

# Steering Demand and the Quest for ‘Better Regulation’

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January 2016

DemandAT Working Paper No. 4



This project has received funding from the European Union's Seventh Framework Programme for Research, Technological Development and Demonstration under Grant Agreement No. 612869

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## About the project

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Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in it or protecting the human rights of victims. However, European countries are increasingly exploring ways in which to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves. **DemandAT** aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

**DemandAT** takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, in order to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking as well as demand-side policies of selected countries are examined, in order to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- Phase 1: Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.
- Phase 2: Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

## Project Facts

**Coordinator:** International Centre for Migration Policy Development (ICMPD)

**Partners:** University of Bremen (UBr); University of Edinburgh (UEDIN), International La Strada Association (LSI), University of Lund (ULu), University of Durham (UDUR), European University Institute (EUI); Geneva Centre for the Democratic Control of Armed Forces (DCAF); La Strada Czech Republic (LS Cz)

**Duration:** 1 January 2014 to 30 June 2017 (42 months)

**Funding:** 7<sup>th</sup> Framework Programme, European Commission (DG Research), total volume 3.2 million. EC contribution: 2.5 million.

**Website:** [www.demandat.eu](http://www.demandat.eu)

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**Abstract**

This paper reviews the options for different regulatory approaches for addressing demand for trafficking-related services. It starts by reviewing the debate on different types of regulation, and identifies types of smart regulation that might be most pertinent to measures to address demand for trafficking-related services. We then go on to explore options for developing more innovative approaches to address demand in the area of THB. We summarise some insights from other policy areas in which smart regulation has been applied. The paper then goes on to examine the challenges in adjusting existing approaches to regulation. We question one of the underlying assumptions of literature on regulation: notably, its rationalist presuppositions about the basis on which tools can be, and are, selected. We present a number of theories about the role of national styles, framing, or cultures in shaping the construction of policy problems and responses. We argue that these frames can delimit the scope that policy-makers have for adjusting existing national or sectoral approaches. Finally, we review literature on framing and issue definition to consider the conditions under which shifts in framing or issue definition to incorporate smarter approaches might occur.

## 1 Introduction

The past three decades has seen lively debate among scholars and policymakers about appropriate mechanisms for steering societal behaviour. Much of this debate has focused on a critique of traditional “command and control” forms of state intervention. It has been argued that hierarchical control systems featuring legal rules and sanctions are overly clunky, bureaucratic, and fail to motivate compliance with desired patterns of behaviour. Instead, so the argument runs, policymakers should develop better or “smarter” forms of regulation, involving lighter touch steering through forms of competition, persuasion, peer pressure or design.

These debates are of clear relevance to the question of how to shape demand-side measures on trafficking in human beings (THB). They share a preoccupation with identifying tools or mechanisms for steering undesirable forms of human behaviour (the consumption of services or goods whose production involved the use of trafficked persons); and the need to steer behaviour in areas in which traditional punitive means are problematic or have proved inadequate. So *prima facie*, we might expect the debate about better regulation and forms of smart regulation to offer a promising resource for identifying and evaluating different options for demand-side measures.

This paper starts by reviewing the debate on different types of regulation, and identifies types of smart regulation that might be most pertinent to measures to address demand for trafficking-related services. In the second part, it goes on to question one of the underlying assumptions of literature on regulation: notably, its rationalist presuppositions about the basis on which tools can be, and are, selected. We present a number of theories about the role of national styles, framing, or cultures in shaping the construction of policy problems and responses. We argue that these frames can delimit the scope that policy-makers have for adjusting existing national or sectoral approaches. We then go on to explore options for developing more innovative approaches to address demand in the area of THB. In section three, we summarise some insights from other policy areas in which smart regulation has been applied. Finally, section four returns to the literature on framing and issue definition to consider the conditions under which shifts in framing or issue definition to incorporate smarter approaches might occur.

## 2 The Regulatory State and the Debate on Smart Regulation

Debates on regulation date back to around the 1970s, when liberal welfare states were facing serious challenges to their governing capacity and legitimacy. We need not dwell too long on the reasons for this crisis – predictably, any number of theories can be marshalled to characterise and explain it. Most emphasise challenges created by the expansion in the range of functions assumed by welfare states over this period. On one account favoured by a number of German sociologists (Habermas 1976; Mayntz 1987; Offe 1972), welfare states were facing a legitimation crisis brought on by their failure to prevent economic crisis. In an attempt to compensate for its failure to secure economic growth, the state became involved in steering (or “colonised”) an expanded range of social spheres, over which it had limited capacity (Habermas 1976). US legal scholar Cass Sunstein sees a similar expansionist tendency as emerging already in the 1960s, as governments (notably the US government) saw that formalisation and juridification of their efforts to protecting public safety from risks of various sorts increasingly created problems (Sunstein 1990). A third account is proffered by systems theorists such as Luhmann and Willke, who see such expansionist tendencies as a feature of the inclusivist logic of the welfare state, which establishes a cycle of ever increasing societal expectations and political guarantees about social protection (Luhmann 1981; Willke 1984). According to these theories, attempts at intervention to steer such processes are doomed to failure, however, as the political system is unable to steer behaviour in increasingly complex and functionally differentiated systems.

Whatever the underlying structural causes, the 1980s saw a major adjustment in the nature and scope of state control over economic and social systems in post-industrial welfare states. In many cases, the state was being “hollowed out” through privatisation and outsourcing of public services to non-state actors (Rhodes 1994). The privatisation of state-owned assets by many governments was accompanied by new forms of regulatory supervision, which involved light touch or “meta-regulation” through specialized technocratic agencies. At the same time, a restructuring of public services saw many aspects of service delivery outsourced to private and voluntary organizations, and many services being made responsive to competitive market forces. These changes involved lighter touch regulation through incentive-based controls, and alternative modes of influence, such as through taxation regimes and information disclosure (Baldwin, Cave and Lodge 2010: 9). Many of these changes were inspired or justified through tenets of the “New Public Management” of the 1980s (Hood 1991). The upshot of these changes was a shift from the post-war welfare state to a new form of “regulatory state”, whose mission was to steer economic and social systems, rather than to control them directly. And with this shift came the emergence of new programmes and technologies for governing social systems – as well as ongoing debates on appropriate tools for regulating complex social and economic systems.

## 2.1 Command and Control

Before turning to the debate on new forms of regulation, it is worth considering the more traditional approaches which had inspired criticism. So called 'command and control' approaches are characterised by the use of compulsion. The state or relevant authorities command those being regulated to comply with certain stipulations. Compliance is then controlled through the threat of sanctions – and thus criminal law is a main area of application. The rationale behind this mandatory approach is based on the theory of deterrence (Teitenberg 1992). On this account, compliance is a function of the probability of an offender being punished, and the severity of the penalty. Severe penalties, in principle, create strong incentives for individuals, firms or organizations to comply. Such approaches are also associated with more rigid forms of regulation (Sinclair 1997), which are not responsive to the particular problems or needs of those being regulated. They are also associated with more top-down approaches to developing regulation, which emanate from the state rather than being developed in cooperation with regulatees.

Given the barrage of criticism levelled against command and control regulation, it is easy to dismiss such approaches as flawed: they have been depicted as overly cumbersome, rigid, difficult to enforce, and liable to produce distortions and gaming on the part of those being regulated. Yet the command and control model has been the mainstay of approaches to regulation across a range of areas of the economy and society, and arguably has proved remarkably successful and enduring. Individuals and organizations internalise and comply with a huge variety of rules and regulations, based on the threat of sanctions. Moreover, as Sinclair (1997) points out, much of the discussion on regulation has constructed a false dichotomy between strict command and control, and pure forms of self-regulation or smart control. Much of the more critical literature on command and control offers a very black and white picture of competing modes of regulation. In reality, most forms of regulation contain a mixture of different mechanisms – a point we shall pick up on when we consider the concept of the 'pyramid of control'.

Turning now to the debate on new, 'smart' forms of regulation, Colin Scott (2002) suggests classifying these alternative forms of regulation into three main groups: market-based mechanisms, which use forms of rivalry or competition to incentivize desired behaviour; community based mechanisms, involving forms of persuasion or peer pressure; and attempts to influence behaviour through design.

## 2.2 Market-Based Mechanisms

Of these three, market-based mechanisms were the first to emerge and have arguably been the most pervasive. Such approaches aim to provide incentives for firms, organizations or individuals to adopt cost-effective solutions, for example through the tools of privatisation, markets, auctions, pricing and fiscal incentives (taxes and subsidies) (Veljanovski 2010: 30). Thus, for example, the privatisation of utilities was expected to lead to more efficient production and lower costs for consumers, through the creation of competition between firms to win customers. Similarly, the introduction of tendering processes for subcontracting was aimed at bringing down costs and improving the quality of service provision through creating a market, while the introduction of tradable pollution or emission rights was intended to

reduce pollution in a way that was least costly to firms. A further example was the use of prices to ration usage, as in the case of congestion charging. Such market-based approaches proliferated across different sectors from the 1990s onwards, with mixed results. Indeed, the debate on the impact of privatisation or outsourcing certain government services to private providers is still very much ongoing in many EU countries.

### **2.3 Peer Pressure**

The second type of regulation involves forms of persuasion through increasing or deliberately activating peer pressure. The basic idea is that firms, organizations or individuals will be motivated through a desire for social affirmation, or – more negatively – by concern to avoid reputational loss. Alternatively (or in addition) they may also be swayed to behave altruistically by a commitment to collective goals or a sense of shared fate. Examples of regulation tapping into reputational concerns might include forms of peer review or benchmarking which “name and shame” or “name and fame” organizations. For example, school or hospital league tables might galvanise poorer performing organizations to improve their services (when combined with consumer choice, they may also trigger market-style behaviour akin to the first type of regulation – see above).

Moral suasion approaches are often combined with other forms of regulation. Indeed, a number of scholars have argued that these types of approaches need to go hand in hand with more punitive measures. These ‘combined’ approaches are discussed in 2.5 below.

### **2.4 Design**

Finally, we can point to a literature that seeks to steer behaviour through design. The idea here is that people can be subtly – often inadvertently – steered to make the “right” choices through influencing the decision-making environment. This can involve building in architectural or design features that delimit choices to pursue undesirable behaviour – such as blue lights in toilets to deter drug users, layout of roads to prevent speeding. Or it can involve the use of technology to prevent certain types of transgression – such as biometrics to limit fraud or forgery, or phone texts to prompt timely payments.

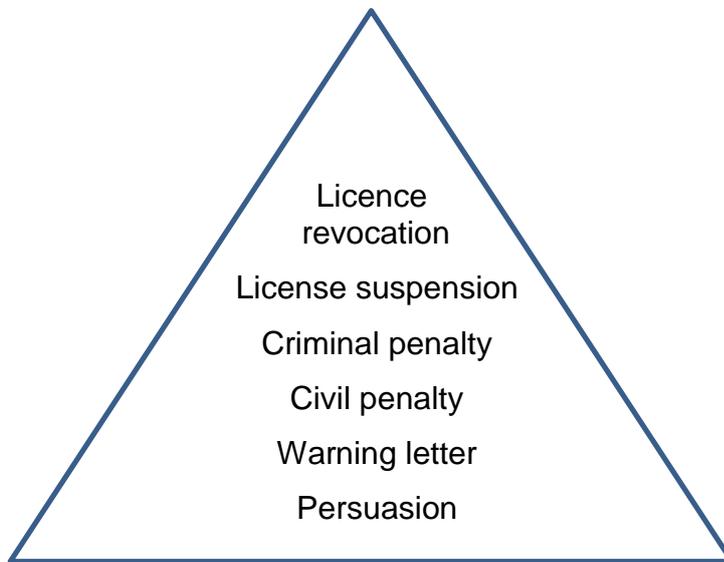
One particularly fashionable variant of steering through design is the so-called ‘nudge’ approach, most famously expounded by Richard H. Thaler and Cass R. Sunstein in their bestselling book (Thaler and Sunstein 2008). The authors draw on a range of research from behavioural psychology and economics to suggest how social environments could be designed in a way that subtly steers people to make more enlightened choices – whether about which type of food to eat, whether to sign up to a pension scheme, or when to renew a subscription. These interventions are based on behavioural research about the types of biases and heuristics that influence human decision-making, many of which encourage choices which run against people’s best or longer-term interests. The idea of ‘nudge’ is that governments can subtly, even subliminally, prompt people to make better decisions without heavy-handed intervention or explicit coercion. Its advocates see it as a form of ‘libertarian paternalism’.

The nudge philosophy has attracted a great deal of attention from policy-makers, notably in the UK and the US, where governments have set up new units to conduct research and inform policy. In the UK, the 'Behavioural Insights Team (better known as the 'Nudge Unit') has been behind measures to encourage organ donations, charitable giving, and renewal of driving licences. It claims to have saved tax-payers millions of pounds through relatively low-cost and unobtrusive interventions. For example, it has been proven that the share of organ donors in a population is much higher if individuals have to opt out rather than opt in to organ donation. The nudge agenda also firmly supports certain kinds of methodology for underpinning its interventions, notably randomised controlled trials to understand behaviour. Critics of 'nudge' have focused around two perceived problems with this approach. Firstly, many have objected the paternalist nature of nudge approaches, and especially the idea of subconscious or subliminal control of subjects. The second critique – especially relevant for our purposes – is the point that the applicability of such approaches is quite delimited. Nudge seems to work best where individual choices are malleable and open to steering, and where the 'nudged' choice is not seen as running contrary to the perceived interests of the individual. Nudge would be less applicable in cases where individuals have strong preferences, and would therefore be likely to work harder to evade the choices being steered through design.

## **2.5 Combined Approaches**

As noted above, some authors have suggested that regulation should ideally involve a combination of different approaches to steering. Ayres and Braithwaite, for example, developed the idea of the "pyramid of enforcement". They argued that regulation of corporations has the best chances of success where punitive measures – "big sticks", as they call them – are kept in the background for use as a last resort. Punitive enforcement is costly, and can generate a culture of resistance. Instead, governments should "speak softly", relying in most instances on forms of "moral suasion" (Ayres and Braithwaite, 1992: 19-20). This implies fostering norms among those subject to regulation, such that they will be self-motivated to comply (Moran 2002). Ayres and Braithwaite's pyramid comprises softer forms of influence at the base, accompanied by more punitive, draconian measures only at the peak. It therefore represents a model or framework for combining more traditional command and control approaches with softer, 'smarter' ones.

Figure 1: Pyramid of mechanisms for steering company behaviour



Source: Ayres and Braithwaite 1992

This approach relies on ongoing interaction between regulator and firm, so that the regulator can continually monitor compliance and adjust its strategy accordingly (Gunningham 2010). Critics have pointed out that this would be less appropriate in cases where there is serious risk of irreversible or catastrophic damage resulting from non-compliance, such that regulators cannot afford to gradually escalate their response (Ibid).

Gunningham and Grabovsky (1999) developed a related approach based on so-called “regulatory pluralism”. The focus here is on the simultaneous use of a broad and diverse set of instruments, often employed by a variety of governmental and non-state actors, including the regulated firms themselves. The favoured mode is self-regulation by actors who can be encouraged to develop a sense of collective responsibility, or “community of shared fate”. As Moran points out, this rather optimistically supposes that firms abandon their characteristically opportunistic behaviour, instead being motivated by collective goals (Moran 2002). However, such forms of moral suasion may have more traction in (non-market) contexts where individuals are strongly motivated to secure social approval through altruistic/compliant behaviour. We shall return to this point later.

### 3 Applying the Theory to Demand-Side Measures

How might these different approaches to regulation – including the options for “better regulation” – be applied in the case of demand-side measures? This section will identify ways in which different regulatory approaches might be applied, drawing on examples from other relevantly similar policy areas. The areas selected are regulation of illegal employment; regulation of narcotics; and regulation of tobacco consumption. These examples were selected for two reasons. The first is that they involve attempts to prevent or reduce types of practices or behaviour considered

harmful. Importantly, they attempt to prevent or reduce such behaviour by seeking to influence preferences for particular goods or services. In this sense, we consider them to be potentially relevant for informing measures to steer demand for goods or services provided by, or produced with the use of, trafficked persons. The focus is on trying to bring about a change in preferences – for certain types of goods or services.

Second, we have chosen these three areas because each has been the object of ‘smart’ approaches to regulation. In the case of illegal employment, we compare two cases of attempts to make traditional command and control approaches ‘smarter’. In the case of narcotics, we compare approaches based on moral suasion in different societal contexts. Finally, in the case of tobacco regulation, we look at the use of design to try to steer people away from harmful consumption patterns. More detailed analysis of the three cases can be found in working papers D5.1, D5.2 and D5.3.

### **3.1 Irregular employment: the use of ‘smart’ command and control**

The first case study looked at two sanctions regimes in the US and UK that tried to steer employers away from exploitative employment practices. Both could be characterised as essentially command and control regimes. Regulators sought to deter infringements through the imposition of employer sanctions, and in both cases the use of penalties could be seen as providing an economic incentive for employers to comply. However, often such penalties were either set too low or were too difficult to enforce, and thus were failing to act as effective deterrence. Thus in both cases policymakers sought to improve compliance by drawing on smarter forms of regulation. Some of these efforts involved risk-based analysis of compliance and deterrence which were self-described by regulators as ‘smart’ or ‘strategic’. To improve compliance, both agencies also tried out methods of co-opting retailers into monitoring supply chains either by using ‘hot goods’ remedies (these allow for the embargoing of goods suspected of having been produced in violation of labour standards) or by negotiating agreements with retailers that involved the latter taking on some monitoring or auditing role and thereby increasing economic incentives to comply. This implied mixing techniques of command and control with market-based mechanisms and moral suasion.

Arguably the most interesting innovation of those we analysed was the use of data and evaluation to structure monitoring and enforcement, combined with strategic communication of enforcement results, as implemented by the US Department of Labor’s Wages and Hours Division (WHD). This more strategic use of data to help prioritise monitoring activities appears to have led to an improvement in compliance levels across employers.

We suggest that these smart approaches to monitoring and enforcing labour standards provide relevant learning for policy innovation in regard to THB as labour exploitation forms part of THB. Our case study highlighted differences between enforcement approaches that sought to maximise the apprehension of offenders and approaches that sought to maximise compliance with labour standards as a whole. Understanding how labour inspection agencies can best deter employer demand for labour practices that infringe labour standards would be of clear relevance to

policymakers seeking to develop demand-side measures that reduce demand for trafficked labour.

### **3.2 Illegal Drugs: the role of peer interventions**

The second of our case studies looked at measures to address drug use with a particular focus on heroin. Within the international framework on drug control heroin use is clearly illegal. However, enforcement approaches tackling heroin reveal a spectrum of options within which approaches rooted in criminal justice sit alongside approaches focused more on public health. Our study compared the cases of New York City and Rotterdam, which have been subject to quite different approaches: in the case of NYC, an abolitionist approach that criminalises drug use and relies on strong deterrents such as criminal sanctions in an effort to eradicate it. In the case of Rotterdam, a harm reduction approach that predominantly medicalizes drug use and focuses on providing treatment to reduce drug use and promote safer drug use practices. The case study looked at peer-related interventions, in particular the use of user group interventions to influence drug use. This is an example of attempts to engage with communities affected by regulation, involving them in monitoring and harm reduction/elimination.

The analysis showed a clear contrast in the ability of such peer interventions to operate effectively, depending on the policy context. In the Rotterdam setting, the policy and legal context allowed the innovations developed by user organisations to steer user behaviour away from harmful practices to gain significant traction. This openness is proven by how quickly new innovations were adopted into mainstream services delivery, and how user groups had been integrated into mainstream policy process over time. The NYC experience was very different, with a prohibitive policy and legal environment slowing down the uptake of user organisation initiatives such that it lagged well behind international acceptance of needle exchange programmes as beneficial in reducing the spread of HIV infection. The human cost of such delay is indicated in the difference in HIV prevalence rates among injecting drug users with this not rising above 12% in Rotterdam in 1986, while estimates of prevalence in New York between 1985-1989 range between 40-50% (among methadone users) and 50-70% (in street samples) (cited in Grund, Stern et al 1992: 383). Lurie and Drucker (1997: 606) attempt to quantify the impact of the absence of needle exchange programmes on the scale of HIV infections in New York. They conclude that the absence of needle exchange programmes contributed to 4,000 – 10,000 preventable infections.

Limitations in comparability mean that it is not possible to determine, within the scope of the research undertaken, which approach to drug use is most effective in reducing demand for heroin. However, the case study clearly showed that harm reduction approaches left greater scope to reduce the risky behaviour and harm that accompanies drug use. Debates in drug control policy between the merits of use reduction and harm reduction show potential for being transferred not only into policy areas like commercial sex -a key field for THB, but also to other fields of THB. Adopting a harm reduction approach when making policy on issues such as commercial sex, domestic work and immigration could provide benefits in thinking through the likelihood of harm that accompanies certain policy interventions, including the harm of trafficking that may result from policy changes in other fields.

### **3.3 Tobacco: using design to steer tobacco consumption**

This third case study analysed the use of design to influence tobacco consumption. Design-related policy interventions are less common among policy interventions, yet there have been striking innovations in such approaches in the area of attempts to control the harmful effects of smoking. Two design-related policies were analysed: smoking bans to prohibit smoking in designated places; and plain packaging on tobacco products. The analysis looked at World Health Organization data comparing a number of different countries.

The analysis yielded a number of findings of potential relevance to demand-side measure in THB. The first was the difficulty in teasing out the separate effects of different measures introduced to influence smoking rates and harm to non-smokers. This was a complex, changing policy environment in which simultaneous measures were often introduced, making it difficult to isolate the effects of individual interventions. A second relevant point was the significant difference in impact between partial and absolute bans. In terms of bans on tobacco advertising, promotion and sponsorship, the WHO notes that partial bans have little or no effect on smoking rates. Similarly with smoke-free policies, designated smoking areas tend to greatly weaken, and even eliminate, the effects of smoking bans on smoking rates, although they were effective to reduce negative side-effects for non-smokers.

The implications for these findings need fuller consideration in relation to debates regarding policy interventions on prostitution, a key field of THB, where there are divisions in approach between those seeking abolition and those seeking regulation. The evidence from tobacco control policies is that easy-to-evade measures do not change underlying behaviours with the effect of reducing demand systematically. Evidence from the case study of tobacco control policies suggests that demand reduction is achieved by effecting changes in smoker behaviour that in turn reduce tobacco consumption and prevalence.

## **4 Better Regulation in Policy-Making? Critics of rationalist models of policy making**

The “better” or “smarter regulation” agenda has been wholeheartedly embraced by a number of national and international agencies – indeed, it has been something of a growth industry since the 1990s. One of its first European advocates was the UK Better Regulation Task Force (BRTF), set up in 1997 to help simplify and rationalise UK regulatory practice. The BRTF identified five basic tests for ascertaining if regulation was fit for purpose: proportionality, accountability, consistency, transparency, and targeting. It promoted the use of Regulatory Impact Assessment (RIA) to assess the impact of different policy options, and set out the purposes, risks, benefits and costs of any given proposal.

These ideas were taken up with zeal by a number of international organizations keen to expand their advisory role, the main protagonists being the European Commission and the OECD. The European Commission made better regulation a cornerstone of the Lisbon Agenda (adopted 2000), and in 2002 adopted the practice of RIA for all of

its proposals (RIA has subsequently morphed into “sustainability impact assessment”). The OECD has a unit devoted to regulatory performance, part of whose remit is to measure regulatory performance across its member countries. More recently the World Bank has adopted the mantra of “regulatory governance” as part of its development agenda, which includes encouraging recipient countries to adopt RIA methods.

Underlying this better regulation industry are a number of assumptions about policymaking. As Baldwin points out, its advocates share a commitment to the notion that regulation can be improved through a rational appraisal of different policy options, which are selected based on criteria of efficiency, cost, coherence, and so on (Baldwyn 2010: 264). Baldwin’s own critique of these assumptions is based on scepticism about the ability of RIAs to be of a “sufficiently high technical standard” to have an influence on policy. Indeed, studies suggest that RIAs are often rather cursory, superficial analyses, which tend to vindicate the selection of options that were already preferred (Radaelli 2007).

These doubts are echoed in some of the public policy and organisational sociology literature. A number of authors have rejected the rationalist theory of policymaking embraced by proponents of better regulation. Scholars such as March and Olsen (1976), Cohen et al (1972) and Kingdon (1984) suggest that there is no clear causal and temporal sequencing of policy problems and solutions. Policymaking does not involve a linear process of defining a problem, identifying solutions, and then adopting rational criteria to choose among them. For example, problems do not necessarily precede or initiate policy responses; instead, the solutions favoured by politicians for dealing with particular social problems may have been on the agenda for years, but were never taken up because they did not garner support. Such discarded solutions may be revived, or rescued from the “garbage can” (Cohen et al 1972). In similar vein, March and Olsen (1976) argue that for policy change to occur, three “streams” need to converge: problems looking for solutions, solutions looking for problems, and people looking for things to do. Models of rationalist or “high modernist” policy making assume that solutions are instrumentally fitted to problems; but often off-the-shelf solutions are simply applied (imperfectly) to problems that they do not remotely fit (Goodin, Rein and Moran 2006).

Even if policymaking does not adhere to such rationalist, linear procedures, there is nonetheless strong pressure to justify and legitimise policy decisions in such terms. As Majone points out, justifications for policy decisions are often post hoc, deploying different arguments from the considerations which led to the adoption of policy (Majone 1989: 19). Organizational sociologists such as Brunsson (1993, 2002), Feldman and March (1981), and DiMaggio and Powell (1983) go further, arguing that organizations often adhere to rationalistic expectations about decision-making in their rhetoric and formal structures, while in practice their informal structures and behaviour follows quite a different logic – a phenomenon known as “institutional decoupling”. Indeed, organizations often seek legitimation and support from imitating other successful organizations in their environment, adopting the trappings of what are perceived to be efficient and rational decision-making procedures. This form of “institutional isomorphism” can arguably explain the diffusion of norms on better regulation across EU or OECD member countries.

A second critique of the rationalist approach builds on institutionalist and cultural approaches: theories emphasising the role of shared ideas, norms, traditions or cultures in shaping policy choices. Similar to the garbage can model, these approaches question the notion that policy solutions emerge as rational responses to objective problems. Instead, both policy problems and solutions are socially constructed, taking the form of shared frames or paradigms for making sense of social problems. Frames therefore represent different ways of constructing the same social reality. As Sniderman and Theriault put it, such framing effects “refer to semantically distinct conceptions of exactly the same course of action that induce preference reversals” (2004: 135-6). Thus it is the framing of the issue that leads people to change their beliefs about appropriate policy responses, rather than any change in the empirical conditions themselves.

Such frames have significant effects on how people think about appropriate policy responses. They constitute “underlying structures of belief, perception and appreciation” (Schön and Rein 1995: 23). Jones and Baumgartner argue that such “issue definitions” have a significant impact on policy-making. They suggest that policy issues have multiple components. Usually, only some parts of an issue become salient at any one time. Baumgartner and Jones argue that “the set of issues that come to be associated with a given public policy is probably the most important element in determining its outcome” (2004: 50). Frames and issue definitions tend to become settled or entrenched ways of interpreting and debating responses to issues, delimiting the scope for identifying or evaluating alternative frames.

There is a range of literature in political science and sociology that echoes these points about the construction of policy frames. Peter Hall has used the concept of policy “paradigm” to describe a framework of ideas and standards that specify policy goals, problems, and instruments for addressing them (Hall 1993: 279). Other authors have emphasised the dramatic and narrative nature of constructions of policy problems (see, for example, Roe (1993) on narratives; Edelman (1999) and Gusfield (1981) on drama). Finally, Schneider and Ingram argue for the importance of understanding how debates on policy interventions also involve the social construction of the target populations of policy interventions (1993). They suggest that the construction or framing of different groups in public debate and policy has a profound impact on policy agendas and policy design.

Such ideas have been applied empirically to examine particular national or sectoral policymaking style. In the national style camp, Richardson and colleagues developed a theory of how national policy styles influence policymaking and implementation (Richardson, Gustafsson and Jordan 1982). They argued that policymakers develop “standard operating procedures for handling issues which arrive on the policy agenda”. They distinguish two dimensions of policy style: the approach to problem-solving (anticipatory v. reactive), and the relationship to other actors involved in policymaking (consensus v. imposition of decisions). Combinations of these two dimensions yield four distinct ideal typical policy styles. Different national styles are then (more or less neatly) classified along this four way typology. The implication is that these national approaches delimit the range of policy options that are seen as appropriate or feasible by governments.

An alternative approach to classifying policy styles focuses on variations between different policy sectors, rather than between countries. Sectoral theories of policy styles emphasise how different policy areas are associated with distinct approaches to regulation. The idea here is that certain features of policy areas or communities shape patterns of policy response, or what Hood et al. (2004) call “regulation regimes”. Such variation may be a product of various political, organizational or cultural factors. Hood et al. examine a number of sources of variation across sectors, classifying them according to Mary Douglas’ grid/group model. They conclude that there are important cultural variations in the way policy actors deal with risk across different sectors. Indeed, they argue that there is often more intensive interaction and knowledge exchange *within* particular risk domains (including cross-nationally), than there is across different domains within a particular state (Hood, Rothstein and Baldwin, 2004: 6). Whether one takes national or sectoral differences as the axis of comparison, the point is that policy-makers are not free to “choose” instruments on objective, rational grounds, but are guided by strong and often implicit norms and beliefs about how policy problems and solutions should be defined.

To summarise, while the better regulation debate encourages policymakers to identify, appraise and select different tools based on rational and objective criteria, more critical approaches to policymaking suggest that such models represent an idealised and misleading model of policymaking. This implies the need to be cautious about the notion that “evidence”, “good practice” or other forms of policy advice can have a significant impact on policymaking. It is one thing to set out the pros and cons of different regulatory tools; quite another to expect policymakers to be willing/able to adjust their approach accordingly. Moreover, where policymakers do appear to be adopting modish new approaches, it is important to examine how far such shifts have resulted in substantive shifts in informal structures and practice. We shall return to these debates in section four, when we consider the conditions under which issue definition and policy frames can change.

We therefore suggest combining analysis of regulatory options with an acknowledgement of the non-linear nature of policymaking, as well as awareness of distinct national and sectoral patterns of constructing/framing social issues. Moreover, we argue that researchers should be alert to processes of isomorphism and decoupling, whereby organizations make cosmetic adjustments to conform to fashionable management mantras about “better regulation”, rather than introducing substantive changes to practice.

## **5 Issue Redefinition and Policy Change**

In this final section, we will examine the question of how institutions, cultures, or national ‘styles’ can influence the selection of approaches in different contexts. We saw in the analysis of other policy sectors that particular countries or sectors can develop quite different frames for constructing policy problems and responses. One good example of this was the case of regulating narcotics in NYC and Rotterdam. Different policy frames can become quite entrenched. Such frames may become stabilised and taken for granted, implying that any evidence or information contradicting them is dismissed, or not even properly comprehended.

Indeed, there may be much at stake in sustaining such frames. First, they may codify deeply held social norms about appropriate behaviour, or appropriate responses to the infringement of norms. And they may capture strong convictions about the causes and nature of transgressions, and about which types of measures are most likely to correct these. Second, such frames may be supported and perpetuated by institutional configurations. The government departments responsible for regulation may be guided by strong organisational cultures which influence how they define and respond to policy problems; and the wider policy community or network involved in policy deliberation and formulation is likely to develop patterns of reflecting on and debating the issue. The actors involved in policy making are also likely to have particular expertise or experience, biasing them towards certain types of intervention or monitoring. Not least, prevalent frames may also suit powerful vested interests – for example, businesses may be keen to preserve certain beliefs about the effects of cracking down on illegal employment or tobacco consumption, or political elites may gain popular support by adopting punitive rhetoric on drug abuse.

For these reasons, it may be challenging or even impossible for public authorities to simply switch from one style of regulation to another. Whatever the apparent merits of ‘smarter’ approaches, it will be far from straightforward to import new ways of thinking about policy problems and responses. And this may well be the case in relation to debates about addressing human trafficking. The traditional focus on prosecuting perpetrators and protecting victims in most countries may suit entrenched ways of thinking about crime and punishment. Given prevalent social norms and beliefs about the causes of criminality, it may be more comfortable and reassuring to focus on symptoms of the problem and to construct the problem in terms of victims and perpetrators. Existing institutions may be configured in a way that lends itself to prohibition and criminalisation rather than more flexible and innovative approaches. Not least, political leaders may have limited incentives to adopt positions that appear counter-intuitive or overly complicated, in relation to existing narratives about the problem.

Yet policy frames undoubtedly do change, and countries do learn from one another. Norms are diffused, and policy approaches in particular sectors often do converge. It is worth considering two different accounts of how such frames can shift.

### **5.1 Issue Redefinition**

First, the literature on issue definition suggests that policy frames can shift through two types of (mutually reinforcing processes): shifts in venue, and so-called “boundary effects” (Baumgartner and Jones 1994: 51). Policy venues, as we saw earlier, can be understood as the institutions with authority to make decisions about the issue. Venue shifts can mean that actors from different policy areas or sectors become more involved in debate. Institutions structure decision making in a manner that privileges certain outcomes over others (Schattschneider 1960). For example, it can make a difference whether debate is limited to a particular set of “experts” or widened out to a broader circle of participants (Schattschneider 1960; Cobb and Elder 1983).

Boundary effects refer to the spillover of issues into other areas, or “interconnections” between them (Rochefort and Cobb 1994). As Plein (1992) suggests, issue definition “is a process of establishing associations with other issues prominent on the political

agenda". Such associations or interconnections can lead to importing solutions or issue definitions from policy areas considered to be relevantly similar.

A number of studies applying the issue redefinition approach have found that significant shifts cannot be brought about by single individuals or groups of actors. Moreover, as Bosso (1994) argues, societal value systems can impose constraints on problem definition. Shared norms and beliefs delimit "the range of 'legitimate' alternatives" (ref 184). Nonetheless, there are numerous studies showing that issue re-definition does occur. One example is the case of biotechnology, where public officials and interest groups succeeded in transforming the image of the issue from one of uncertainty and danger, to one of familiarity and opportunity in the 1980 in the United States (Plein 1991). Plein argues that this shift was brought about through four processes: (1) establishing the biotechnology industry as a collective voice; (2) forging alliances with established public and private interests; (3) associating biotechnology with popular issues on the policy agenda; and (4) discrediting opponents and critics of biotechnology.

## 5.2 The Multiple Streams Approach

A second, related approach to theorising issue redefinition can be found in the work of John Kingdon, and his "multiple streams approach". Kingdon's theory explains policy change as the outcome of the merging of three largely independent streams: problems, policies, and politics. *Problems* are defined as conditions considered to be in need of change. Such problems often emerge following crises or focusing events; or as a result of monitoring practices that identify changes in trends, or feedback about the short-comings of particular programmes (Kingdon 1984: 90-113). *Policies* are the manifold ideas or 'solutions' floating around the policy community at any given time. For an idea to be taken seriously, it needs to be considered sufficiently feasible, cost effective, and broadly acceptable to the policy community and the public (131-9). Ideas are rarely completely new, but typically involve repackaging or combining elements of previous ideas (124). They emerge, mutate and become accepted over time, through a process of gradual exposure and 'softening up'. Finally, the stream of *politics* refers to changes in policy-makers' perceptions of public opinion or the 'national mood' (146), changes in the configuration of organised political forces such as interest groups or parties, or changes in government, such as a new administration, or changes to key personnel or departmental jurisdictions (153-5).

Kingdon argues that policy change occurs where policy entrepreneurs are able to couple solutions to problems in a way that is politically acceptable. Frequently, such entrepreneurs have pet solutions that they have been nurturing for a while, and then wait for the appearance of a political 'window' to press for its adoption. Such windows may be opened by a focusing event, crisis or accident, or by more institutionalised events such as elections or budgetary cycles (Howlett 1998).

Hall (1993:278) differentiates between the overarching goals and terms that guide policy in a particular field, the techniques or policy instruments used to attain these goals, and the precise settings of these instruments. Most of the time, changes only relate to instruments and their settings without challenging the overall terms of an interpretative framework (policy paradigm). First order changes involve more of the

same measures, and second order changes introduce new instruments to realise the same goals. Third order change with a redefinition of key terms, goals and actors occurs more rarely, for example when anomalies and unanticipated developments call the adequacy of a paradigm into question (285).

How might these approaches be applied to thinking about the feasibility of reframing European policies to focus on the demand side? And more specifically, the feasibility of developing more innovative or ‘smart’ approaches to addressing demand? The issue redefinition approach would imply the need for coalitions of actors – in the public, NGO and possibly private sector – to form alliances to redefine the issue. Such redefinition would be facilitated through a shift in venue, so that the question is debated in a forum more amenable to the new framing. As the literature suggests, it might also be constructive to link the issue to relevant policy responses in other areas – whether drug or tobacco control, or illegal employment, or other areas. If favourable lessons can be learned from these areas, or areas of association established, it might make it more feasible to promote a similar shift in issue definition in the area of demand-side measures on THB.

We would like to suggest, however, that Kingdon’s approach offers the most comprehensive and helpful framework for thinking about policy change. On Kingdon’s multiple streams account, the precondition for effecting a change in issue definition or framing would be to disseminate an idea more widely across the policy community. The idea would need to become normalised over a period of time, with key actors being familiarised with the approach and “softened up” with regards to its merits. Second, there would need to be a shift in the problem stream. Policy actors and/or public debate would need to identify serious deficiencies with existing approaches. Such problem identification would typically be a result of a focusing event which highlighted the scale of THB, or could also involve the incremental build-up of criticism of current approaches. In order for the preferred idea or “solution” to be attached to this problem, a third factor would need to be in place: a political stream which was supportive of policy change. This may be more challenging in the area of THB: it is not a salient political issue in most European countries, and this may mean that political leaders are reluctant to invest limited resources in mobilising support for policy change. However, this is where the role of policy entrepreneurs becomes critical. It would be vital for influential actors – such as government ministers – committed to change to identify windows of opportunity, and to push for solutions.

Part of this shift in problem and political streams might involve a shift in venue. As identified by Baumgartner and Jones, the involvement of a different set of actors and institutions could help shift which actors are involved in the debate, and the fora in which issues are debated. This could facilitate – and consolidate – a shift in issue definition brought about through the confluence of streams. Thus it is useful to see the multiple streams approach and issue redefinition as complementary, and potentially reinforcing.

Finally, we should introduce a word of caution. As Bosso observes, the scope for issue redefinition or the adoption of a new policy idea will be constrained by societal norms and beliefs, and historically shaped institutions. Different European national contexts will clearly be more or less amenable to change, not just as a function of

policy streams. The scope for change will also depend on how deeply entrenched their societal modes of framing the policy question are.

## 6 Conclusion

Addressing the demand-side of trafficking has become something of a touchstone for some actors in the anti-trafficking sphere, particularly those campaigning for abolitionist approaches to prostitution. There is often the belief that a focus on ending demand will greatly assist in eradicating THB as well as acknowledgement that policy making in the field of THB initially privileged supply-side measures. The imperative to discourage demand is part of the 2000 UN Trafficking Protocol (Art. 9, para. 5) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (Art. 18, para.1). However, what these references to demand mean remains both vague and highly contested with some seeing demand for trafficking as unmet demand for labour that is satisfied by using trafficked labour, while others interpret demand in trafficking as the male demand for commercial sex. Whether an increased focus on demand-side measures to tackle THB will have the intended effects is debateable.

Within this work package we have focused on understanding how demand for illegal or harmful goods and services is addressed in other policy areas with the aim of attaining greater clarity of what demand-side measures are and the effects they can attain. This paper offered an overview of different types of regulation, with a focus on “smart” approaches. It summarised some lessons learned from steering demand in other policy areas, in which “smarter” approaches had been attempted.

The paper examined the conditions under which new approaches were likely to be developed in different policy settings. Critiquing prevalent rationalist notions of decision-making, we drew on literature from public policy that eschews linear, rationalist accounts of policy-making. These suggest that pre-existing policy responses or solutions are often attached to new problem definitions as they emerge. They also show how particular ways of constructing or framing policy problems become entrenched, making it difficult to win support for new approaches. We suggested that literature on issue definition and the multiple streams approach might be well placed to explain when and how issues are redefined, and new “ideas” become accepted in policymaking.

We hope this analysis can contribute to thinking about what sorts of regulatory approaches might be suitable for addressing demand in THB; and for understanding the opportunities and constraints to adopting such approaches in different national settings.

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Geneva, Switzerland

La Strada Czech Republic  
Prague – Czech Republic

FUNDING SCHEME: FP7 Programme for research, technological  
development and demonstration – Collaborative projects

DURATION: 1 January 2014 – 30 June 2017 (42 months).

BUDGET: EU contribution: 2,498,553 €.

WEBSITE: [www.demandat.eu](http://www.demandat.eu)



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