



**Observatory for
Sociopolitical Developments
in Europe**

Prostitution in Europe between regulation and prohibition

Comparing legal situations and effects

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1 Introduction

The regulation of prostitution is a complex undertaking. It is necessary to consider a wide range of situations in life and concerns in this area and regulate an activity which in most cases occurs behind closed doors. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is seeking to provide a uniform legislative response to the different requirements in the sector with the draft of the law for the protection of prostitutes (ProstSchG).

In the coalition agreement, the coalition partners have agreed to review the law on prostitution (ProstG). The relevant bill drafted by the BMFSFJ was presented in late July 2015. The intended legislation has triggered heated debate: what for some does not go far enough already constitutes “discriminatory coercive measures”¹ for others. What both parties have in common here is that in their argumentation they often cite arrangements in other European states as negative or positive examples.² This raises the issue of an objective analysis of the regulation of prostitution in Europe.

In light of current reform plans, the Observatory has therefore carried out wide-ranging research into the regulation of prostitution in other European states. The key issues in the research were: What is permitted and prohibited in other countries and under what conditions? At what levels are legal framework conditions, requirements and prohibitions for prostitution set, and by what means? With this research the Observatory aims to foster a more objective discussion on the various policy approaches to prostitution. This working paper presents selected findings from the research. It is based on several detailed country studies conducted by the Observatory investigating the regulation of prostitution in Austria, Switzerland, the Netherlands as well as Belgium, Romania, Bulgaria and the Czech Republic.³

Section 2 of the working paper presents a typology of the various policy approaches which can be distinguished in the area of prostitution. To this end, four different models or policy approaches are presented. A map is then used to show which states in Europe follow which model, or which policy approaches are widespread and which tend to be less prevalent.

Section 3 explains the key points of the German draft bill – the licensing requirement for brothels and the mandatory registration of prostitutes.

Germany is one of the states which not only permits prostitution but also seeks to control it through additional legislation (policy model 4, see section 2). The second stage of the Observatory’s research therefore focused on comparing prostitution laws in the states that also follow this approach. The Observatory has therefore analysed the legal framework of prostitution in Austria, Switzerland and the Netherlands with focus on common features and differences.

¹ Undine de Rivière, Speaker of the professional association of sexual and erotic services; see: http://berufsverband-sex-arbeit.de/berufsverband-der-sexarbeiter_innen-uebt-erneut-scharfe-kritik-am-geplanten-prostituiertenschutzgesetz/.

² Alice Schwarzer, editor of Emma, is one of those calling for the introduction of the Swedish model of criminalisation of clients; see <http://www.emma.de/artikel/prostitution-alice-schwarzer-ueber-den-verrat-318399>.

³ Together with other Observatory publications on the subject, these are available at: <http://www.sociopolitical-observatory.eu/en/publications.html>.

The comparison in section 4 shows that the German draft bill is not unique. The planned regulations either already exist or are intended to be introduced in a similar form in Austria, Switzerland and the Netherlands. However, at the same time the analysis shows that individual legal requirements in the countries compared differ regionally due to a lack of nationwide legislation, and in all three states the legal situation is significantly fragmented as a result. A licensing obligation is in place for brothels in all of the Swiss cantons, Austrian Länder and Dutch municipalities covered by this study. As in the German model, the obligation is linked to both technical requirements and a verification of civic integrity. The picture is far more varied when it comes to mandatory registration for prostitutes. For example, there are differences between mandatory personal registration (Vienna) and mandatory indirect registration by brothel operators (Tyrol). There are also mandatory registration requirements applying only to specific groups of people (e.g. street prostitutes in Zurich or window prostitutes in Utrecht). The dispute surrounding general mandatory registration is currently dominating parliamentary debate about the prostitution law in the Netherlands.

The conclusion summarises the key findings of the paper.

2 Different models of prostitution policies

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 the analysis 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 paper therefore differentiates between states on the basis of legal instruments applying 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. This model is also referred to as criminalisation of clients or the Nordic/Swedish model, because Sweden was the first country that introduced it, in 1999, and the model now also applies in Norway.

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 specific types of operation e.g. 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 authorisation requirements.⁴ This regulation often constitutes a minimum level of political consensus, or it is based on the assumption that prostitution will disappear in the long term if all the activities which accompany it are banned.

4. Prostitution is legal and regulated

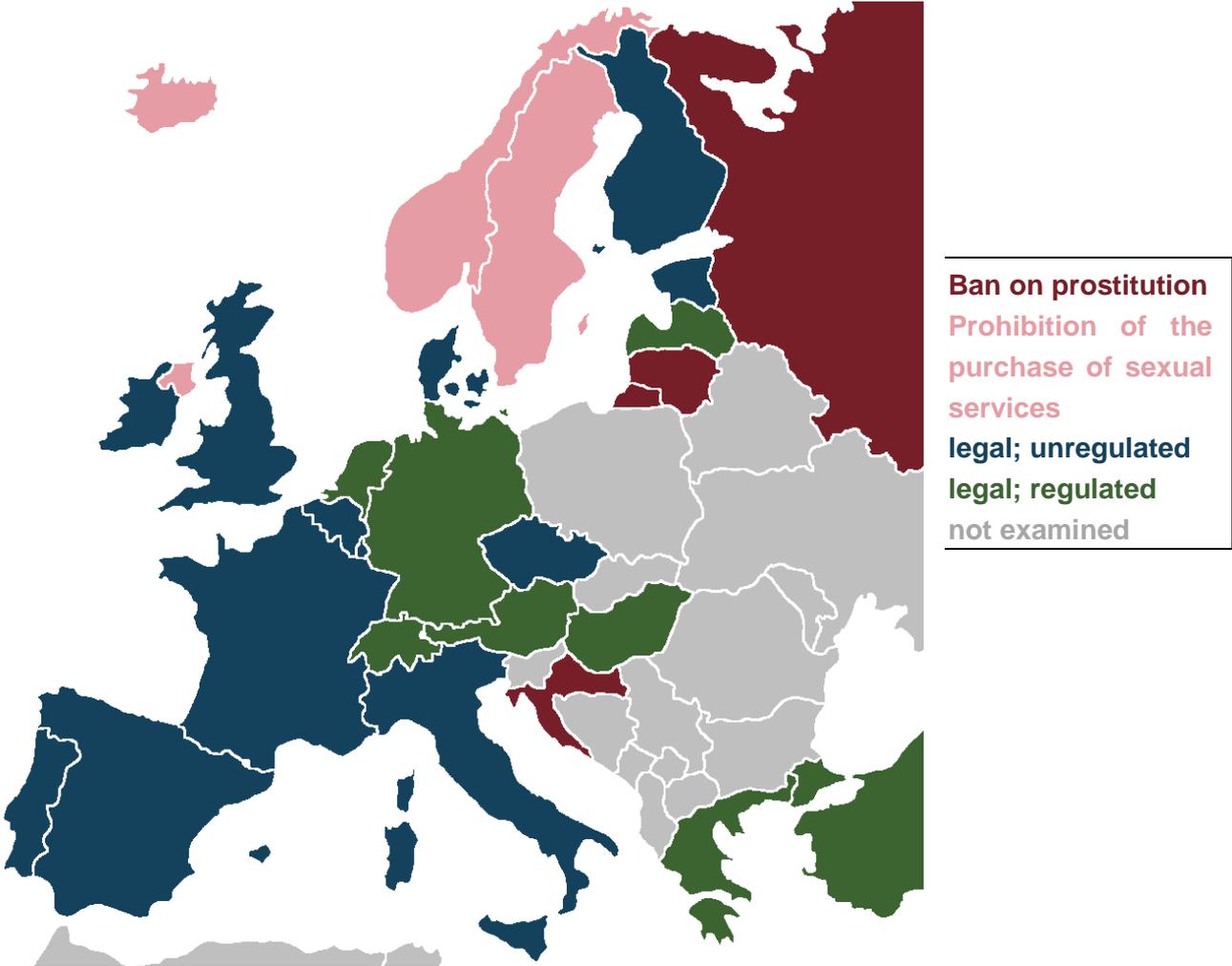
In these states, prostitution is not only permitted, but it is regulated by directives and therefore actively structured by the state. Directives of this type might be found in health or commercial law and involve licensing systems for brothels, mandatory registration for prostitutes, mandatory medical examinations etc. There are two versions of this model. The purpose of the directives in some countries, e.g. Greece, is the strict regulation of prostitution, and they relate primarily to requirements for prostitutes (e.g. mandatory medical examinations). In other countries, for example, Austria, Switzerland, the Netherlands or Germany, the objective of the directives is also to protect persons working in prostitution with regulations analogous to commercial law.

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.⁵

The following illustration shows which models apply in which states.

⁴ 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.

⁵ For example, prostitutes in Sweden are also liable for tax, even though the purchase of sexual services is prohibited there.



Source: own presentation

Belgium: Some municipalities, e. g. Antwerp, have introduced extensive local regulations. However, brothels and procuring are prohibited under federal law (Reinschmidt forthcoming).

Croatia, Estonia, Latvia, Lithuania: Data was taken from Danna (2004) and not subject to further checks through expert interviews.

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. Some states are currently

considering prohibiting the purchase of sexual services, for example Ireland and France.⁶ 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.

This means that it is mainly the model 4 states that are suited to an in-depth comparison with the intended German regulation. Because the aim of the proposed reform is the increased regulation of legal prostitution, a comparison within this group on the one hand provides an opportunity to learn from existing regulations in these states. On the other, it allows to reflect on the reform plans currently being discussed in Germany in light of the results of this comparison and to place these plans in a European context.

Table 1: Regulations approaches to prostitution in European states

Model 1 Ban on prostitution	Model 2 Prohibition of the purchase of sexual services	Model 3 Legal, but unregulated	Model 4 Legal but regulated
Croatia Lithuania Russia	Iceland Northern Ireland Norway Sweden	Belgium Czech Republic Denmark Estonia Finland France Great Britain Ireland Italy Luxembourg Portugal Spain	Austria Germany Greece Hungary Latvia Netherlands Switzerland Turkey

3 The German draft bill

The prostitution law of 2002 repealed the concept of the immorality of agreements between prostitutes and their customers. In consequence, civil-law contracts in prostitution are no longer invalid. The removal of the immorality concept had two main consequences. Firstly, prostitutes are now able to sue clients for payment if the client, for example, has not paid the sum previously agreed for the sexual services received. Secondly, prostitutes can conclude a contract of employment with brothel operators and therefore work in an employment relationship that is subject to social security contributions as an employee. In this way, the prostitution

⁶ See Reinschmidt 2015 for a description of the current reform discussion in selected European states.

law (ProstG) was to enable prostitutes' access to social insurance and thus provide them with social security.

However a 2007 evaluation showed that the objectives of the prostitution law (ProstG) were not achieved to the level expected and that therefore additional steps were deemed necessary (BMFSFJ 2007). In comparison to other trade sectors, for instance, employment in prostitution is still not subject to regulation through legal requirements addressing the particular risks of this sector. This lack of specific regulation also means absence of a basis for regulatory oversight. The lack in supervision in turn favours lack of transparency and encourages criminal structures in the sector. The new law for the protection of prostitutes (ProstSchG) is intended to change this.

The heart of the draft bill essentially consists of two measures: the introduction of a licensing system for prostitution businesses and the introduction of mandatory registration for prostitutes. The draft also includes a condom obligation and a ban on the advertising of unsafe practises. The intention is to link planned mandatory registration to mandatory medical consultation. However, both mandatory registration and mandatory medical consultations are very contentious issues in the political debate. While stakeholder groups of sex workers and some women's associations regard this as a restriction and stigmatisation of prostitutes, the majority of Länder and municipalities reject the regulations intended for prostitutes due to the administration work they would cause and the costs incurred as a result. In late November 2015, the Minister for Women's Affairs, Manuela Schwesig (SPD), therefore presented a new draft bill imposing less strict requirements on prostitutes. It set out, for example, that mandatory registration with the authorities is no longer necessary every two years, but every four. However, this proposal was widely criticised by the CDU.⁷ According to media reports, the coalition partners subsequently agreed to a compromise at the start of February this year which is still to go before cabinet in March.⁸

The following two subsections explain in greater detail the regulations planned within the law for the protection of prostitutes (ProstSchG) concerning licensing for brothel operations and mandatory registration for prostitutes. The content of individual regulations can then be compared to the regulations in Austria, Switzerland and the Netherlands. The following sections relate mainly to the regulations included in the original ministerial draft bill of July 2015. The changes resulting from the most recent compromise, to the extent that these are known, are included in the following presentation and highlighted as such.

⁷ Süddeutsche Zeitung online (26.11.2015): *Schutz und Pflicht [Protection and Obligation]*; accessible at: <http://www.sueddeutsche.de/politik/prostituierte-schutz-und-pflicht-1.2756192> .

⁸ Süddeutsche Zeitung online (26.11.2015): *Kondompflicht für Freier kommt [Condom obligation for clients to come]*; accessible at: <http://www.sueddeutsche.de/politik/schutz-fuer-prostituierte-kondompflicht-fuer-freier-kommt-1.2845874>; Zeit online (02.02.2016): *Anmeldepflicht für Prostituierte [Mandatory registration for prostitutes]*; accessible at: <http://www.zeit.de/politik/deutschland/2016-02/prostitutionsgesetz-einigung-reform-schutz-sexarbeiter-kondompflicht>.

3.1 Licensing system

The new draft bill provides for a licensing or permit system for prostitution businesses (brothels but also vehicles and prostitution events). According to it, only individuals who have previously obtained a licence from the relevant authorities will be permitted to operate such businesses. Authorisations will be granted for a specific type of operation and a specific concept and can be limited in time. A business concept must be submitted with the application.

Licences may not be granted to minors or to persons who do not show the necessary civic integrity. It will therefore be the responsibility of the authorities to check the civic integrity of the applicant. An individual will not be regarded as having civic integrity if, for example, having been convicted of an offence against sexual self-determination, physical integrity, personal freedom, or of robbery, extortion, money laundering or corruption within the last five years. Also, membership in organisations incontestably prohibited under association law, for example, an illegal rocker club, also constitutes a reason for refusal.⁹

A licence will also not be granted if the business concept, the product/service structure or the planned contracts with prostitutes indicate that the business is not compatible with sexual self-determination or encourages the exploitation of prostitutes. This applies, for example, to so-called gang-bang parties.

The awarding of a licence is also linked to specific local and technical criteria. In general, the business concept, situation and facilities of a prostitute's workplace must be such that it is adequate for the protection of employees, clients, young people and the general public. This means in specific terms that rooms used for prostitution, for example, must not be visible from the outside, can be opened from the inside and have an emergency call system. Suitable break and recreation rooms must be available for the employees and it must be possible for them to store their personal belongings. In addition, rooms used for practising prostitution may not serve as sleeping or living quarters.

The law specifies additional obligations on operators. If it is shown that these obligations are not complied with, then a licence cannot be granted or a licence which has already been granted must be withdrawn. These obligations include, for example, that no prostitute be allowed to work for or with an operator if the person does not possess the judgement needed for his/her own protection. No individual under 21 years of age who is being or about to be brought into prostitution by third parties can be employed. The same applies for individuals who are being coerced or exploited or where the intention exists to do this.¹⁰ In future, operators must ensure that no unregistered prostitutes work in their business. (Section 3.2)

Operators should also ensure that the health and safety of those present is sufficiently protected, in particular by means of compliance with the condom obligation. Sufficient condoms,

⁹ Also, authorisation may not be granted to any individual who has had a licence for the operation of a prostitution business withdrawn in the five years prior to the application or whose business has been prohibited.

¹⁰ According to the draft bill, these are individuals who have been or are to be coerced into prostitution by third parties through the exploitation of adverse conditions, of helplessness associated with being in a foreign country, or of personal or economic dependency.

lubricant and hygiene products must also be provided. Operators are also not permitted to impose requirements on prostitutes regarding the nature and extent of the sexual services to be provided (restricted right to issue instruction to employees). How the service is structured must be agreed solely between the prostitutes and the clients. Operators are also not permitted to demand excessive costs from the prostitutes for the rental of premises or other services.¹¹

If the above requirements are not met, or if there are indications that an operator is not meeting his or her other obligations, then no licence should be issued or a licence already issued must be withdrawn. A licence may be linked to additional requirements.

3.2 Mandatory registration

The second key aspect of the draft bill is the introduction of mandatory registration for prostitutes. Under this requirement, prostitutes must register in person with the relevant authorities prior to commencing their work. Registration is possible only after a prior medical consultation (see below). The ministerial draft bill provided that, when registering, prostitutes must specify one or more municipalities for which the registration is valid. Work in another location would therefore not be permitted. Because prostitutes are often extremely mobile, the practicality of this regulation was one of the key discussion points between the coalition partners. According to media reports, the compromise arrived at in February 2016 therefore includes a change in this respect. Registration is now to be valid nationwide, with a right of the Länder to adopt alternative regulations.

Name, date and place of birth, nationality and registered address must be stated when registering and a valid passport document and, if necessary, a work permit must be presented. Individuals are also obliged to present proof of a medical consultation. The authority must issue the prostitute with a registration certificate within five working days and the prostitute must carry this when practising prostitution. A registration certificate under an alias can be issued on request.¹² The registration is intended to be valid for two years, and for one year for persons under 21.

An information and counselling interview must be conducted as part of the registration process. Both the registration and the counselling must take place in a confidential setting. The authority must also hand out information to the person regarding the practice of prostitution in a language which is easily understood, e.g. the native language of the prostitute.¹³

Furthermore, the draft bill also includes a mandatory medical consultation to be carried out by a public health service. This consultation can include topics such as illness prevention and contraception. The interview should also provide prostitutes with an opportunity to tell someone

¹¹ The pecuniary benefit must not be obviously disproportionate to the service itself or to the brokerage thereof.

¹² No registration certificate may be granted to anyone without the necessary judgement required for their own protection or to anyone who is under 21 years of age or who has been brought, or is to be brought into prostitution by third parties under duress or exploitation.

¹³ As a minimum requirement, information material must contain basic information regarding the legal situation under the law for the protection of prostitutes (ProstSchG) and the prostitution law (ProstG), as well as other valid regulations within the jurisdiction of the authority, information regarding compulsory health insurance and medical and social consultation programmes and also information regarding assistance in emergency situations.

if they are being abused or coerced. According to the draft bill, the medical consultation must take place on an annual basis and must be repeated every six months for prostitutes under 21 years of age. The relevant authority must attest that the consultation has taken place and this evidence must be presented at the time of personal registration (see above).

As described above, the reform plans have triggered heated debate both publicly and between the coalition partners. Therefore, in view of the German draft bill and the debate currently going on in Germany on this topic, the following section of the working paper takes a look at the regulation of prostitution in our European neighbours – Austria, Switzerland and the Netherlands.

4 Examples of regulation in Austria, Switzerland and the Netherlands

The following section compares the regulation of prostitution in Austria, Switzerland and the Netherlands. These states were selected because prostitution, and specifically both the practice and purchase of sexual services, are legal and regulated by further directives (model 4). All three attempt, as in Germany, to actively manage commercial prostitution by means of legal provisions. The comparison therefore provides the opportunity, on the one hand, to enrich the current debate in Germany with information about regulations and the experience gathered in other European states with similar political approaches, and on the other to reflect on the German reform proposals in light of this information.

The sex market in Austria, Switzerland and the Netherlands

Prostitution has been permitted in Austria since 1947. Since the immoral status of prostitution was repealed by a Supreme Court judgement in 2012, contracts between prostitutes and customers and between prostitutes and operators are no longer invalid. According to information from the Federal Ministry of the Interior, there were 990 commercial sex establishments in 2010, half of which were in Vienna (Wagenaar et al. 2013: 37). Besides the so-called *Laufhäuser* (traditional brothels), the most frequent commercial forms of operation are sauna clubs, studios, massage salons and ethnic coffee shops.¹⁴

In Switzerland, prostitution has been legal since 1942. However, a judgement of the Swiss Federal Court more than 30 years ago still regarded prostitution as immoral. However, fundamental shifts are currently taking place, and this judgement is the subject of political discussion in the country.¹⁵ Reliable and current data regarding the size of the sex market in Switzerland is not available. According to *Aidshilfe Schweiz*, 18,000 to 22,000 individuals practised prostitution in 2013. Most prostitutes work in the cantons of Bern and Zurich (Swiss Federal Council 2015: 46f). The most prevalent forms of indoor operation, the so-called *établissements*, include massage parlours, champagne bars and cabarets (ibid).

¹⁴ Ethnic coffee houses are in most cases illegally operated brothels which appear from the outside to be coffee houses but which are frequented, with virtually no exception, by male customers of foreign origin.

¹⁵ For further information regarding the categorisation of prostitution under civil law see Reinschmidt 2016.

In the Netherlands, prostitution itself has never been prohibited, but until 2002 the operation of a brothel was illegal. Despite the ban however, brothels were systematically tolerated in many municipalities. It was therefore municipalities, starting in the 1980s, pushed for the legalisation of brothels in order to be able to regulate these officially. As a result, the Dutch parliament removed the ban on brothels from the Criminal Code in 2000 (Outshoorn 2012).¹⁶ According to a survey of 200 Dutch communities, there were a total of 254 licensed brothels, 195 window brothels and 125 licensed escort services in 2014.¹⁷ Besides so-called indoor prostitution, i.e. prostitution in various forms of brothels (see above), prostitution also takes place outdoors in all three states, i.e. on the street. In the Netherlands, window prostitution has traditionally been an important area of the sex industry (Daalder 2014).

Distribution of competencies and heterogeneity of the legal situation

Both in Austria and in Switzerland, laws regarding prostitution in the areas of civil law, labour and tax law as well as social insurance, criminal and immigration law fall under the jurisdiction of the federal state.¹⁸ By contrast, specific regulations regarding when, where and under what conditions prostitution can be practised in all three states are issued at a level of authority below that of the federal state. In Austria, such regulation is a matter for each Land, in Switzerland it falls under the jurisdiction of the cantons and in the Netherlands regulation has been within the jurisdiction of the municipalities since the repeal of the ban on brothels. This division of authority goes back to the fact that no national law for the regulation of prostitution has been enacted in any of the three states. The consequence is a fragmentation or lack of uniformity in the legal situation in all three states.

The heterogeneity of the legal situation in the three countries is already evident in the forms of practice permitted. While street prostitution and house visits are legal in Vienna, prostitution in Tyrol is permitted only in licensed brothels. The picture is similar in Switzerland. Street prostitution and apartment prostitution are permitted in Bern and Zurich, but prohibited in Ticino. In the Netherlands, municipal jurisdiction entails that the picture is even more fragmented. A survey showed that approximately 75% of municipalities have their own prostitution regulation. Of these 75%, the majority required licensing for brothels (Daalder 2014). However, the precise regulations regarding the licensing system vary from municipality to municipality, and there are also municipalities which, although they do have their own prostitution policy, do not require a licence for brothels.

These examples serve to illustrate the range of regulation at national, Land, canton and local level. In all three states, this lack of regulatory uniformity also involves significant negative effects. Firstly, it contributes to a lack of information on the part of the prostitutes who are very often mobile and work in different locations. This applies in particular to prostitutes from a

¹⁶ However, since the mid-2000s, the level of critical debate surrounding prostitution has again increased in the Netherlands. The shift in the public discussion is characterised by an increasing equating of voluntary prostitution with human trafficking and confusion between the two (Outshoorn 2012).

¹⁷ However, these figures can provide only a rough indication of the size of the legal sex market, since a licensing system does not exist in all municipalities.

¹⁸ Reinschmidt 2016 provides a detailed comparison of the legal regulations in these areas.

migrant background, who often lack sufficient language skills and knowledge regarding their legal situation. These prostitutes are often not told about their legal rights and obligations until they are in the brothel. Here, in some cases – either intentionally or unintentionally – incorrect information is spread. A uniform legal situation would help to provide prostitutes with information in a targeted manner and also to support them in the exercise of their rights. Secondly, and almost of more significance, the fragmentation of the legal situation leads to so-called displacement effects. Prostitution is displaced from areas with more restrictive legislation and into areas with less restrictive legislation. As a result, nationwide control of the market is made more difficult or even prevented altogether. The heterogeneity of the legal requirements and the problems this causes, in particular the lack of scope for nationwide regulation of the sex market, are some of the main reasons why the Dutch government has presented a draft for a new federal law to regulate prostitution, which resembles the German draft bill in many respects. The law is intended to regulate prostitution across the Netherlands in a uniform manner, allowing municipalities much less scope to act. Some items in the draft bill, however, are being strongly contested between the Senate and the National Assembly, which is why the law has not been passed as yet (Section 4.2). Due to the problematic situation outlined for Switzerland and Austria, experts are also calling for a harmonisation of the legal situation there: in Austria by transferring relevant authority to federal level and in Switzerland through the enactment of a federal law within the framework of concurrent legislation (the “Prostitution” Working Group as Part of the Taskforce on Human Trafficking 2015; Swiss Federal Department of Justice and Police 2014).

The following comparison is an example of the range of different regulations in the licensing systems for brothels and in the mandatory registration of prostitutes in selected Länder, cantons and municipalities in the three states. The areas of advertising, customer responsibility and coordination of stakeholders are also addressed in detail. In Austria, the statutory provisions were compared for Vienna and Tyrol. In Switzerland the legal situation in the cantons of Bern and Zurich were compared with a current draft reform for Ticino, and in the Netherlands the regulations in the districts of Rotterdam and Utrecht were compared. The Länder or cantons and municipalities have been selected on the basis of two criteria. Firstly, does prostitution exist to a relevant extent. Secondly, do the selected Land or canton laws or municipal regulations reflect the breadth of possible regulations by taking a more restrictive approach and then also a less restrictive approach.¹⁹

The following comparison illustrates on the one hand, the differences between the individual laws and regulations investigated. On the other hand, however, it also shows that some of the regulation approaches in the three states resemble reform proposals of the German draft bill in terms of the licensing system for commercial sex establishments and the mandatory registration of prostitutes.

¹⁹ The Vienna prostitution law dates originally from 2011. The legal requirements in Tyrol are a component of the Tyrolean regional police law and are therefore not regulated in a separate law. The Bernese and the Zurich prostitution laws both entered into force in 2013. Ticino was the first Swiss canton to pass a separate prostitution law. A reform draft is currently being put to the vote. The municipal regulations in Rotterdam were adopted in 2015. The relevant regulation in Utrecht originally dates from 2013.

4.1 Licensing system for brothels

A licensing system for brothels exists in all Länder, cantons and municipalities examined.²⁰ An additional licensing system exists in Rotterdam for prostitution events and in Zurich prostitution vehicles also come under the licensing system. Exceptions exist in Bern and Zurich for small brothels. No licence is required for businesses in which only one person (Bern), or a maximum of two people (Zurich) rent an apartment for the purposes of prostitution. This takes into account the generally high level of autonomy of prostitutes in small brothels. Working conditions there are frequently regarded as desirable and should not be impeded by the bureaucratic hurdles of a licensing system.

As in the planned German draft bill, licensing in all the systems we analysed is linked to certain personal requirements of the operator and to local and technical business requirements as well as to compliance by the operator with other legal obligations and requirements. The Land or canton laws and municipal regulations examined differ only slightly from the provisions of the German draft as shown by the following selection of requirements and obligations.

Personal requirements of operators

In Vienna, Tyrol, Zurich and Bern, only individuals regarded as having civic integrity are may operate a brothel; this is likely to soon be the case in Ticino as well. Details of the individual legal requirements are largely similar. For example, in Vienna a licence cannot be awarded to an individual who is without the full capacity to act, who has been sentenced to imprisonment of more than one year and the sentence has not yet been erased, or who has been convicted on the grounds of serious breach of commercial, social insurance or police law, or law relating to foreigners or prostitution, and the penalty has not yet been erased. The test for civic integrity in Ticino will be the most restrictive of all. The intention here in future is that all individuals who have ever been in breach of the Swiss Criminal Code are to be excluded from receiving a licence. A licence will also not be granted to anyone who has previously filed for bankruptcy or from whom a licence has been withdrawn. In all districts, the authority must check civic integrity in each case prior to issuing the licence. A criminal records check must be submitted in Vienna, Tyrol and Zurich, and the same is planned for Ticino. In Rotterdam and Utrecht, civic integrity will be determined by the public authority within the framework of the law relating to integrity checks – known as the Bibob law.²¹ The authority submits a request to the national Bibob

²⁰ All Austrian Länder have introduced a licensing procedure with the exception of Burgenland and Lower Austria. In Burgenland and Lower Austria, a simple obligation of disclosure continues to apply for brothels. In the Netherlands it is still currently up to the municipalities to decide whether or not to introduce a licensing system for brothels in their area. Approximately two thirds of Dutch districts have introduced a separate prostitution policy. This also includes, in almost all cases, a licensing procedure for brothels (Van Wijk et al. 2014). This means, conversely, that in approximately one third of Dutch districts, it is still possible to legally operate a brothel without a licence. The Dutch draft bill includes a national uniform licensing system. The intention of this system is that the business is legal only after a successful application for a licence. The aim however is to still allow the municipalities to set quotas. This also includes the so-called zero option (no awarding of licences). All licences awarded must be entered in a national licensing register. This should be simple and straightforward for the public to access in order that customers can reassure themselves that they are visiting a legal business.

²¹ The Bibob law has been in force in the Netherlands since 2003 and permits public bodies to obtain detailed background information regarding the applicants for the awarding contracts and licences. The law aims to prevent criminal acts being supported through the awarding of public contracts and/or licences. If a justifiable risk exists that a licence is supporting criminal acts in any way, then the administration may refuse or retrospectively withdraw the licence. The public offices may submit a request to national Bibob agency for this purpose. The agency is able to access virtually all national databases, and have access to police information and information from the public prosecution department, the immigration offices and other

agency in The Hague which then returns a non-committal risk assessment to the relevant licensing authority.

Local and technical requirements

All laws and regulations investigated link the issuing of a licence to specific local and technical requirements. Only if these requirements are met can the licence be issued. This involves both local requirements, e.g. distance regulations to specific protected locations, as well as technical requirements in the areas of hygiene, health protection and security.

In Vienna, brothels may be granted a licence only if the business does not compromise youth protection and no unreasonable inconvenience is caused for the neighbours. In contrast to Tyrol, for example, brothels are permitted here in mixed buildings under certain conditions. For this, they need their own direct access to public areas (a brothel on the third floor of a block of flats with shared stairs, for example, will not receive a licence)

The strictest regulation is included in the new Ticino draft bill. In future, brothels there must neither compromise public law and order nor be located in districts that are primarily residential. A licence will also not be issued if the planned brothel is close to protected locations such as schools, kindergartens or elderly care homes.

Text box 1: Needs testing for the issuing of a license in Tyrol.

Tyrol law is unique in including a needs test in the licensing process. i.e. a licence may be issued only if justified by demand. This is to be determined on the basis of the population and tourism structure, brothels already in existence and, if applicable, the obvious presence of illegal prostitution. This regulation means specifically that the negative consequences of a licence refusal – e.g. increase in illegal prostitution – must be taken into account in the decision.

Utrecht has set a quota, i.e. a maximum number of licences to be issued: a maximum of six brothels can be operated legally in Utrecht. In Rotterdam, the municipal authorities have identified a so-called concentration district, in which no increase in the number of licences is permitted. In these districts, no new licence may be issued unless another brothel ceases to operate.²²

With regard to technical requirements, the prostitution law in Bern stipulates that – much like in Germany – brothels must have an appropriate floor area and bathroom facilities including showers. Operators are also obligated to regularly clean the premises, furnishings and bedding. In Zurich, only business that offer at least a break room with lockers may be awarded a licence.

offices such as the immigration office. The Bibob agency uses this to prepare a risk assessment of the applicant. On the basis of this assessment, the public offices can then make their awarding decision.

²² Concentration districts are regarded as those areas in which more than two businesses already exist which are less than 250 metres apart as the crow flies. This currently affects three districts within the city.

Other requirements of brothels

In all districts investigated, the issuance and continued validity of a licence is linked to compliance with further requirements. In Bern and Zurich, these include, besides compliance with the statutory working conditions, maintaining public law and order and the obligation only to employ or have persons working with you who are of legal age, have legal capacity and have a valid residence permit. In Ticino and Vienna operators must ensure – in a similar way to the regulations planned in the German draft bill – that prostitutes in their brothels have previously registered with the authorities and have undergone the mandatory medical examination. The new Dutch draft bill stipulates that operators are only permitted to have people working in their business who are already 21 years old.

Further obligations for brothel operators include keeping a register, i.e. listing and recording the individuals working in the business (Zurich, Bern, planned in Ticino), providing sufficient condoms (Zurich, Bern, planned in Ticino), appointing an appropriate individual as a representative (Zurich, Bern), and personal obligation for the operator or manager to be present during opening times (Tyrol and Vienna). The prostitution regulation in Zurich also prohibits operators from demanding excessive rents or ancillary costs. This is similar to the regulation included in the draft German bill.

The comparison shows that all the legal requirements analysed include a licensing system allowing for regular monitoring of brothels. Other forms of operation intended to be covered by future German licensing conditions, such as prostitution events or vehicles, are by contrast rarely subject to licensing in Austria, Switzerland or the Netherlands. In all federal state or canton laws, or municipal regulations, the issuance of a licence is linked to the civic integrity of the operator. Also, in some cases, regulations stipulate different local and technical criteria. The planned requirements differ largely in the details, such as distance regulations, but not in the fundamental drafting. This also applies to the comparison with the legal requirements of the German draft bill, which do not differ significantly from the legal requirements investigated in Austria, Switzerland and the Netherlands.

4.2 Obligations for prostitutes: registration, licence and medical examination

The main focus of recent discussion between the German coalition partners has been on mandatory registration and obligatory medical consultations for prostitutes. Some Länder and municipalities have claimed that this will entail a significant level of bureaucracy and cost increases and for this reason are rejecting both. Many stakeholder groups are also criticising the mandatory registration because they fear a further stigmatisation of prostitutes.

A comparison of the regulations of the German draft bill (section 3) with the regulations in the Länder, cantons and municipalities examined in this study shows that some of the legal requirements are similar. For example, all Länder in Austria have introduced direct or indirect mandatory registration. On the other hand, however, it is clear that these regulations are in some cases more restrictive than the registration and consultation requirement planned for

Germany. For example, throughout Austria, prostitutes are obliged to undergo an official medical examination for sexually transmitted diseases on a weekly basis. At the same time however, less wide-ranging mandatory registrations exist in some cantons and municipalities, such as in Zurich and Utrecht where the relevant regulations only apply to specific risk groups.

Mandatory registration exists for prostitutes in all Austrian Länder. This is either a *direct* mandatory registration (e.g. in Vienna) or an *indirect* mandatory registration (e.g. in Tyrol). In Vienna, all persons wanting to work as prostitutes must register in person beforehand at the Federal Police Headquarters, providing name, date of birth, nationality, two photographs and a residential address. Stating the address of the prostitution establishment in which the individuals intend to work is voluntary. Individuals may register only if they are of legal age and legally competent, hence not under any guardianship. The Vienna prostitution law provides for personal counselling by the city as part of the registration process (it is, however, subject to availability of funds). The city cooperates for this purpose with the counselling organisations LEFÖ and SOPHIE, and provides funding for these. If a person works as a prostitute without valid registration, he or she is subject to an initial fine of up to €800 and up to €1,600 for a repeated offence.

Tyrol has introduced an *indirect* mandatory registration. Here, operators are obligated to register prostitutes working for them with the relevant authority. In addition to the personal details of the prostitutes, the authority must also be notified of the agreed rent.

The Austrian mandatory registration is highly controversial. In the view of the police it serves to help identify fluctuation, and is therefore a potential indicator of human trafficking. Experts from advisory services doubt however that mandatory registration will actually help to protect prostitutes. This applies in particular to indirect mandatory registration, under which prostitutes have no direct contact with the authority and receive no counselling.

In Austria, a nationwide obligation for medical examinations of prostitutes exists independently of the mandatory registration in the Länder. The details of health obligations for prostitutes are quite different to the regulations planned in Germany. The German draft bill includes a medical consultation which is adapted to the specific circumstances of the individuals concerned. This may involve issues such as infection prevention or contraception. The interview is also intended to provide scope for prostitutes to bring up issues involving abuse or coercion. This is therefore clearly a health *consultation* and not an *examination* in the medical sense, as is the case in Austria. Here, under the Austrian law on sexually transmitted diseases (STD), prostitutes must undergo an STD examination with a medical officer before starting their work (text box 2).

The comparison shows clear distinctions in the obligations of prostitutes in this area between Austria and the planned German law for the protection of prostitutes. While in Germany the focus is on counselling the prostitutes, the focus in Austria is on an examination for sexually transmitted infections (STI). There are therefore differences in the prescribed frequency. While counselling in Germany is intended to occur annually or every 6 months for prostitutes under 21 years of age, in Austria a weekly examination is required. The official medical examination in Austria applies independently of the official mandatory registrations in the individual Länder.

In Vienna however, issuance of a health card is linked to police registration. In this case, prostitutes do not receive their health card from the medical officer until they can show proof of registration. The procedure in Vienna is therefore the exact reverse of that planned in the German draft bill. Here, evidence of the health consultation must be submitted at official registration.

Text box 2: Mandatory health examinations in Austria.

Under the Austrian federal law on sexually transmitted diseases, all persons wanting to practice prostitution are obliged to undergo an official medical examination for sexually transmitted diseases. If results are negative, the physician issues a photo ID. The practice of prostitution is permitted only with this photo ID. The official medical examination must then be repeated weekly and noted on the ID. If a prostitute tests positive for one of the infections covered by the test, the photo ID will not be issued or must be withdrawn. Prostitutes must also be tested for HIV before starting work and then must be re-tested at intervals of three months.¹ These examinations must also be noted on the photo ID. An annual examination for tuberculosis is also obligatory. Anybody working without a valid photo ID faces a fine of €70 under the law on sexually transmitted diseases and up to € 7,260 under the AIDS law. The official medical examination is free. The costs are borne by the tax payer since the purpose of the examinations is to protect the general public from infectious diseases.

Experiences with the examination requirement.

As with mandatory registration, the requirement for an examination by a public medical officer is highly controversial in Austria. Experts in the advisory areas report that health examinations increase the demand for unsafe practises because customers consider themselves supposedly safe due to the weekly entries on the photo ID. They add that this also detracts from the risk of transmission from clients. There is also criticism that a simple examination does not provide sufficient protection from STIs, i.e. that examinations without information and advisory interviews do not prevent the risk of infection over the long term. It is also reported that in some rural areas the infrastructure for the high level of work involved in the examination is lacking. In some cases, therefore, examinations are also conducted by resident doctors who often incorrectly charge the prostitutes for the cost of the examinations, which are approximately €150 to €200 per month.

The new draft bill in Ticino includes plans for a licensing system (*autorizzazione*) and not a simple mandatory registration as in Germany. Only individuals who have previously received a licence from the relevant authority can be licensed to work as prostitutes. Only individuals who are of legal age and capable of exercising judgement may receive a licence. The draft also stipulates that individuals must have previously undergone a medical and health examination and consultation. Any STI and the risk of such an infection must be noted in a health certificate. The relevant authority must register the prostitute's biometric data, address and residency information. Medical data is not stored with the exception of the results of the medical examination.

The 2009 Dutch draft bill also called for the introduction of a mandatory registration of prostitutes. This planned mandatory registration is, however, the most controversial item in the legislative procedure – as it is in Germany. The original intention was that only individuals who had previously registered in the national register for prostitutes should be able to work legally

as prostitutes. Prostitutes were to register personally with the relevant body in the community and present a valid identification document. As part of the registration process, they were to receive – in a personal consultation – information regarding their rights, obligations, risks and about support services available to them. Registration would not have been possible for persons under 21 or without a valid residence permit. The validity of the registration was intended to be three years and three months. Prostitutes were also to be granted the right to be deleted from the register at their own request. One feature of the draft related to future advertising of the prostitute. It was planned that, upon registration, individuals must specify a telephone number which was to be included in the register. The use of this telephone number only would then have been permitted in each advertisement (also in the internet). Prostitutes were also to be obligated to always state their registration number in advertisements.

The draft bill originally intended that clients would only be permitted to use the services of registered prostitutes. They would otherwise face a prison sentence of six months, or a fine of up to €8,100. The intention was therefore that clients should be able to consult the prostitute register beforehand to see whether or not a prostitute had a valid registration. The register was therefore supposed to be quick and easy to access for everybody.

At the request of the Senate, however, the mandatory registration clause was cut from the draft bill in 2013. The Senate doubted whether mandatory registration was compatible with the prostitutes' right to privacy. The main point of criticism here was the general accessibility of the register. The Senate also expressed doubts regarding the enforceability of the regulation with respect to clients. In place of mandatory registration, the new draft now requires prostitutes to be at least 21 years of age. Clients are prohibited from paying for sexual services from persons younger than 21.

In some of the other laws and regulations investigated, rules regarding mandatory registration are worded less restrictively or relate only to specific groups of people who are perceived to be at higher risk of exploitation. For example, the canton of Bern does not require mandatory registration or health consultation. In the Zurich canton and the municipality of Utrecht, licensing and mandatory registrations apply only to street and window prostitutes.

Prostitutes in Zurich need authorisation to be able to work as street prostitutes (not, however, for work in a brothel). The aim of this authorisation is to recognise signs of exploitation or human trafficking and to prevent exploitation and human trafficking by means of consultation. Prostitutes must obtain authorisation in person from the relevant authority before starting work as a street prostitute.²³ At this point they are informed regarding their personal rights and obligations as well as about risks and available support programmes. The competent authority in the social department conducts the counselling interview. If the police has reason to suspect human trafficking on grounds of the personal interview, the relevant specialist departments can then be contacted with the consent of the person affected. Proof of authorisation must be

²³ Authorisation may only be granted to persons of legal age and who have legal capacity, who have a valid photo ID, can verify they have a residence and work permit and who have a medical insurance certificate. The authorisation may be time limited and costs CHF 40.

carried when practising street prostitution. The City of Zurich may, if necessary, set an upper limit for the number of authorisations, for example, due to traffic safety or space available.

The City of Zurich has closed the area where prostitutes used to work on Shilquai and in its place opened up two new designated areas for prostitutes in Altstetten.²⁴ Street prostitution is legal only in the indicated zones. If prostitutes wish to walk the street in these areas, they must pay CHF 5 for a day ticket at machines provided locally. For this they must enter the registration code they received with the authorisation.

Following incidents of systematic human trafficking, the province of Utrecht has introduced mandatory registration for window prostitutes. The aim of registration is to prevent human trafficking and other abuses in the licensed sector using a so-called barrier system (text box 3) and without entirely prohibiting window prostitution. To register, prostitutes must have a personal interview with the staff of the local health service. Licences are not issued if there is evidence that a person is victim of human trafficking or other forms of exploitation. Prostitutes must be at least 21 years of age and have a valid work permit. Proof of registration must be issued within 14 working days and must be carried by the individual when working as a prostitute. The registration is valid for 24 months.

A much more varied picture is apparent overall if we compare regulations regarding mandatory registration and health examinations than when comparing the legal requirements relating to brothel licences. A distinction can be made between general personal mandatory registration for all areas of prostitution, as is being planned in Germany and already applies in Vienna, and a licensing/authorisation system for specific risk groups, for example window prostitutes or street prostitutes as in Utrecht or Zurich. A significant difference becomes apparent if we look at the health consultations and medical examinations. Here, Austria has by some distance the strictest legal requirements in the form of mandatory weekly medical examinations. However, criticism of the mandatory medical examinations in Austria as well as debate surrounding the introduction of mandatory registration for prostitutes in the Netherlands shows that regulations regarding mandatory registration and medical examinations are controversial both there and in Germany.

²⁴ The red light districts in Altstetten will be maintained by the City of Zurich. The area has so called “sex boxes” into which the client can drive with their cars. An information pavilion containing rest rooms, sanitary facilities and lockers is provided for the prostitutes. Support from social workers is also available.

Text box 3: The barrier model in Utrecht

The barrier model – and as part of this the mandatory registration of window prostitutes – was implemented following evidence of systematic human trafficking among Utrecht window prostitutes. Window prostitution in Utrecht traditionally took place in the Zandpad district. The barrier model is the result of an analysis of the individual steps regularly taken by human traffickers to exploit their victims. The barriers are intended to place obstacles in their way.

Personal registration creates direct contact between prostitutes and the municipal administration. Prostitutes can be informed about existing counselling and assistance services during the registration interview. Local health service employees can also use the interview to identify and report evidence of human trafficking. If such evidence comes to light, a further interview takes place, this time in the presence of the police.

The registration is sent to a postal address specified by the prostitute. This is intended to ensure that the prostitute has a fixed address which he or she also knows. Overall, applying for the interview, conducting the interview and then sending the registration by post takes at least a week, thus preventing fast rotation and fluctuation among prostitutes, a strategy often used by human traffickers to keep their victims out of sight of the authorities.

Experiences with the barrier model:

Personal registration meant it was possible to collect good basic information regarding the number, origin and age of prostitutes in the Zandpad zone. The city states that fluctuation in the zone declined following the introduction of registration. Evidence of human trafficking was reported in one out of eight registration interviews. Police doubt however, that registration will effectively prevent human trafficking in window prostitution over the long term. Moreover, a displacement effect into other communities without a similar system must be assumed. Since suspicion of human trafficking reoccurred despite the registration obligation, the City of Utrecht closed the Zandpad zone in July 2013. All licenses for operators of window prostitution were withdrawn. The city subsequently decided to permit window prostitution in one new location. Opening is planned for 2017.

4.3 Customer responsibility, advertising and coordination

Customer responsibility, advertising and coordination are three further areas which are addressed to some extent by the laws and regulations investigated. However, not all statutory regulations cover all three areas.

It is noticeable, for example, that the areas with the heaviest restrictions on prostitution, i.e. Tyrol and also Ticino once the planned reform is successfully passed, only include obligations for operators and not, however, for clients. In Vienna, **customer responsibility** is regulated to the effect that clients are expressly prohibited from contacting prostitutes for the purchase of sexual services outside permitted street prostitution zones and licensed brothels. A fine of up to €500 is imposed for violation of this legal requirement. A similar regulation applies in Zurich. The Dutch reform plans originally included a stipulation that clients would be punished by a prison sentence of up to six months for using the services of unregistered prostitutes. This was overturned by the Senate (section 4.2). Instead, clients are prohibited from acquiring sexual services from prostitutes under the age of 21 which is subject to the same level of penalty.

Different legal requirements also apply regarding the **advertising** of sexual services. Tyrol has the strictest requirements. Here, any advertising for sexual services outside licensed brothels is prohibited. The Ticino draft bill stipulates that each advertisement must state that the prostitute is “authorised to practice prostitution under the Prostitution Law” or that the brothel is “licensed under the Prostitution Law”. In the Netherlands, as in Germany, the plan is to prohibit all advertising for unsafe practices. In this context, operators are also not permitted to “guarantee” that prostitutes in their business are free from sexually transmitted diseases. It also stipulates that the registration number of the business and the landline number specified at registration must always be visible in every advertisement for the sex trade, whether this is in print, online or in other media.

Attention is also given to the **coordination** of the stakeholders involved and to ensuring the flow of information between the authorities. To improve coordination, the canton of Bern has set up a commission as a specialist advisory body. The aim of the commission is (i) to provide information about developments in the prostitution business, (ii) to support cooperation between the competent bodies, (iii) to evaluate the effectiveness of the measures taken and (iv) to make proposals for changing the law and to report to the next competent civil service level.²⁵ A commission of this type was also established in Zurich. The Ticino draft bill does not include a body of this nature. Instead, the bill establishes a mutual obligation to provide information on the part of the authorities involved upon suspicion of human trafficking and illegal prostitution.

In view of the lack of a uniform national regulation in the Netherlands, a national programme exists as a discussion and coordination forum for the municipalities. Besides the municipalities, the Ministry of Public Security and Justice – which is responsible for prostitution – is also represented. The aim of the programme is to promote uniformity in the area of prostitution regulation in order to avoid displacement effects between municipalities and combat human trafficking and abuse in the prostitution sector more effectively. As part of the programme, for example, information was shared regarding best practice examples for contact with prostitutes and setting up administrative hurdles for combating abuse.

Rotterdam offers an example of successful coordination at local level. The Rotterdam municipality has introduced so-called chain management, a system in which different partners come together to share information and coordinate resources and thus prevent abuse and human trafficking (text box 4). The introduction of chain management was a response to the findings of the so-called Dürden case. Here, three human traffickers built up a network to which at least 78 prostitutes fell victim without this being identified in time by the authorities responsible.

²⁵ The commission is comprised of representatives of the canton police, public prosecution department, the Governor's Office, the Director of Migration and Civil Registry Department, the Health and Welfare Administration, labour market authorities, the communities where prostitution businesses exist and the social welfare provider. It meets at least once per year.

Text box 4: Chain management in Rotterdam.

Seven institutions are part of the chain management system in Rotterdam: the relevant social work departments, the public prosecution department, the labour inspectorate, the local health service, the youth welfare office and the tax authority. Specific cases are discussed at the meetings with the aim of liberating victims from the structures of human trafficking and punishing the perpetrators. Participants share information regarding specific cases and discuss the next steps (commencement of criminal prosecution or intervention initially on the part of the tax authorities etc.) Here, all participants are authorised to take decisions on behalf of their authorities. The aim is to promote better coordination and improve the flow of information between the different stakeholders, and to uncover and prosecute abuse earlier in future.

5 Conclusion

In view of the controversy surrounding the planned reform of prostitution regulation in Germany, the Observatory has conducted wide-ranging research into regulation of prostitution in Europe. The aim of the research was to place the German reform plans in a European context and compare the specific regulations of the draft bill with legal requirements in other European states. This working paper summarises the key results of this research.

One key finding is that European states, to some extent, adopt fundamentally different approaches to managing prostitution. The research also shows that a wholesale prohibition of the purchase of sexual services and the Nordic model of client criminalisation are the two least prevalent political approaches in Europe, even though the dominance of the so-called ban on purchase of sexual services in the public and media debate would often suggest otherwise. Prostitution is legal in most European countries, but is not actively organised in any other way in the form of legal requirements. The second most prevalent model exists in European states where prostitution is legal and regulated. The German draft bill for a law for the protection of prostitutes includes uniform regulation of legal prostitution through the introduction of a licensing system for brothels and mandatory registration for prostitutes. For this reason, the legal requirements of Austria, Switzerland and the Netherlands in particular, offer a useful basis for a detailed comparison because prostitution is also legal here and subject to comprehensive regulation.

The comparison shows two main findings. Firstly, the legal situation in all four states is very diverse due to a lack of regulation at national level. This diversity results in displacement effects and prevents nationwide control of the sex market. Furthermore, this fragmented legal situation means that prostitutes are more likely to suffer from a lack of information. In order to counteract these negative effects, experts in Austria and Switzerland are calling for harmonisation of regulations by means of a federal law. For the same reasons, concrete efforts are already being made in the Netherlands, just as in Germany, to implement a new national law for the regulation of prostitution. However, the Dutch draft bill has been disputed between the political forces since 2009. The same can be said of the efforts made in Germany relating to the introduction

of the law for the protection of prostitutes (ProstSchG). The sometimes intense political debate illustrates that it is not only in Germany that the issue of how to best manage prostitution both socially and politically is characterised by moral value judgements.

Secondly, our research shows that the regulations included in the German draft bill relating to the licensing system for brothels and mandatory registration for prostitutes are not unique in Europe. The draft provision for the licensing of brothels largely corresponds to the statutory requirements in Vienna, Tirol, Bern, Zurich, Rotterdam and Utrecht as well as to the draft bill in Ticino. In all of these areas, a licensing system is already in place or is to be introduced. The criteria linked to the awarding of a licence differ from the planned regulation in Germany only in their details. The picture is much more diverse in respect of mandatory registration. Personal mandatory registration already exists in Vienna. In other areas, e.g. in Zurich and Utrecht, mandatory registration applies only to specific risk groups such as individuals in street and window prostitution. In Bern, on the other hand, no mandatory registration exists at all. In other European countries also, the mandatory registration of prostitutes – in contrast to the licensing system for brothel– is often controversial as shown by the discussions surrounding the Dutch draft bill. The comparison also reveals major differences regarding health consultations. Here the regulations range from no mandatory consultation to a weekly requirement to be examined for sexually transmitted diseases.

Finally, it can be concluded that the regulations planned as part of the law for the protection of prostitutes in Germany already apply in a similar form in other European states. However, basic decisions as to how a society handles prostitution in general always transcend this type of legislation. The prostitution law (ProstG) in Germany shows that the decision has been made to the effect that prostitution is permitted and regulated. Germany is also not alone in Europe in this respect, as critics often seek to suggest.

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