



**Observatory for
Sociopolitical Developments
in Europe**

Regulatory approaches towards prostitution in European comparison

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Abstract:

This expertise focuses on the comparison of the different policy approaches towards prostitution adopted in European states. The first part of the expertise offers an overview of the different policy approaches and classifies European states into four different models. The findings are presented in form of a map. The second part informs about current reform efforts and other developments in selected states. The main characteristics are summarized and presented in form of country boxes. The expertise aims contribute to the objectification of the discussion on different policy approaches in Europe.

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1 Background

The European states pursue different policy approaches in the area of prostitution. These different approaches or models vary both with respect to the specific legal framework and with respect to the policy objectives pursued and the actual effects of regulation. In light of the discussions surrounding the draft bill on the regulation of the prostitution business and for the protection of prostitutes, published by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), this short expertise presents **an overview of the different regulatory approaches adopted towards prostitution in Europe**. On the one hand, it focuses on the differences and common features in the different legal frameworks (section 4). On the other, it examines current reform efforts and discussions (section 5).

2 Objectives and method

This short expertise aims to contribute to the **objectification of the discussion on different policy approaches in Europe**. To this end, this expertise identifies key common features and differences between the regulatory approaches in the European states. This is based on a mapping that classifies the different national regulations according to the models adopted, presented in the form of a country map (section 4).

This short expertise consciously seeks to examine as many European states as possible so as to avoid restricting its examination to merely a few countries whose models frequently dominate the political and media debate (these being first and foremost the approaches in Sweden and Netherlands, which are portrayed as antipodes). In this way, the expertise seeks to present the current legal situation in Europe as comprehensively as possible.

Section 5 contains summaries of current reform efforts and further relevant developments currently featured in the media. For greater clarity, the most important information is summarised in form of bullet points in country boxes.

This short expertise is the **first building block in a wide-ranging, multistage analysis** of the regulation of prostitution in European comparison by the Observatory. On the basis of the findings, the aim is to identify states that have passed regulations similar to the proposed German reform. In a second stage the regulations in these states will be analysed in detail in order to identify common features and differences within this policy approach.

The information in this short expertise is based on a literature review and internet research, as well as additional information from national experts. Unless explicitly indicated otherwise, all the information presented here has been reviewed in consultation with the national experts to verify that it is still current (through telephone interviews or by email).

3 Different policy approaches in Europe

3.1 Classifying states into models

One typology frequently used in the literature divides policy approaches in the area of prostitution into models of criminalisation, legalisation, and decriminalisation (Sanders; Campbell 2014). The distinction between the individual models is based on the political aims being followed in each case (abolishment of prostitution, reduction of negative effects, recognition of prostitution as a profession like any other). The social and political approach to prostitution is an area of discussion which is heavily influenced by moral value judgements, with differences in political aims always reflecting different moral beliefs. Because the aim of this short expertise is to contribute to the objectification of the discussion, a typology based on political aims and therefore on moral values is not particularly suitable as a basis for comparison. This expertise therefore differentiates states on the basis of legal instruments that apply to prostitution.

Here, a distinction is made between **four different political approaches or models**:

1. Ban on prostitution

The sale of sexual services is generally prohibited.

2. Prohibition of the purchase of sexual services

It is legal to offer sexual services; however, the purchase thereof is a criminal offence (also known as the principle of client criminalisation or the Nordic/Swedish model because Sweden was the first country to introduce it in 1999).

3. Prostitution is legal, but unregulated

Prostitution in itself is permitted, i.e. neither prostitutes nor clients are punished for exchanging paid sexual services. Other aspects of the issue are mainly regulated by bans covered by criminal law. In most cases these refer to third-party activities – such as brothel operation or procuring – or to street prostitution. No further regulations apply to prostitution itself: i.e. prostitution, which in itself is permitted, is not subject to any other legal requirements such as mandatory registrations or licensing requirements.¹

4. Prostitution is legal and regulated

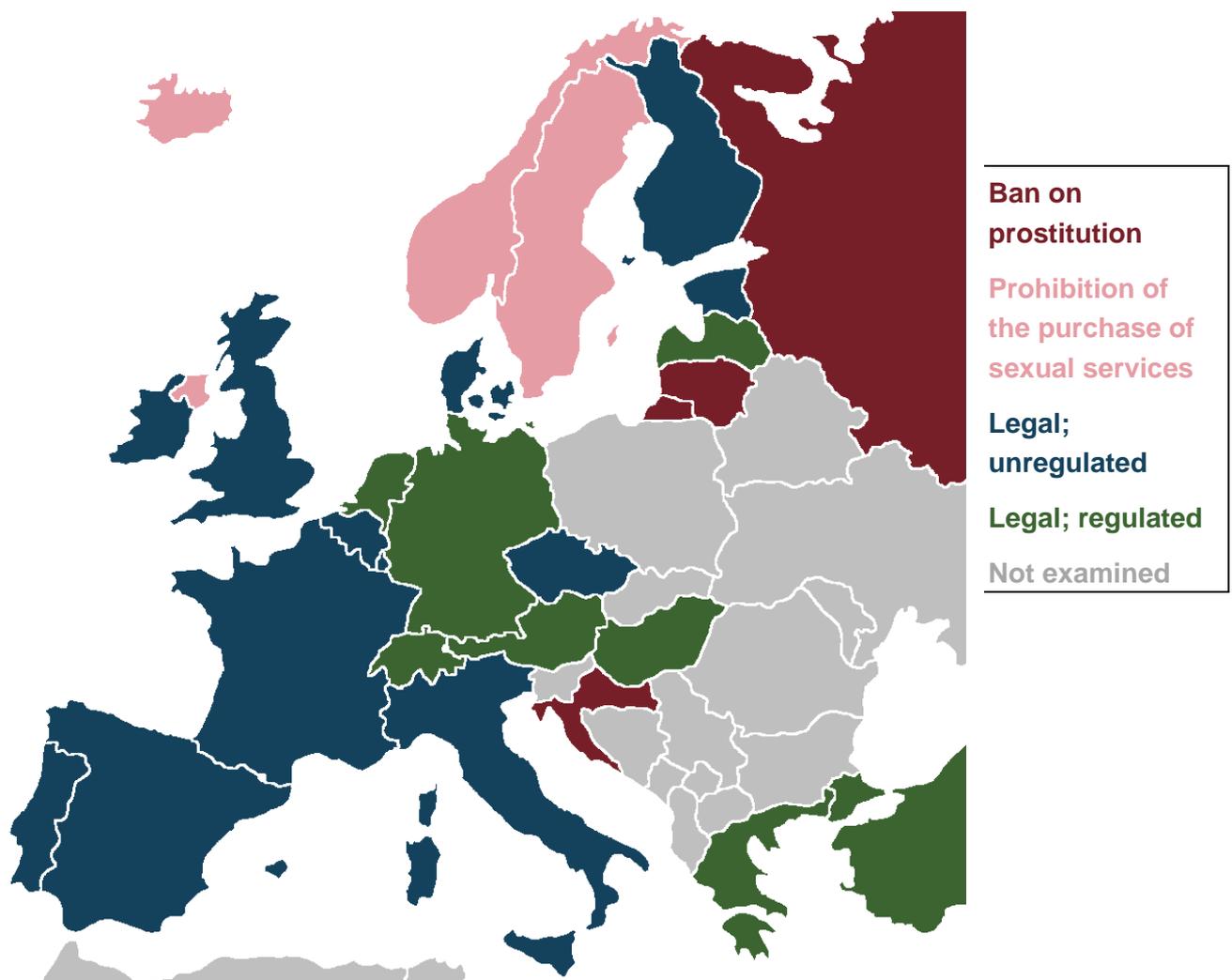
In these states, prostitution is not only permitted, but it is regulated by directives and therefore structured. Directives of this type might be found in employment, health or commercial

¹ In model 3, prostitution is often referred to as being *not technically illegal* or taking place in a legal vacuum since prostitution itself is not covered by national laws (neither prohibited nor explicitly permitted) as for example in Spain and Italy. Third-party activities are a criminal offence.

law and involve licensing requirements, mandatory registration, mandatory medical examinations, etc.

- A key distinguishing characteristic between models 3 and 4 is whether the sector is legislated in the form of directives for prostitutes, operators and/or customers (model 4), or regulated solely by means of certain prohibitions while the permitted activities are not subjected to any other further regulation (model 3). The distinction between the four models is independent of prostitutes' tax liability, because this runs across all models.²

3.2 Policy approaches by states



Source: own presentation

Belgium: Some municipalities, e.g. Antwerp, have introduced extensive local regulations. However, brothels and procuring are prohibited under federal law (see Expertise of the Observatory, Reinschmidt 2016).

Croatia, Estonia, Latvia, Lithuania: Data was taken from Danna (2014) and not subject to further checks.

² For example, prostitutes in Sweden are also liable for tax, even though the purchase of sexual services is prohibited there.

3.3 Findings and evaluation

Research shows that a ban on prostitution under which prostitutes are prosecuted is the exception in Europe and only exists in some central and eastern European states. In the **majority of states examined, prostitution is legal but unregulated** (model 3). Twelve out of the total 27 countries examined fall into this category. The **second most frequent model is model 4**. In eight of the 27 states, prostitution is not only legal but also subject to a clear legal framework in the form of directives. Besides Germany, these countries include the Netherlands, Austria, Switzerland, Greece, Latvia, Hungary and Turkey (with the latter four states having a significantly more restrictive focus). The **least prevalent approach is the prohibition of the purchase of sexual services** (model 2). Only four of the 27 states have introduced such a model. Besides Sweden and Norway, these include Northern Ireland and Iceland. As indicated section 5 of this short expertise, reform efforts are, however, currently under way in some of the states examined. This may result in a different weighting of the models in the future.

This broad comparison of European states is a useful exercise. It reveals that **prohibition of the purchase of sexual services often dictates the media debate, while the legal reality is that it is the least prevalent model**. In most European countries prostitution is tolerated without being subjected to further regulation. However, this solution often constitutes no more than a minimum level of political consensus. The extent to which these groups of countries offer the potential to learn from their respective regulations is questionable as in most cases these take the form of criminal offences.

3.4 Approach to the continuation of the study

For the continuation of the study, model 4 countries are particularly suited to an in-depth comparison. Because the aim of the proposed German reform is the increased regulation of legal prostitution, a comparison within this group of countries provides an opportunity to learn from existing regulations in these states. The analysis could focus on the issue of the specific form of directives, e. g. what form do the directives actually take? How are the regulations embedded in the legislative framework (e.g. in construction law, commercial law, etc.)? Which bodies are responsible for their implementation and, where applicable, monitoring?

3.5 Digression: Text box 1 – The civil law status of prostitution

Digression: Differentiation on the basis of the civil law status of the exchange

A further key distinguishing characteristic of state regulation of prostitution is the civil law status of the exchange of sexual services for money that it entails. Three different models exist: a) the exchange is prohibited; b) the exchange is neither prohibited nor subject to legal safeguards. In this model, the exchange is not recognised as a valid contract under civil law and instead considered immoral. The consequence is that prostitutes, for instance, cannot sue before the courts for payment for services rendered; c) the exchange is recognised as valid under civil law (Danna 2014).

Prohibited	Invalid (immoral)	Valid
Lithuania	Belgium	Austria
Malta	Bulgaria	Finland
Romania	Czech Republic	Germany
Sweden	Cyprus	Greece
	Denmark	Hungary
	Estonia	Latvia (?)
	France	Netherlands
	Ireland	
	Italy	
	Luxembourg	
	Poland	
	Portugal	
	Slovakia	
	Slovenia	
	Spain	
	United Kingdom	

The table presented above is taken from the study “Report on prostitution laws in the European Union” by Daniela Danna, University of Milan, correct as of February 2014. The information has not been subject to any further checks.

See: <http://www.danieladanna.it/wordpress/?tag=prostitution>

4 Current reform efforts and other developments

A number of states are currently undertaking reforms of their laws on prostitution. Reform efforts are currently under way in **France, Ireland, England, Scotland and Luxembourg. Canada** has also reformed its prostitution laws in the past months. The majority of these states are planning reforms aimed at introducing a prohibition on the purchase of sexual services.

4.1 France

Reform proposal: Introduction of a prohibition on the purchase of sexual services on the initiative of the National Assembly

Current status: The proposal by the National Assembly was rejected by the Senate on 14.10.2015 in the second round of negotiations.

Prospects for reform: A conference committee has been formed to mediate between the National Assembly and the Senate. If agreement between the two chambers cannot be reached, the National Assembly has the final vote.

In December 2013, the National Assembly passed a draft bill that was intended to introduce a prohibition on the purchase of sexual services. The bill called for a fine of €1,500 (€3,000 for repeated offences) for the purchase of sexual services. It is primarily supported by left-wing parties, who point to the Swedish model and view prostitution as violence against women. The National Assembly's rapporteur is the Socialist Deputy Maud Olivier. The former French Minister of Women's Rights Najat Vallaud-Belkacem also supports the prohibition of the purchase of sexual services.

The **Senate struck the prohibition of the purchase of sexual services from the draft bill by 189 votes to 107 on 30 March 2015**. The reasons put forward were an increased risk of violence and precarity if the prohibition of the purchase of sexual services were to be introduced as well as greater difficulties in establishing contact with prostitutes for authorities engaged in social work. The Senate also pointed to the difficulty of practically enforcing the ban and the risk of incoherent application of the law.

The new draft by the Senate called for the continuation of the current regulation. This prohibits the solicitation of clients by prostitutes in public places (including passive forms, for example, by wearing certain clothing, known as *racolage*). The resumption of this ban was extremely close, at 162 votes to 161. Critics saw the **decision as manifestation of male dominance in the Senate**.

On 12 June, the National Assembly on the second reading again replaced the criminalisation of the solicitation of clients in public places with the prohibition of the purchase of sexual services. In response, the Senate rejected the prohibition of the purchase of sexual services on its second reading on 14 October, by 190 votes to 117. **A conference committee has now been formed** to mediate between the chambers. If agreement cannot be reached, the National Assembly has the final say. The **introduction of a prohibition on the purchase of sexual services is therefore likely**.

4.2 Ireland

Reform proposal: Introduction of a prohibition on the purchase of sexual services

Current status: The Minister for Justice published a draft bill in September 2015.

Prospects for reform: Open

The current legal situation is very similar to that in England (see below). In November 2014, the Irish Minister for Justice announced plans to introduce a prohibition on the purchase of sexual services in Ireland. The regulation is part of a larger legislative package that regulates sexual offences (e.g. closer monitoring of sex offenders on day release). The draft bill was published in September 2015 (the Sexual Offences Bill). Section 20 makes the purchase of sexual activities a punishable offence. The section also contains a provision concerning the purchase of sexual activities from victims of human trafficking. At the same time, the bill does not call for the outright decriminalisation of prostitution (prostitutes can still be prosecuted if they do not work alone).

The reform was deemed necessary as there had been an ongoing shift of prostitution in Ireland from the streets to indoors since the beginning of the 1990s.

The draft bill follows a **written consultation** in 2012 under the previous Minister for Justice with the stakeholders concerned, based on a discussion document.³ The document provides an exceptionally **balanced and open-ended presentation of different policy approaches** in other states and of recommendations and requirements of various international organisations.

4.3 England

Reform proposal: Introduction of a prohibition on the purchase of sexual services

Current status: An all-party parliamentary group called for the introduction of a prohibition on the purchase of sexual services in March 2014. A draft bill intended to prohibit the purchase of sexual services within the framework of the Modern Slavery Act was rejected in December 2014. However, widespread publicity campaigns for the introduction of a ban continue.

Prospects for reform: Open

The current status in England and Wales is that prostitution is legal, but is considered “antisocial behaviour” under the law. The solicitation of clients by prostitutes is prohibited. Clients are prohibited from loitering in public places in order to establish contact and from driving slowly along the edge of the road (kerb crawling). Procuring and brothel operation are prohibited third-

³ For the discussion document, see <http://www.justice.ie/en/JELR/Discussion%20Document%20on%20Future%20Direction%20of%20Prostitution%20Legislation.pdf/Files/Discussion%20Document%20on%20Future%20Direction%20of%20Prostitution%20Legislation.pdf>.

party activities. Prostitutes may therefore only work alone.⁴ Following a number of murders of prostitutes that attracted great media interest (the so-called Bradford murders), Cameron introduced decriminalisation as an option in the debate in 2010.

The **All-Party Parliamentary Group on Prostitution and the Global Sex Trade**, formed in 2008, conducted a consultation with the stakeholders concerned ((former) prostitutes, social workers, police officers and local authority employees). The final report was published in March 2014 and **recommended introducing a prohibition on the purchase of sexual services**. The reasons put forward were: the violence against women associated with prostitution, the stigmatisation of the supply side whilst demand is accepted under the current legal situation, and the gender inequality inherent in prostitution.

A reform proposal introduced by Labour MP Fiona Mactaggart called for the UK Modern Slavery Bill to be extended to include the criminalisation of clients. The **bill was defeated in November 2014**. The defeat followed widespread mobilisation by prostitutes and other organisations, e.g. Women Against Rape, the Royal Society of Medicine, trade union groups, researchers and lawyers, etc.

However, media campaigns calling for the prohibition of the purchase of sexual services continue. These include EndDemand.com, a platform founded in October 2014.

4.4 Scotland

The situation in Scotland is very similar to that in England. The legal situation is the same with the exception of minimal differences (prostitution as antisocial behaviour and the prohibition of all third-party activities). The introduction of a prohibition on the purchase of sexual services has also been discussed in Scotland for several years. A draft bill calling for such a prohibition was defeated in the Scottish Parliament in 2012. In February 2015, the prohibition of the purchase of sexual services was raised again by the churches in an open letter to the First Minister of Scotland.

At the beginning of September, MSP Jean Urquhart proposed a draft bill to *decriminalise activities associated with the buying and selling of sexual services and to strengthen the laws against coercion in the sex industry* as a counterpart.⁵ The proposal aimed to comprehensively legalise prostitution and associated activities (model 4), and provided the basis for a consultation process, which lasted until 8 December 2015. The results of the consultation process are to form the basis for a reform in 2016.

⁴ As soon as two prostitutes operate in the same place, it is considered a brothel. Hotels in which more than one prostitute operates at the same time can also be subject to penalties. The obligation to operate alone has been repeatedly criticised as it is seen as a considerable safety risk for prostitutes.

⁵ *Proposal for a bill to decriminalise activities associated with the buying and selling of sexual services and to strengthen the laws against coercion in the sex industry*, see: http://www.scottish.parliament.uk/S4_MembersBills/2015-09-3_Prostitution_Law_Reform_Bill_consultation_-_final.pdf.

4.5 Luxembourg

Reform proposal: Introduction of a model based on pragmatism, prevention and education (press release by the Luxembourg government 12/2014)

Current status: A reform was announced in the coalition agreement. However, an actual bill has yet to be drafted.

Prospects for reform: Open, an orientation debate in Parliament is planned.

The current government promises in its coalition programme to create a legal framework for prostitution. Currently, the approach in Luxembourg corresponds to model 3, i.e. prostitution itself is legal, but unregulated (the soliciting of clients, brothel operation and procuring are prohibited).

However, precisely what kind of regulations are to be established in the area of prostitution remains unclear. The current Minister for Equal Opportunities, Lydia Mutsch, emphasised in December 2014 that Luxembourg **does not need a German model, nor a Dutch or Swedish one**. She called instead for a Luxembourg model based on pragmatism, prevention and education. Before the actual drafting of a bill, an orientation debate will first be held in Parliament.

In November 2014, the Luxembourg government presented the key points of its strategy on prostitution. It calls for an exit strategy for prostitutes, improved sex education in schools and closer cooperation between the authorities in the fight against procuring and human trafficking.

The Luxembourg government is actively monitoring the reform debates in Germany and France as these reforms could also affect Luxembourg.

4.6 Canada

Reform proposal: Introduction of a prohibition on the purchase of sexual services

Current status: Bill passed and signed in December 2014. Prior to this, the Supreme Court had ruled that the previous regulations were unconstitutional as they infringed prostitutes' right to safety.

Prospects for reform: Open as it remains to be seen whether a constitutional challenge will also be brought against the new act.

A new prostitution law came into force in Canada in December 2014. The new act (Bill C-36 - *Protection of Communities and Exploited Persons Act*) makes the purchase of sexual services, the advertising of such services and brothel operation punishable offences. In addition, prostitutes face a penalty if they solicit clients in particular areas (e.g. in the vicinity of schools). The reform was required following a judgement by the Canadian Supreme Court in 2013 which ruled that the existing criminal regulations in the area of prostitution were unconstitutional. Up until the reform's implementation at the end of 2014, prostitution was legal, but brothels, communicating in public for the purposes of prostitution and living on the avails of the prostitution

of another person were illegal. The Supreme Court ruled that these regulations infringed prostitutes' personal rights – in particular their right to safety. A challenge had been brought forward by three prostitutes.

The **introduction of a prohibition on the purchase of sexual services is highly controversial** in Canada. Some **premiers have already expressed doubt** as to whether the new act offers better protection for prostitutes and hence is constitutional. It appears that a new challenge in the Supreme Court cannot be ruled out.

4.7 Further current developments of particular relevance

In the first months of this year, a number of developments have been noted in some European countries. Although they may not constitute fundamental reforms of the law on prostitution, they do indicate a degree **of deviation from the previous line**.

4.7.1 Spain

Current development: 1.) A court in Barcelona upheld prostitutes' claim to employment contracts and social security benefits and hence de facto workers' rights. 2.) Since 01.07.2015, a new act has prohibited the purchase of sexual services in certain public places.

The national legal situation in Spain since 1995 is that prostitution is legal, but completely unregulated.

In February 2015, a court in Barcelona held that prostitutes have workers' rights and a claim to social security benefits. The judge ruled that the operators had to issue employment contracts and pay social security contributions. The case concerned three prostitutes from a massage parlour in which sexual services were offered. The three women were not officially employed, but the authorities claimed that a relationship **similar to an employee/employer relationship** existed. The firm had to pay backdated social security contributions for several years. **The judge gave the protection of prostitutes from exploitation as the grounds for his judgement.** An appeal against the judgement can still be brought before the Superior Court of Justice of Catalonia. The judgement is considered forward-looking. However, it remains unclear precisely what the consequences will be. The first visible consequence was the forming of the first trade union for prostitutes in Spain, in Barcelona in March.

On 1 July, the **Citizen Safety Law** (*Ley de Seguridad Ciudadana*) came into force. Its key provision is a restriction on the right of assembly, and it is known colloquially as the "gag law" for this reason. The law makes **seeking out and accepting sexual services in certain public areas punishable offences**. These include areas in the vicinity of places primarily intended for children and young people, such as children's playgrounds or schools. (Potential) clients face a fine of €601 to €30,000. In addition, the law makes the performance of obscene and exhibitionist acts a punishable offence subject to a fine of up to €600. On this basis, the police have increased their actions against street prostitutes since the law's introduction.

4.7.2 Sweden

Current development: A study commissioned by the Swedish government published in March 2015 reports that the number of people in Sweden offering and purchasing sexual services has remained relatively constant over the past 20 years (despite the introduction of the prohibition of the purchase of sexual services in 1999).

A study by the City of Stockholm commissioned by the Swedish government was published in March 2015 and reported **comparatively critical findings**.⁶ The Swedish government had commissioned the City of Stockholm in its role as the national coordinating body in the fight against prostitution and human trafficking to conduct a study on the extent of prostitution in Sweden.

Amongst other things, the study found that the number of people offering or purchasing sexual services has remained more or less constant over the past 20 years. The number of street prostitutes has fallen by half since the prohibition of the purchase of sexual services was introduced in 1999. In contrast, the number of online advertisements for escort services has increased from 300 to approximately 7,000 in the past eight years (it must be taken into account here that the same offerors may be behind several adverts). Approximately 80% of female prostitutes are foreigners. **Opponents of the prohibition of the purchase of sexual services in England and Scotland have already pointed to the findings of the most recent Swedish study in the reform debates in their countries.**

4.7.3 Netherlands/Amsterdam

Current development: 1.) Negotiations on a new national bill to regulate prostitution have been ongoing since 2009. 2.) Amsterdam city council is to close fewer windows than planned. 3.) In the fight against forced prostitution and human trafficking, a brothel operated independently by prostitutes is planned.

The Dutch Parliament has been debating a new bill to regulate prostitution since 2009.

Whereas the municipalities previously had the authority to regulate prostitution, a national bill is intended to harmonise regulation of this sector to a large degree. The bill calls for a general licensing system for brothels and raises the minimum age for prostitutes to 21 years.

In the past years, around **115 of the 500 windows in Amsterdam's red-light district have been closed** as part of urban developmental enhancement efforts. Dozens more windows face the prospect of closure. Around 200 prostitutes and their supporters demonstrated against the plans on 9 April 2015. However, Amsterdam's Mayor van der Laan assured demonstrators that the city would buy back considerably fewer windows than originally planned.

⁶ The background to this assessment is that the official debate in Sweden has been relatively one-sided for some years, and active attempts have been made to export the Swedish model of client criminalisation to other countries (see for example Levy; Jakobsson 2014).

In addition, a project enabling prostitutes to open and operate their own brothel is currently under review in Amsterdam. This is intended to **minimise dependency on procuring, as well as reducing forced prostitution and exploitation**. The community purchased five houses in which up to 50 prostitutes could work under their own management. If the community does not find buyers for the buildings, the city will step in as the landlord. The organisation HVO-Querido will initially help to manage the business and provide further training for the prostitutes. However, the medium-term objective is for the prostitutes to run the brothel completely independently. With this project, the city council aims to initiate **a ground-breaking approach to tackling human trafficking and forced prostitution**. In February, the city council voted to review the actual implementation of the project.

4.7.4 Finland

Current development: The criminalisation of clients in the case of forced prostitution is to be reformed or more precise regulations adopted by 01.06.2015.

On 1 June 2015, a criminal law reform concerning the criminalisation of clients of forced prostitutes came into force in Finland. Prostitution and the purchase of sexual services are legal in Finland. However, clients are punished with fines or prison sentences of up to six months if they accept sexual services from victims of human trafficking or procuring (a form of restricted prohibition of the purchase of sexual services).

The existing regulation is to be made more specific with the reform that is currently under way. Clients will only be punished if they **knew or had good reason to suspect** that they were accepting the services of forced prostitutes. Clients who cannot rule out the possibility that a prostitute is a victim of human trafficking or procuring are guilty of negligence and liable to prosecution. On the one hand, the regulation aims to raise awareness of forced prostitution and human trafficking. On the other hand, the regulation is intended to have a deterrent effect on clients and thereby reduce overall demand for sexual services. The reform follows a ruling by the Supreme Court of Finland in 2012.

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