmental factor that help health sector interventions yield the most benefit:

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*“Laws, policies and practices should be reviewed and revised where necessary, and countries should work towards decriminalisation of behaviours such as drug use/injecting, sex work, same-sex activity and non-conforming gender identity and toward elimination of the unjust application of civil law and regulations against people who use/inject drugs, sex workers, men who have sex with men and transgender people.”*

*Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations. Geneva: World Health Organization<sup>16</sup>*

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Furthermore, The Lancet, a leading medical journal, also identified the decriminalisation of sex work as vital to preventing the spread of HIV and AIDS.<sup>17</sup> WHO, UNFPA, UNAIDS, and the Global Network of Sex Work Projects also recommends that:

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*“All countries...work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.”*

*Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions. Geneva: WHO, UNFPA, UNAIDS, NSWP, World Bank, UNDP<sup>18</sup>*

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The Global Commission on HIV and the Law recommends that countries repeal laws that prohibit consenting adults to buy or sell sex, and:

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<sup>16</sup> [http://apps.who.int/iris/bitstream/10665/128049/1/WHO\\_HIV\\_2014.8\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/128049/1/WHO_HIV_2014.8_eng.pdf)

<sup>17</sup> The Lancet (2014). HIV and sex workers. Executive Summary. Retrieved from: <http://www.thelancet.com/series/hiv-and-sexworkers>

<sup>18</sup> [http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf?ua=1)

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*“...ensure that enforcement of anti-human-trafficking laws is carefully targeted to punish those who use force, dishonesty or coercion...Anti-human-trafficking laws must not be used against adults involved in consensual sex work.”*

*Global Commission on HIV and the Law: Risks, Rights and Health<sup>19</sup>*

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## Position of Transgender Europe

As addressed in TGEU’s Strategic Plan 2014-2016<sup>20</sup>, TGEU works towards making trans groups at risk of oppression and marginalisation and with intersectional identities visible, aiming to take into full account their needs and perspectives.

TGEU wishes to ensure that sex workers’ human rights are protected and human rights violations against them become part of the past. Based on available evidence on the impacts of decriminalisation, positions of UN agencies, international organisations, and inputs received from sex work networks and TGEU membership, TGEU calls for the full decriminalisation of sex work, including the decriminalisation of sex workers, clients, third parties, families, partners, and friends and all operational aspects, such as soliciting, advertising, selling, and purchasing sexual services (indoors and/or outdoors) or working collectively with other sex workers.

TGEU’s general work on e.g. non-discrimination, including advocacy for access to health care, prevention of violence, and gender recognition legislation already benefit trans sex workers. However, specific actions are needed to realise the human rights of trans sex workers. Based on the consultation, the following forms of engagement for TGEU to support the human rights struggle of trans sex workers have been identified:

[trans community]:

- Empower trans sex workers to be more visible within the trans community;
- Raise awareness within the trans community on the human rights violations trans sex workers are facing;

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<sup>19</sup> <http://www.hivlawcommission.org/resources/report/Executive-Summary-GCHL-EN.pdf>

<sup>20</sup> [http://tgeu.org/wp-content/uploads/2014/12/TGEU\\_Strategy\\_2014-2016.pdf](http://tgeu.org/wp-content/uploads/2014/12/TGEU_Strategy_2014-2016.pdf)

- Support TGEU members to involve trans sex workers and embrace their specific needs and demands;
- Take a trans sex worker inclusive approach when developing or implementing projects, e.g. the TvT or ProTrans project, to contribute with improved data collection (on the human rights situation of trans sex workers), service provision, e.g. legal aid (by project partners).

[sex worker rights civil society]

- Seek cooperation with sex worker rights civil society;
- Welcome sex worker organisations who work with/for trans people to become TGEU members.

[policy makers and other stakeholders]

- Support and speak out in support of the full decriminalisation of sex work;
- Engage in campaigns and policy discussions relevant to the issues of trans sex workers;
- Call upon policy-makers to ensure sex worker representation in policy discussions and decision-making processes that concern them;
- Call upon feminist organisations for an intersectional, trans, and sex worker inclusive approach.

## The TGEU Consultation

TGEU consulted its member organisations from May – June 2015 in preparation of this policy. We asked whether and how trans sex workers are present in the organisation’s membership. Does the organisation work with/for trans sex workers? What are the (planned) activities? We also wanted to know what our members thought were the main human rights issues trans sex workers in their country/ region experience. Finally, we asked our members to tell us what they would like TGEU to do. 11 TGEU member organisations replied.

While not representative of all of the TGEU membership, responses were diverse in geographic scope (Albania, Cyprus, Hungary, Italy, Malta, Montenegro, Slovenia, Sweden, Switzerland, Ukraine) and representation of trans sex workers in the organisation and level of engagement (ranging from years of experience in advocacy & service provision to seeking help in getting

started). However, all respondents made it clear that the human rights situation of trans sex workers calls for urgent action.

In parallel, we also contacted sex worker human rights networks in Europe about the involvement of trans sex workers in their ranks, their measures for trans sex workers, main human rights concerns, and demands as well as their expectations towards TGEU. We received a reply from one network.