

# **Round Table “Prostitution” North-Rhine Westphalia**

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## **Final report**

Mandate, Challenges and Outcomes

**Passed on October 8th, 2014**

## **Foreword**

The Round Table “Prostitution” North Rhine-Westphalia has proved to be a successful participatory process which has built up a unique knowledge base in an innovative way on a complex subject: prostitution. Not only did it achieve a high degree of awareness throughout Germany, but it has also been honoured in different scientific publications and in the general media, even though, at the time of this report, its outcomes have not yet been published in detail. The efforts made by a ministerial administration in cooperation with approx. 70 experts from science and practice over nearly four years to address the basics of such a subject break with administrative routine. All the more since prostitution is an awkward subject and involving sex workers and clients is widely considered as a courageous approach that breaks a taboo. This was made possible because the coalition agreement and the cabinet clearly defined its political mandate. North Rhine-Westphalia’s Parliament whose committees and political parties have been continuously informed on the progress of the Round Table never cast any doubt on this body.

Many Round Table members have declared that the experience of participating in this process was exceptionally enriching. They “voted with their feet”; the Round Table could rely on the active and constructive participation of its members. Although there were signs of scepticism or even hostility at the beginning, interest and commitment increasingly developed. Conscious or unconscious views were wavering; many sessions were experienced as deeply emotional and moving events. Not only has the Round Table “Prostitution” succeeded in extending expertise, but it has also changed ethical positions.

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Chair of the Round Table “Prostitution”

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## **I. Round Table “Prostitution” NRW**

### **1. Political mandate**

With a view to promoting the implementation of the Prostitution Act of the Federal government, a Round Table “Prostitution” was established according to the coalition agreement of the government parties SPD and Bündnis 90/Die Grünen of July 2010; its objective was to develop an action plan for the necessary adjustments of the State law.

This political mandate was taken up at an early stage by the “red and green” State government. As soon as December 14, 2012, it had approved the establishment of this body and commissioned the Minister of Health, Equalities and Ageing of the State of North Rhine-Westphalia as the lead institution.

### **2. Guiding concepts**

The cabinet’s decision also highlights the legal and political guiding concepts the State government links with the establishment of the Round Table “Prostitution”. The government’s guiding concept is an emancipated society without exclusion. This also means that the free decision of people to engage in prostitution has to be respected and protected by the established law. Whoever decides to practice this profession shall do so under the rule of law and decent conditions. For the State government, the objective is to reinforce prostitutes’ right to self-determination, improve their working conditions and protect them against violence.

The State government considers this action to also be an important contribution to the fight against human trafficking and the uncovering of unreported cases.

### **3. Legal situation**

Since the mandate given to the Round Table “Prostitution” refers to “implementing the Prostitution Act”, it is necessary to take a look at the legal situation.

The Prostitution Act of January 1, 2002 was passed by the federal legislator in order to improve the legal situation of prostitutes.

With the abolition of the so-called “immorality” in civil law contracts for the performance of sexual services, prostitutes were given an enforceable right to the agreed remuneration as well as – within the framework of an employment relationship – access to social security. It was also expected that this Act would eliminate the criminal implications of prostitution. At the same time, it deleted Section

180a(1) No. 2 of the Criminal Code (*Strafgesetzbuch*), i.e. the promotion of prostitution which was punishable until the Prostitution Act came into effect. As a result, the promotion of prostitution is punishable only when the personal or economic freedom of prostitutes is affected (Section 181a(2) of the Criminal Code). Therefore, no legal prohibition rules out creating better working conditions in brothels.

However, the outcomes of the report on the impact of the Prostitution Act published in 2007 on behalf of the Federal government show clearly that the objectives of the Act have been achieved to a very limited extent.

Deleting immorality in Civil Law did not result in changing the social evaluation or recognition of prostitution. Although the law succeeded in setting up the regulatory framework for concluding an employment relationship subject to social insurance, it had hardly any measurable impact in practice. Only one percent of all prostitutes have an employment contract. According to the report, 87 percent of prostitutes are covered by health insurance, but 93 percent of them are not covered as prostitutes. Just under half of the prostitutes surveyed have a pension scheme or another form of private pension coverage.

The law has not significantly improved the number of prostitutes dropping out and switching profession. There is no evidence that the law had any impact on reducing criminality and made prosecution of human trafficking or forced prostitution more difficult (cf. Report by the Federal government on the Impact of the Act regulating the legal situation of prostitutes, BMFSFJ, January 2007).

This evaluation has clearly shown that regulatory changes of civil or criminal law had only a limited impact on other branches of law, such as commercial, building law and the act on administrative offences. Administrative practices are not uniform and, according to this finding, result in legal uncertainty for all people concerned.

We can conclude that, although the Prostitution Act of 2002 was a major step towards improving the situation of prostitutes, doubts can be cast on the accuracy and efficiency of – at least some – regulations. Therefore, it is not (only) about adjusting State law, and thus modifying the mandate given by the coalition agreement, but it is a matter of federal law first of all.

#### **4. Members**

Since the Round Table was set up by the cabinet as an independent and autonomous body, with a clearly defined mandate, the members should be closely involved with the subject due to their expertise and involvement with important organisations. The members had an independent status.

The composition of the Round Table membership was the result of preliminary meetings, expressions of interest in participating and intensive consultation. All major stakeholders at State level were involved.

As a result, the body was composed of permanent members of the State ministries competent in the fields concerned, i.e. Ministry of Health, Equalities and Ageing (MGEPA), of Justice (MJ), Finance (FM), Internal Affairs and Local Authorities (MIK), Ministry of Employment, Integration and Social Affairs (MAIS), Building, Housing and City Development (MBWSV), Family, Children, Youth, Culture and Sport (MFKJKS), the municipal umbrella organisations at State level, the city of Dortmund, represented by the head of the department for business and trade of the public order agency, advisory services for prostitutes or victims of human trafficking (Kober, Social Services by Catholic Women Dortmund, Mitternachtsmission Dortmund; AIDS-Hilfe Essen e.V./State working group (*Landesarbeitsgruppe – LAG*) Male-to-male Prostitution); State working group Law/Prostitution; State working group Women's Office/Equality bodies and two prostitutes.

Further experts had been invited depending on the subject. The Round Table could thus benefit from scientific expertise and practical experience. In addition, the Round Table provided a forum for representatives of vastly different sectors of the sexual services, so that they could exchange experience and evaluate prostitution from different points of view.

The Round Table was chaired by the head of the MGEPA department in charge of emancipation who also moderated the meetings. The competent departmental section of MGEPA acted as administrative office in charge of preparatory and subsequent work in terms of organisation and content.

## **5. Role and process**

The Round Table "Prostitution" has been set up as an independent body which – with a composition unique in Germany – shall study this issue in depth for North Rhine-Westphalia, the objective being an ethical knowledge-based debate.

Given the fact that there are hardly any reliable information or data about the extent and forms of prostitution that allow a realistic perception and evaluation, the body opted for a processual approach: over 70 experts from science and practice were consulted in 14 meetings on different key topics on the vast issue of sexual services. Sex workers were also invited and consulted.

The objective of these meetings was to identify the most disparate points of view, to approach them and, as far as possible, to integrate them in common concepts. The different perspectives resulting from participants' different roles had to be made transparent and integrated. Compromises were necessary to elaborate common positions. It was important first to gain knowledge of prostitution-specific issues and then to continuously expand it. It was thus possible to gain insight into the most different aspects of prostitution, to evaluate problems properly and, as a result, to develop solutions.

## **6. Connected action**

The work carried out by the supervisory board of the Round Table was complemented by the activities of some individual members with a view to gaining additional insight.

For example, the chair of the Round Table “Prostitution” informed the Round Table “International human trafficking with foreign women in North Rhine-Westphalia” of the background and the work of this new body.

Members of the Round Table “Human Trafficking”, set up as early as the 1990’s, are eight State-supported advisory services for victims of human trafficking. As part of their everyday outreach and street work, they have access to women either forced into prostitution or voluntarily engaged in prostitution.

In this context, the specialised advisory services reported about their experience with reinforced street work activities in prostitution subculture and the individual expert support of prostitutes. The creation of the Round Table “Prostitution” and the course of action taken by the State government to launch a differentiated and knowledge-based debate on the issue of prostitution was unanimously welcomed. In their opinion, a debate about the blurred boundaries between voluntary prostitution and human trafficking is necessary. All perceive the Round Table “Prostitution” as promoting their individual work.

In addition, there was a thorough discussion by experts – according to different competencies - in sub-groups or other means on the key issues of “Poverty migration”, “Social security”, “Prostitution and building law”, “Prostitution and commercial law” and “Fixed-sum tax for sex workers”. As far as possible, the outcomes were included in the work by the Round Table.

In addition, there were field visits:

In order to gain an additional impression of the different forms of prostitution, the Round Table chair and the competent division carried out on-site visits to a large walk-in brothel in Cologne, street prostitutes in Dortmund before street prostitution was prohibited, street prostitutes in Essen, different brothels in Duisburg and to an apartment brothel in Bochum. The visitors were always accompanied by staff of advisory centres for prostitutes and local authorities (especially public health authorities). All accompanying persons had contacts with the local prostitution “scene” and a good knowledge of the respective conditions so that it was possible to visit the premises and talk with sex workers and brothel operators.

## **7. Presentation of the report**

The Round Table “Prostitution” presents a report consisting of discussions, findings and recommendations. Any disagreement between the members on different issues is disclosed.



Clarity in terms of process and role is complied with: according to the self-conception of this body and although the members remain associated with their occupations, they are not authorised to talk with binding effect on behalf on the persons they represent. As a result, the priority for the State government was departmental sovereignty and cabinet decisions. Neither was it objectively possible in the field of sexual services to find people who were able to speak on behalf of all sectors of this sector.

This report is thus the original product of the independent body Round Table "Prostitution". Its recommendations should be presented to the cabinet as such in accordance with the mandate.

## **II. The challenge**

### **1. Prejudices, myths, confusion of surrounding issues**

Prostitution is an issue that moves many people. At the same time, public as well as private debate is guided by prejudices and myths. Media images vary from voyeurism, taboo and scandalisation to minimization. The issues are almost all the time mixed up. Most frequently, prostitution is generally equated with human trafficking for sexual exploitation; but many people automatically link such problems as sexually transmitted diseases, addiction or lack of integration after migration with prostitution. Even though it is not unusual for prostitution to be linked with such factors, a direct causal link is not inevitable. Although the Prostitution Law 2002 changed the legal situation by abolishing “immorality”, the debate has not changed significantly; it is still characterised by a moralizing approach.

### **2. Moral concepts**

Because of its close connection with sexuality, prostitution touches upon an area particularly marked by individual moral concepts. As the expression of personal rights, the individual ethical position to prostitution deserves respect. It is striking that the social evaluation of prostitution varies depending on historical, political, cultural or religious context and is subject to major changes. Just a comparative look at the European Union shows quite different models of how society deals with prostitution. Diametrically opposed are the countries where buying sexual services is punishable by law (e.g. Sweden) and countries where prostitution is legalised, but state-controlled (e.g. the Netherlands). At the same time, the situation is not static : it is not only France that is experiencing a controversial societal debate on punishing the client in accordance with the Swedish model; but in the Federal Republic too, voices have become louder asking for the withdrawal of the Prostitution Law and for a restricted regulation on practising prostitution. In February 2011, the European Parliament called on the EU Member States in a non-binding resolution to reduce the demand for prostitution by punishing the client, since not only forced prostitution, but also voluntary sexual services against remuneration violate human rights and dignity.

### **3. Gender policy context**

At the beginning of October 2013, the publisher Alice Schwarzer started an “Appeal against Prostitution” demanding the withdrawal of the Prostitution Law. According to Ms Schwarzer, Germany has become “the hub of Europe’s traffickers and a paradise

for sex tourists from the neighbouring countries”. Prostitution must be curbed in the medium term and abolished in the long term. Actually, prostitution must be put on a level with slavery, it is the exploitation and continuation of the traditionally established inequality between men and women and degrades women to a “gender for sale”. Among the first signatories of this appeal were not only many celebrities, but also female politicians, as well as the federal spokeswomen of the working group of local-level representatives in charge of gender equality.

This “Appeal against prostitution” is a current and significant example of how the moral debate surrounding prostitution takes place mostly in the context of gender policy. However, reference to the right to self-determination and the dignity of women also justifies the opposite position, as the international “sex workers’ rights movement” argues. According to them, prostitution contributes to the functioning of society, like the invisible work of housewives. The independent decision of a person to engage in “sex work” is to be accepted, whereas victimisation disempowers them and makes them an object. The women do not “sell” themselves or their body, but they sell a service. Deplored phenomena, such as grey areas outside the rule of law, unprotected or exploitative employment, and harassment are generated by taboos that stigmatize and criminalized sex work. As a logical consequence, the sex worker-led organisation BesD established in 2013 for “Erotic and sexual services” appealed for a counter resolution “Appeal FOR Prostitution”, objecting in particular to equating it with human trafficking. This appeal has been signed also by politicians as well as by many celebrities.

#### **4. Consequences of the work carried out by the Round Table “Prostitution”**

The very composition of the Round Table – headed by the MGEPA head of division in charge of gender policy and, as permanent members, the State working group of the local level representatives responsible for equal opportunity – takes into account the gender policy context. In addition, the Round Table agreed to conduct a broad and open discussion: people who were critical of the Prostitution Law and its further implementation were also to be consulted. For that reason, SOLWODI and TERRE DES FEMMES were invited.

In a meeting, the Round Table dealt in detail with the situation in Sweden where the majority of the population supports the Swedish law on making the purchase of sexual services punishable. The speaker explained that the Swedish view of prostitution is embedded in a general understanding that gender equality has a high social value and is incompatible with prostitution. According to her, this ethical position is convincing at first sight, it is clear and consistent. However, on closer

scrutiny, it is clear that the legal situation would have a significant negative impact on prostitutes continuing with their activity, even though they have not to fear of being punished, according to the legislator's intention. On the one hand, this approach - punishing only the clients and exempting the prostitutes - should be considered as a theoretical model: if prostitution is detected, women could steadily lose clients and, as a consequence, quite often their means of existence. Their automatically established role of victim would be synonymous with stigmatization and stereotype; self-determined prostitutes could not act self-confidently. This status would create a sense of powerlessness, since, in fact, the different legislative measures do not involve the prostitutes. As a rule, sex work under such conditions would mean working dangerously, as distrust of police and authorities, as well as dealing with stressed clients at hidden and quite often dangerous sites, would increase the danger of being exposed to violence and blackmailed by pimps. The regulation would be a "class law"; prostitutes working for escort agencies could not be controlled; wealthy clients would always find ways not to be detected and male-to-male prostitution would not be recorded, merely rated as a "homosexual way of life".

No one at the Round Table favoured the Swedish model as applicable and preferable. As far as a society without prostitution was considered desirable, this was considered an individual vision and not a guideline for political action.

When discussing the issue of differentiating human trafficking from prostitution as a freely chosen activity, the Round Table agreed that the boundaries between these two extremes are fluid in practice. Even though there is no doubt that migrant women characterised by poverty, linguistic problems, low levels of education and poor health frequently engage in prostitution as an activity with no professional prerequisites, the Round Table does not detect forced prostitution whenever these circumstances are encountered. Even in cases of economic pressure, the decision space remains open, so that an activity can be freely chosen. Whenever there is no voluntary agreement, the real issue is not prostitution, but human trafficking for the purpose of sexual exploitation, as stipulated in the Criminal Code.

Because prostitution particularly touches upon individual ethical positions, the Round Table members agreed to decide to ensure open and respectful cooperation. Only an atmosphere of mutual tolerance and of tolerating the positions of other people that would not be admissible from a personal point of view could make it possible to work on this issue. In addition, the objective was to establish a forum for people providing prostitution services and those demanding them. For that reason, the Round Table agreed on a statement defining its role, the targeted process and the cooperation principles

[www.mgepa.nrw.de/emanzipation/frauen/frau\\_und\\_beruf/runder\\_tisch\\_prostitution/index.php](http://www.mgepa.nrw.de/emanzipation/frauen/frau_und_beruf/runder_tisch_prostitution/index.php)).

### **III. Discussion, findings and recommendations**

#### **1. General information**

##### **1.1 Prostitution, different forms, facts and figures**

If we regard prostitution as a “sexual service against payment”, this basic definition opens up a broad field. Prostitution takes place in the most varied places and in the most different forms. The most visible form takes place on the street, either in a specific area, as it may be, in so-called “*Verrichtungsboxen*” (drive-in boxes), in mobile brothels, or in traditional or newly developed sites, quite often within a restricted area. Prostitution takes place mostly in closed rooms, where it is more or less visible for external observers depending on the privacy of the environment. Examples are flat-rate brothels, walk-in brothels, S/M studios, bars, cubs, soliciting bars, porn cinemas, saunas and massage parlours, as well as offices, apartments and office buildings. Contacts are increasingly established via the internet.

Where it is generally thought that prostitution means mostly or even exclusively female prostitutes and male clients, in the reality of social life, male to male prostitution – prostitutes and clients are men – plays a not insignificant role. Two major forms of prostitution can be identified: young male prostitutes on the street or in bars on the one hand and the call-boys acting as escorts in closed rooms on the other. Prostitution of transsexual people is a market sector of its own.

All attempts at the Round Table to gain precise data on the number of prostitutes in the whole or even in some areas have been only partly successful. The figure of 400,000 prostitutes in the Federal Republic, as frequently used by the public, cannot be scientifically confirmed and, as an estimated value, has been variously evaluated by the Round Table. Prostitution (female) in North Rhine-Westphalia has been estimated at 25,000 to 45.000. It is even more difficult to estimate the extension of male-to-male prostitution, since this has a much stronger social taboo; the frequently cited figure of ten percent of all prostitutes must be considered as a less reliable figure. The fact that a Cologne flat-rate brothel provides an entire floor for transsexual people shows that there is quite a significant demand for transsexual prostitution. However, concerning the prostitution of transsexual people, reference is made to the surveys by TAMPEP in 2009 which showed that 6 percent of prostitutes active in Europe are transsexual and come mostly from foreign countries (The European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers; [www.tampep.eu](http://www.tampep.eu)).

The unanimous criticism of all consulted scientists of the unsatisfactory current state of research corresponds to these fragmentary statistical findings. Surveys frequently refer only to a small specific group of persons so that the outcomes cannot be transferred. Or there is a specific context (e.g. HIV prevention), or research is marked by a lack of continuity, or is obsolete. This supports the conclusion that commissioning authorities have shown less interest in systematically clarifying prostitution as a major field. In addition, research is always confronted with the problem that many prostitutes do not want to reveal their activities because of actual or feared stigmatization and, as a consequence, are willing to participate in scientific surveys only under special conditions.

A closer look at the subject shows that prostitution is a rather vague term. For instance, is paid phone sex or webcam sex prostitution, even though there is no body contact? How about sexual accompaniment when persons – in particular elderly people or people with disabilities – are given the opportunity to experience a fulfilling and self-determined sexuality?

When defining prostitution, internal and external viewpoints can differ significantly. For example, hustler prostitution is, as a rule, poverty-induced prostitution as a survival strategy and there is no identification with the activity. Likewise, substance addicted girls and women who prostitute themselves to buy drugs differentiate from professional prostitutes. Both groups have the fact that they are significantly stigmatized in their own scene in common.

In addition, there are fluid transitions. A much discussed matter is the delimitation between human trafficking and sexual exploitation – there are grey areas of voluntariness, in particular due to economic needs or mental addictions without elements of an offence being fulfilled. Payment as a criterion can also be widely interpreted, it must not only be a matter of money. The website “PlanetRomeo”, which provides lonely hearts ads and professional escort offers, shows how flexible the boundaries between private and commercial sexuality are.

## **1.2 Prostitution, a dynamic market**

Presenting the approximate status quo of prostitution is already an ambitious attempt, but the difficulties are even worse since it is a very dynamic market.

Over the past few years, poverty-induced prostitution, especially street prostitution, was given greater visibility through the EU enlargement. These people – EU citizens – are characterized by a frequent lack of language skills, insufficient health care and, as a rule, precarious living and working conditions. In North Rhine-Westphalia, some

cities, e.g. Duisburg, Dortmund, Cologne, are particularly affected and faced with major social, integrative and regulatory challenges. For many citizens, the image of prostitution is largely marked by these problems. Admittedly, this phenomenon is nothing new: porous borders and worldwide mobility have resulted in many migrants working in Germany as prostitutes. At the Round Table, the “waves” of movements of African or South American women were mentioned.

The Round Table outlined striking changes in the brothel scene. On the one hand, there is a trend towards expensive services, such as wellness. On the other hand, there are more and more industrial enterprises with business concepts aimed at maximum profit; flat-rate services are a particularly significant example. It is notable that more and more operators do not come from the subculture, rely on good cooperation with police and tax offices and clearly try to get prostitution out of the grey area and gain social acceptance. Brothels organise “Open days” and there are events such as “Art in Brothel”.

However, the most important factor for dynamic changes is the internet; for this reason, the Round Table dealt with this issue intensively in a special meeting. The increasing digitalization of society and the resulting fundamental changes have also an impact on prostitution. For example, advertising of sexual services has shifted from print media to internet platforms. Establishing virtual contacts is anonymous; the threshold is much lower for both parties than in the real world. There are more and more in-door services that are more differentiated and transparent. In addition to internet platforms differentiated according to regions and special sectors, there are more and more interactive forums where direct communication takes place (“Pay Sex goes Social Media”). Male and female advertisers personally post contents as chats, sex cams, pictures and texts, whereby the demands of the users are on the increase (more information, better pictures/videos, inclusion by means of “auctions”, evaluation tools, etc.). Client forums and dating websites give prostitute clients the opportunity to pair up in a virtual community. For the first time, the demand side of the transaction – the clients – is present as an interest group. Prostitutes also use the internet for exchange and networking. As a rule, the internet has made prostitution in closed rooms more visible for external observers. Whoever wants insight into the offer has just to download the relevant websites, mostly free of charge. According to expert evaluation, it can be expected that this easier access to prostitution will induce more people to demand and to provide sexual services.

### **1.3 Evaluation**

At the Round Table, it quickly became clear that it is not possible to obtain an objective overview of the wide field of prostitution. However, there was a significant advantage; bringing together scientific, administrative and political expertise made it possible to shed light on many facets and join them together in a mosaic. The sex workers invited emphasized continuously that their insight into the different areas was limited and restricted. Quite striking was the fact that many experts at the Round Table met and exchanged for the first time. Presenting and discovering different points of view, their equal coexistence – the points of view of the police, experiences made at the advisory centres and the scientific perspective – made it possible for the Round Table to grasp the complexities of the issue and to discover and differentiate at least some areas.

### **1.4 The Round Table recommends**

1. Knowledge of prostitution is limited. The objectives are closing research gaps and creating a social climate allowing prostitutes to reveal their activity.
2. Given the complexity of prostitution, it cannot be solved by “simple solutions”. The political and media debate should take that into account more than before.
3. An extensive regulation of prostitution is not possible. Only approximations to reality and the regulation of subareas are possible. A nuanced approach can be practical.
4. Regulating subsectors of prostitution as an economic sector must carefully balance where and which practical regulations have to be met, where equality of the different sectors is appropriate and where it must be differentiated.
5. Special attention should be paid to the development of the internet.



## **2. Situation of prostitutes**

### **2.1 Initial situation**

With the Prostitution Act of 2002 and the simultaneous shift of paradigm operated in criminal law from “protection from prostitution” to “protection within prostitution”, the federal legislator re-evaluated the law: the decision to engage in prostitution is, accordingly, to be respected. This is reflected in the rulings of the Federal Constitutional Court (*Bundesverfassungsgericht*) recognising prostitution as a protected occupation according to Section 12 of the Basic Law (BVerfG, 1 BvR 224/07 April 28, 2009).

The Round Table “Prostitution” asked for specific proposals for how to improve the living and working conditions of prostitutes, as well as reinforce their right to self-determination. The Round Table decided first to take stock of the situation and look more closely at the current situations of sex workers. Only on this basis could further proposals be developed.

It came as no surprise that looking at reality is necessary. Given the multiple scenarios implied by the term “prostitution”, there is no such thing as “the” prostitute. Generalization is not appropriate because of the diversity of situations, motivations, sectors of sex work and concrete activities. In addition it is important to recognize that – like in every economic sector – there is competition, as well as divergent interests.

If reinforcing prostitute’s right to self-determination is defined as the primary objective, this should not only be taken into account when shaping the relevant provisions, but also at the previous stage of shaping opinions. It was, therefore, only logical that the two prostitutes present at the Round Table as permanent members should present their experience and their commitment to social concerns.

### **2.2 “Empowerment”**

Articulating one’s own interests, participating in social debates and making decisions not only increase the probability that rulings take into account the real conditions and interests of the people concerned, but also develop personal competences and create the opportunity to thwart stigmatization.

All advice centres represented at the Round Table have adopted this approach, from advice centres for female and male-to-male prostitutes as well as advice centres for victims of human trafficking. The necessity of replacing the traditional perspective

that prostitutes are victims with an emancipatory position, starting with the abilities of the individual concerned has been recognized by advice centres and established.

The establishment of the sex worker-led organisation BesD for “Erotic and Sexual Services” in 2013 is a particularly impressive example of the increasing importance of „empowerment. The high professional standards of this association make it a contact point as well as the scientific and political representation of the interests of prostitutes. In September 2014, a congress organised by the association in Berlin “Sex Working on the Move” developed expert positions, exchanged scientific experience and had a public discussion with representatives of the different Bundestag political parties. As a matter of fact, the Round Table “Prostitution” NRW was represented by its chairwoman.

### **2.3 Professionalization**

A self-determined decision to be a prostitute is reinforced by this decision being made on the basis of an accurate understanding of the conditions; this does not only refer to the legal situation, i.e. prostitutes’ rights and obligations, but also to special sector and specific work place. If prostitution is to be carried out without damaging one’s own physical and mental health, significant abilities are required which cannot simply be presumed. These includes knowing how to take care of one’s own body and the capacity to back away from any inappropriate expectations of clients. It is also important to protect the individual’s personality, which suffer harm when desired anonymity is lifted or in cases of derogatory advertising; this aspect is particularly urgent because of the internet, which requires special media skills and brings special opportunities as well as dangers. Last but not least, since prostitution frequently takes place in private or unsafe places, protection against violence must be ensured.

If prostitution has an economic future-oriented basis, a realistic understanding of earnings is crucial. Financial and social security must be a consideration for those pursuing sex work, in order to avoid debt and the resulting constraints.

At the Round Table, it became increasingly clear that such comprehensive knowledge and abilities are only rare. At best, they have been acquired gradually through experience. As the evaluation of the Prostitution Law shows, the opportunity of benefiting from social security based on employment subject to social security contributions is not often taken up; the Round Table confirmed it. Obviously, legal provisions do not match the interests of prostitutes, who are interested in having statutory health insurance, but not in making contributions to social security (pensions, unemployment and invalidity insurance) as part of their employment.

Findings from the different surveys mentioned at the Round Table, observations and presentations of individual biographies suggest that many people, even if they have been active in prostitution for years or decades, initially intended it to be a temporary

occupation. Very few are willing to reflect comprehensively over prostitution and consequences it may have for one's own person and life, especially at the beginning.

In addition, these sources of information suggest that a considerable number of persons carry out prostitution only occasionally for a variety of reasons: because it happens incidentally in the context of private relationships; as a sporadic job to supplement another occupation; seasonally; only in particular circumstances (for example financing specific purchases); with long interruptions which can last years or even decades. These circumstances make it difficult or even impossible to understand prostitution as a profession.

Last but not least, the public perception of prostitution and its social evaluation conflict with the desire to identify with this activity and, as a consequence, with any interest in professionalism. In male-to-male prostitution, regarded as particularly taboo, there is hardly any professional understanding of sex work.

Depending on the target group, there is more or less a need for individual support in order to achieve the highest possible level of professionalism when working as a prostitute.

#### **2.4 Guidance and support for specific target groups – the advice centres at the Round Table**

At present, successful practices have shown how proposals can reach prostitutes in their specific ways of life. The four advice centres represented at the Round Table can look back at long histories of guidance and have specific expertise. They are Madonna e.V., Bochum; Mitternachtsmission Dortmund; Sozialdienst katholischer Frauen, Dortmund; AIDS-Hilfe Essen e.V.

**Madonna e.V., Bochum**, is an association supporting the professional and cultural education of prostitute women, former prostitutes and women from other occupations; it is the only self-help organisation for prostitutes in North Rhine-Westphalia. As of 1997, Madonna has been carrying out a project "Neustart" financed by NRW funds (personnel costs of approx. 175,000 euros/year for 5 persons in 3 positions). At the beginning, the focus was on helping women to drop out in order to develop new career prospects outside prostitution; now they offer guidance on economic self-sufficiency in prostitution. The female staff offer women who are working as prostitutes, were working as prostitutes in the past or want to work as prostitutes, information and support at State level as well as in the Bochum centre. During 2013, there were 4,400 informal communications with prostitutes, 3,000 of these were visits.

The head of Madonna e.V. represents the State working group "Law and prostitution" at the Round Table. It combines free and church advice centres for prostitutes and prostitute advice centres at the public health offices. It was set up in 2002 when the Prostitution Act was passed. One of their

objectives is to pool resources for the implementation of this law and other legal regulations in the interests of prostitutes.

The ***Dortmunder Mitternachtsmission*** (Midnight Mission Dortmund) was set up as early as 1918 and is thus one of the oldest organisations taking care of female sex workers in North Rhine-Westphalia. At the beginning of the nineties, the Mitternachtsmission was confronted more and more frequently with women who were not carrying out this activity voluntarily. The result was a new focus: combatting human trafficking for sexual exploitation. In 1995, the State government commissioned the Dortmund Mitternachtsmission with a model project “Protection for victims of human trafficking – Setting up a Round Table at the local level and developing models of safe housing for women as victims of human trafficking”. Following this model project, North Rhine-Westphalia supported advice centres in other cities when setting up round tables. This field has been funded with 1.5 positions since 1996. The State also allocated funds for the safe housing of women affected by human trafficking, as well as fees and costs of materials. In 2013, 197 women with 129 children received support at the Mitternachtsmission in the context of human trafficking for sexual exploitation.

Experts and public opinion appreciate very much the work done by the Mitternachtsmission as an advice centre for prostitutes, former prostitutes and victims of human trafficking. It has received many awards and prizes for the commitment of its staff and it is a major partner in international cooperative projects. At the Round Table, the Mitternachtsmission represents, in total, eight State-supported, specialised advice centres against human trafficking. The State supports this organisation with approx. one million euros a year.

The ***Sozialdienst katholischer Frauen (SkF)***, Dortmund, (Welfare agency of Catholic Women) was the institution in charge of Kober (Communication and Advice Centre - *Kommunikations- und Beratungsstelle*) in Dortmund with State support until the end of 2013. The support to this organisation as a model project was launched alongside the support to Madonna e.V., Bochum. Its role changed when prostitution became a legally recognised occupation following the Prostitution Law of 2002; their main function became advising street prostitutes in a shipping container at the Ravensberger Straße nearby to so-called “*Verrichtungsboxen*” (drive-in boxes). However, since more and more women coming from Bulgaria and Romania were involved in street prostitution, the city of Dortmund enlarged the restricted zone to the whole city and prohibited street prostitution in May 2011. The Beratungsstelle Kober, still run by SkF Dortmund, was thus no longer in a position to carry on with giving guidance as before. In order to make further use of the proven capacities of Kober, the ministry for Health, Equalities and Ageing commissioned Kober at the beginning of 2014 with a new model project aimed at testing action support for integrating prostitutes from the new EU countries at three sites in North Rhine-Westphalia.

***AIDS-Hilfe Essen e.V.*** was set up in 1985; the target group of its project “*Nachtfalke*” (nighthawks) are young men who work as prostitutes. The organisation as a place of refuge offers living care, recreational activities, medical consultation and street work in the restricted area of Essen. In addition, it offers psychosocial care and housing for young men (“flat sharing for young men – Nighthawk”). The organisation is funded by the local authorities in cooperation with *Ambulant Betreutes Wohnen* (Ambulatory assisted living) pursuant to section 67 of Book XII Social Code. The State has supported so far different projects aimed at AIDS prevention in specific target groups (Centre for social psychiatry – *Zentrum für soziale Psychiatrie - ZSP*).

The director of AIDS-Hilfe Essen is a member of the Round Table and also a spokesman of the working group "Male prostitution" of AIDS-Hilfe NRW. It pools over 30 AIDS assistance centres, projects and associations focused on prevention for specific groups of gays and lesbians or drug-using people. The working group NRW "Male prostitution" focuses on developing discussions of the issue of "male-to-male prostitution" also in terms of the necessary lobbying and destigmatization. Other issues are HIV prevention for men in male-to-male prostitution, but also sexually transmitted infections and overall health promotion. Its activities are mostly focused on networking the three advisory centres for male prostitutes based in Cologne, Essen and Dortmund, on exchange between experts, developing common projects and national cooperation.

A consensus emerged at the Round Table that a qualitative and quantitative development of existing guidance and support activities for the prostitutes is necessary. However, given the limited financial leeway in the budgets of the State and local authorities, simply calling for the creation of a new or enlarged guidance structure would be pointless. On the contrary, innovative approaches must be developed in order to reinforce a sustainable support network targeted at specific groups of prostitutes.

## **2.5 An example of innovative action targeted at specific groups**

An example of such a development is a project aimed at the specific group of impoverished prostitutes from the new eastern European member states; they are in a particularly precarious situation. Furthermore, this group has a crucial impact on the image of street prostitution. Action is urgent, however this must be examined against the background of general migration of Bulgarian and Romanian citizens. .

As early as 2011, even before the subject was dealt with from a broader perspective by the State government, a working group of the Round Table "Prostitution" exchanged views on the major challenges posed by the EU's Eastern enlargement for local authorities. All participants agreed that the problems are less due to prostitution and more due to their particular visibility, like through a magnifying glass.

Indeed, basic welfare services are not provided to these migrant groups in Germany. They are mostly not entitled to social benefits and most people do not have any health insurance. They are mainly members of the Roma minority, who also experience major discrimination and poverty in their countries of origin. Regardless of limited access to employment up to the end of 2013, this group often fails to retain any regular employment because many of them have no linguistic knowledge and only limited skills. In order to support the municipalities particularly affected, the State government set up an Interministerial working group "Migration from South Eastern Europe" jointly coordinated by the Ministry for Internal Affairs and Local Authorities and the Ministry for Employment, Integration and Social affairs in January 2013, which is developing a far-reaching permanent action plan.

The advisory centres often have no easy access to this target group; innovative communication forms suitable to the target group are necessary. These women can

hardly be contacted personally (because of language barriers) or by handing over leaflets (because of widespread illiteracy). After it has been noted that most prostitutes of this target group have internet-ready smartphones and are able to use them effectively, three new ways of contacting them have been developed: a low-threshold mobile app for female sex workers shall provide them information in form of short videos, mainly about health care ("Sex Worker Info Clips"), a map with GPS-marked advisory centres and important contact points, and an advice chat service gives immediate guidance in real time. The project "New media in guidance for health information and prevention of migrant female prostitutes" has been in operation since May 1, 2014. It is operated by Madonna e.V. and supported by the Ministry of Health, Integration and Ageing.

## **2.6 The internet as a challenge**

Not only are new action policies needed for some target groups, but the challenges posed by the internet are a major example for the necessity to qualitatively improve guidance on using the internet. Digital developments are changing the whole market as rapidly as the working conditions of prostitutes.

However, advantages to these changes should not be ignored: prostitutes can get an overview on prostitution websites, advertise and market their services independently of any third party; in addition they can take safety precautions (for instance, warning each other of dangerous clients). In addition, the internet can be used to empower them; this is mostly the case when prostitute women get in contact on line, lobby and create an alternative stream of public opinion.

However, they face new dangers. As a rule, the internet is frequently experienced as a legal vacuum where severe infringements against minors and violations of personal rights remain unsanctioned. There are particular dangers for prostitutes. For example, in a semi-professional context, Camsex (sexual activity via webcam) can render the prostitute permanently identifiable by means of facial recognition software; this is when pictures are not edited to make the subject anonymous and circulate the net unfiltered. Whereas prostitutes could rely on mutual discretion about sexual services in the past, they must now fear being presented and evaluated on some forums in a degrading and commercially detrimental way.

This requires therefore a new form of professionalism based on special media skills. For this reason, the advisory centres provide modern advice services according to their clientele. This is especially relevant for escort services – for heterosexual, as well as male-to-male and transsexual prostitution.

Outreach guidance is only possible to a limited degree or is even no longer possible. If social work is provided on-line, the setting generates new conditions: contact is reduced to the written word; erasing body language, voice and intonation makes communication much more fragile. This creates the particular danger of distortion and misunderstanding and the high degree of anonymity of the individual seeking advice makes it difficult to categorize the issue; both sides must trust each other. Additionally, the option that the individual has to stop the communication at any time changes the guidance progress; eliminating regional borders devalues the knowledge of on-site circumstances and renders the advisory centre a body that is “floating free in a virtual space”.

## **2.7 Conditions for access to an activity as a prostitute**

If this activity is to be professionalized, the formal conditions for taking up this activity must be defined. Defining specific conditions makes it possible, on the one hand, to reinforce the professionalism of this activity and, on the other hand, these conditions could have a protective impact. The Round Table repeatedly dealt with and debated this issue many times. For instance, an obligation to instruct – similar to that implemented within the food industry (Sections 42 and 43 of the Protection against Infection Act) - could have an impact on responsible self-care and point out relevant regulations for medical and social care (cf. Chapter II 5.10). The suggestion that there should be an “initial guidance” in order to remind the individual of the possible consequences of engaging in prostitution is much less binding. Looking more deeply into this issue was not possible within this limited framework.

## **2.8 Social security**

The Round Table intensively dealt with the issue of how to achieve better social security for prostitutes, but did not achieve a working solution. However, there was general agreement that the possibility of prostitution being an employment subject to social security should be pursued. Even though this option received less acceptance, any retraction would constitute a negative political signal.

A sub-working group of the Round Table “Social Security” was set up in order to address this issue in its entire complexity and to achieve more transparency in the practical experience. The objective was to reach the social security agencies and to make use of their expertise.

As a first step towards addressing this complex issue, the working group attempted to categorize the most different forms of legal prostitution. In the case of employment, compulsory contributions have to be paid regularly to the relevant social insurance

branches. However, in the case of self-employment, there is no obligation to make social insurance payments; self-employed people must insure themselves against such risks as disease or unemployment and make their own financial provisions for old age.

It is of crucial importance for any classification according to social insurance law to clarify whether a service has been provided while employed or self-employed. The criteria for employment subject to social security are that an activity is carried out according to instructions of an employer and being involved in the work process of this employer. In this sense, an important indicator is the obligation to work on the premises of the employer and to follow his or her instructions.

This is also the case for sexual services. However, the prostitution law has relativized the criteria delimiting the types of sex workers. As a principle, in accordance with the Prostitution law, the employer has limited authority to give instructions; however, the legislator's intention does not preclude undertaking employment. Prostitutes are thus free to choose their clients and the services rendered. On the contrary, self-employment is characterized by entrepreneurial risk, as well as by more room for decision and action.

In practice, it is quite difficult to delimit employment and self-employment. On principle, it is always necessary to consider individual cases. Particular attention must also be paid to the question of whether the elements of fictitious self-employment can be stated. In the case of doubt, it is possible to apply for a procedure to assess the individual's status at the clearing authority of the *Deutsche Rentenversicherung* (German statutory pension insurance scheme).

The decision regarding social insurance status is based on the actual circumstances under which an activity is carried out. The working group has taken into account the various form of carrying out this activity as a criterion for classifying prostitution in the social security system and studied its possible social security status. The prostitution sectors selected for this purpose are neither exclusive, nor can this classification be considered generally valid. In addition, it is always a matter of the specific circumstances of an individual case.

For instance, the working hours of street prostitution are as a rule "tailor-made", prostitutes are responsible for the services offered and the prices fixed. In the case of such arrangements, it is possible to speak of self-employment since prostitutes provide their services on their own terms independently of third parties. In such circumstances, prostitutes are acting as employers because they commission external persons, for instance for security or transportation.



In the case of indoor prostitution, self-employment can be assumed when at the most two prostitutes are working in a flat, which has been rented and used for private purposes. The work routine and advertisement are organised on this basis and the prostitutes are personally responsible for their working hours, the services offered and the prices.

In larger brothels, the work routine is frequently dictated by third parties who provide services, such as phones, hygiene articles, advertisement, etc. The prostitutes have no fixed remuneration and must hand over a percentage of their income. Working hours are fixed in agreement with the other prostitutes, and the same is true for prices, which are fixed with mutual agreement. There is, in some cases, a sort of dependency on the brothel operators since the latter fix the prostitutes' working hours. As a consequence, it is not unusual that a prostitute no longer comes for a certain time after a rewarding day. In such cases, it is not possible to define an individual's social insurance status; depending on the circumstances, both models – self-employment and employment subject to social security – are possible.

The situation is different in so-called *Terminwohnungen*. There is constant change: prostitutes stay only for a limited time and move on to other places. Since they do not receive a fixed remuneration and have to pay rent, their activities could be considered self-employment.

There is no fixed remuneration for prostitutes in a brothel or walk-in brothes. The rent for the rooms is frequently settled on a daily basis. Working hours, services and prices are under the control of the prostitute. In some cases, there are further costs for advertisement, working materials or food. Individual cases must be taken into consideration. In a recent decision (1 StR 53/14, decision 22.07.2014), the Federal Court of Justice confirmed that prostitutes working in a brothel are employer despite renting the rooms.

In so-called sauna and massage clubs or bars, there is no rent to be paid. Instead, prostitutes pay entrance like the patrons. In addition, they are at liberty to dictate working hours and prices. These factors indicate this it is a case of self-employment.

In flat-rate brothels, prostitutes mostly receive a fixed remuneration. Typically, working hours and services are predetermined and cannot be re-defined or negotiated. This indicates that this situation is a case of employment subject to social security since there is no activity by the prostitute as entrepreneur. The audit service of the *Deutsche Rentenversicherung Westfalen*, in cooperation with the financial control service of the custom office confirmed this evaluation at a special audit. However, cases must be considered individually.

The working group considers the elaboration of a guidebook classifying the different forms of prostitution to be useful the prostitutes as well as for the social security agencies. However, we should first wait for the regulation of prostitution, which is in progress at the federal level.

## **2.9. The Round Table recommends**

1. With a view to improving the living and working conditions of prostitutes in the sense of the greatest possible self-determination, the Round Table considers

“empowerment” and professionalism to be appropriate starting points. Repressive action, if any, is of less significance.

2. Societal changes due to the digital era also affect prostitutes: they enhance the prospect for prostitutes to engage in the occupation independently and make networking and empowerment easier. However, these changes involve some dangers to violating personal rights. Media competence is, consequently, a skill gaining more and more relevance for prostitution.
3. The Round Table feels that there is an urgent need for action in order to empower sex workers and reinforce professionalism. The idea that prostitution is only a temporary activity, a lack of identification with the occupation, occasional sex work, taboos and stigma make it difficult, or even impossible, to understand prostitution as an occupation. Action must be taken. Assistance and advice appropriate for each target group are absolutely necessary and are already provided by the existing agencies with great expertise and commitment.
4. New challenges emerge with new target groups, but also with digital developments. A quantitative and qualitative development of guidance services is desirable, even if fiscal restrictions limit this, even at State level. The development of innovative concepts in particular should be promoted.
5. Even if the model of an occupation subject to social security is hardly accepted, the Round Table advocates the retention of the opportunities opened by the Prostitution Law. Since this approach would bring more protection, the Round Table considers it useful to determine how the inclusion of prostitution in the different sectors of social security, as intended by the law, can be reinforced. Special attention should be paid to the clear delimitation of self-employment and fictitious self-employment with consideration for the special circumstances of prostitutes.
6. In principle, it would be desirable to define formal conditions for engaging in prostitution as self-employment (e.g. valid health insurance, knowledge of fiscal regulations, provision of advice, information about safe sex, AIDS advice).

### **3. Brothels and similar establishments**

The Round Table dealt with the subject of brothels and similar establishments in depth during two special meetings. Whereas the first meeting focused on the state of brothels and different business models with specific framework conditions, the second meeting focused on different legal approaches to a regulation.

#### **3.1 Looking at the practice**

For most people, brothels – alongside with street prostitution – are the typical places for prostitution to be undertaken. The Round Table wanted to take a realistic look at the current businesses and processes.

Apart from the walk-in brothels of the sixties and the seventies, there are now large brothels and flat-rate brothels. Clubs and housing brothels are considered to be similar establishments. There is a broad range of such establishments which have become increasingly differentiated. Clubs can have a staff of only one or two, as well as thirty or even more. Special services (such as BDSM) are common. According to available information, soliciting for prostitution in housing brothels happens mostly via the internet. This is frequently the only possibility for transsexuals to carry out prostitution.

There was agreement that the conclusion of contracts regarding social security have no practical relevance.

According to available experiences, these contracts are isolated cases, mostly elderly women who have been active as prostitutes for years and are now looking for a secure income, such as in the service sector. As a rule, prostitutes are self-employed, mostly because they clearly want to work as independently as possible. It has been mentioned that a large flat-rate brothel has a percentage of 80 percent migrant women. According to brothel operators, these women are not interested in permanent employment, but rather they intend to go back to their countries of origin. According to the estimates made by the expert consulted, activities conducted under self-employment are shaped according to the interests of the persons concerned. Because of the special conditions of prostitution, employment is unusual and linked with special risks for the operators, since one-sided contracts, as laid down in the Prostitution Law, provide too little room for manoeuvre, potential for controls, legal uncertainty, as well as financial insecurity.

In practice, there are two main contract models between prostitutes and brothel operators: either rent is paid for using the premises, in which case the fee for sexual services is charged by person providing these services, or no rent is paid, but the fee is broken down into percentages, the main risk being on the operator's side.

Regardless of the contracting modalities, the services provided by the operator are not only merely providing working space, but also security and advertising. In order to provide an attractive workplace, there are frequently other services, such as lunches at reduced cost, drinks, hair-dressers, wellness services, tax advice, medical consultations, etc. Depending on the size and furnishings, the type of the business and the prostitution sector, rents vary over a large range: it has been mentioned that rent can be from € 30 to € 180 for 24 hours. In case of a rent paid by percentage, the percentage varies from 40 to 60 percent.

Even if prostitutes are formally self-employed, they are more or less involved in the processes of brothel operation. The question of which obligations the operator can establish without violating the sexual self-determination right can be awkward to answer in individual cases (cf. Chapter III 6.4). This also highlights the issue of a possible fictitious self-employment, depending on the practical circumstances.

Business models claiming to guarantee the client a maximum number of sexual services for a fixed admission fee (flat-rate brothels) secure the prostitutes a fixed income independently of the number of clients. However, based on observations of this practice, some experts consulted firmly reject this approach as being inhumane. However other experts mention that a difference should be made between advertising and practice. Recent audits in NRW confirm that this model involves employment subject to social security (cf. chapter III 2.8).

There is an overall will to create more legal certainty for prostitutes by regulating brothels and similar establishments. The current inconsistencies are not satisfying. The Prostitution Act, initially considered as a major first step, has not been questioned.

### **3.2 Regulation of brothels and similar establishments**

The Prostitution Act has a limited regulatory approach. Admittedly, it makes it possible to make prostitution the basis of an occupational activity; however, follow-up regulations that organise prostitution as an activity are lacking. Consequently, it gives neither the prostitutes nor the operators of prostitution businesses any guidance or legal certainty. For that reason, regulatory arrangements, for instance the obligation to obtain authorisation for prostitution to be conducted at a location, which would ensure the protection of the women and men working there, as well as regulatory control of the so-called scene, are being requested at political level.

The federal government has therefore been repeatedly requested by the German states to subject prostitution to legal regulations (Decisions by the Bundesrat of

February 11, 2011, February 11, 2011, BR-Drucksache 314/10, and of April 11, 2014, BR-Drucksache 71/14).

The first subject is the introduction of an obligation to obtain authorisation for places where prostitution is practiced. Conferences of State ministers have also requested that the Prostitution Act be further developed (the last time was at the Permanent Conference of the State Ministers and Senators of the Interior, December 4. – 6, 2013, and at the Conference of the State Ministers and Senators for Equal Rights, on June 14 -15, 2012). The law on the Fight against human trafficking and control of prostitution places, passed during the last legislature of the Bundestag, mentioned a proposal to regulate prostitution which was declared inadequate by a majority of Bundesrat members. The Mediation Committee was consulted on September 20, 2013 (BR-Drucksache 641/13). Finally, the Bundesrat requested the federal government to take legislative action for regulating prostitution in a comprehensive resolution passed on the basis of an amendment by NRW (BR-Drucksache 71/14, April 1, 2014).

The Round Table dealt intensively with the issue of a regulatory framework, its legal basis and the contents of such regulations. Practical experience played a major role in this context.

### **Legal basis and legal framework of a regulation**

Even though prostitution is often declared the world's oldest profession, conflicting legal positions appeared because the Prostitution Act does not clearly determine whether prostitution can be seen as a trade. This was also reflected in the positions of experts.

The representative of science held that the focus is now on public commercial law since the label of immorality affixed to prostitution has been removed.

Preparatory work has already been done for this in legislation: after all, the legislator of the *Gaststättengesetz* (Restaurant licensing act) considered that amendments were not necessary as far as "immorality" is concerned. Section 1 of this Act clearly states that immorality cannot be automatically supposed in case of paid sexual services (BT-Drs. 14/5958). The legislation has recognised at least the impact of the Prostitution Act on the Restaurant code ("Swinger Club decision" of Federal Administrative Court of November 11, 2002).

The definition of trade as a permitted, independent and long-term activity aimed at making profits matches prostitution. Even though classifying prostitution as a trade has been rejected by claims that it is an atypical situation, this category must be strictly interpreted in order to avoid any "hardening" of commercial law. The representative recommended thus that to use commercial law for regulating prostitution was appropriate and has the relevant instruments. However, she noticed that instruments tailored to prostitution, aimed at prevention and based on commercial law are lacking and cannot be derived from previous regulations. The expert advocated that appropriate regulations should be drawn up so that legal

provisions, such as hygiene law, immigration law, labour law, criminal law or fiscal law can be enforced.

In contrast, the State Ministries of Economic Affairs still believe that commercial law is not the appropriate instrument for improving the protection of prostitutes. They do not see any need for action at commercial law level, neither regarding the practice of prostitution, nor the running of prostitution establishments (Decisions of the Conference of the Ministers for Economic Affairs June 18-19, 2009 and December 14 – 15 2009).

These decisions have been preceded by very long expert discussions. For example, the Federal Government and Länder Committee (*Bund-Länder-Ausschuss* - BLA) on Commercial law, composed of representatives of the State ministries of Economic Affairs, rated prostitution for the first time in 2002 as a trade and thus as a normal economic sector. It recommended to differentiate between the activities of an individual prostitute (no trade) from the management of a brothel (trade). This differentiation has been consistently maintained so far. The majority of States implement the recommendation of the BLA on Commercial Law of 2002 when enforcing the law and treat brothels as business enterprises. In May 2009, the BLA Commercial Law adopted a unanimous decision, rejecting any undifferentiated use of commercial code for prostitution businesses since this would result in a disclosure duty for a prostitute working alone in his or her flat, which could be understood as stigmatization, contrary to the objective of the Prostitution Act.

These differences in legal categories could not be resolved during the meeting of the Round Table. For that reason, it was of the utmost importance to have a look at the administrative practice in North Rhine-Westphalia. The local authorities have room for manoeuvre at this level so that they can test their own enforcement models. An innovative approach practised by the city of Dortmund for years was presented.

### **Practical example: Dortmund**

In Dortmund, according to Section 14 of the *Gewerbeordnung* (Trade Law), clubs and brothels must file an application for registration of a trade and, in addition when alcoholic drinks are sold, they must file an application for a licence according to the restaurant law. In the case of indoor prostitution, an application for registration of a trade must be filed when three prostitutes are working in a flat. This application is also in principle possible for independent prostitutes working alone. It has become standard in Dortmund and it is regarded by prostitutes and brothel operators as a matter of course.

Inspection and authorisation of prostitution businesses is technically a matter for the *Ordnungsamt* (Office of public order) which has proven to be the appropriate interface between *Gesundheitsamt* (Public health authority), *Bauordnungsamt* (Building authority), *Amt für Ausländerangelegenheiten* (Office for foreigners' affairs), *Wirtschaftsförderungsamt* (Office of economic development) and *Finanzamt* (tax office).

The obligation to obtain authorisation according to commercial law is considered to be an advantage because it ensures better implementation of legal provisions regarding hygiene law, right of residence, tax or criminal law, greater legal certainty for the businesses and better protection of prostitutes.

Alongside this, representatives of the local authorities, advisory centres and brothel operators have organised a Round Table for exchanging information and balancing their different interests. The objective of this implementation of the Prostitution Law, now known as the Dortmund model, is to improve the social, societal and legal situation of prostitutes.

However, even though this Dortmund approach is generally seen as exemplary, the drawback is that – since there is no clear legal basis – it relies on regulations which have not been tailored to the special conditions of brothels and similar establishments. There are no specific preventive eligibility requirements for the management of a location where prostitution is conducted.

### **Evaluation**

Even though the question of whether classification in commercial law – which received contrary answers at the Round Table - is appropriate for the planned regulations could not be answered, it was possible to achieve agreement on major issues:

There is general agreement that prostitution is a service. In addition, it was recognised that the sector must be regulated. All members agreed that definition as a trade for some parts of this sector, which should be precisely defined, is appropriate in principle. However, there was no agreement on the issue of the relevant law (i.e. commercial law or specific law) and the competence (i.e. who shall enforce the law?).

The Round Table members agreed that regulations are a major instrument for improving the working conditions of prostitutes. Operators would also benefit: a regulation ensures more legal certainty, in particular regarding the issue of protecting acquired rights. This will be an incentive for investing in appropriate working conditions. Should the obligations of the regulation not be complied with, sanctions can be developed that go as far as the withdrawal of authorisation.

### **Obligations of a regulation**

There was general agreement that the reliability of the operator should be controlled in the event that brothels or similar establishments are regulated. Personal grounds for refusing the opening of a place for prostitution should not be limited to previous convictions due to offences related to “red-light” subculture, but they should also take fiscal debts into consideration.

Due to the limited meeting time, it was not possible to discuss in depth which further requirements should be added to the management of a brothel. Qualitative requirements were mentioned: working

conditions, health protection or security. The Round Table highlighted the fact that the requirements must also comply in detail with the type of business. In this context, it is of special relevance to differentiate the various types of businesses.

The Round Table members were sceptical whether the application required from prostitutes working in brothels or similar establishments is appropriate given the frequently desire for anonymity and the high turnover in these establishments.

### **Regulating other types of business (e.g. events)**

Given the dynamics of the prostitution market due to the internet, more and more forms of prostitution are gaining significance, removing the focus from services in buildings, for example brothels. New flexible forms are practised, such as the organisation of sex parties at non-fixed locations. Like the management of a brothel or a similar establishment, the operator and working conditions need to be regulated. This applies all the more since obviously particularly problematic services, such as gangbang parties, are taking root in this sector. The Round Table members agree that such types of business should also be included in future regulations.

### **3.3 Issues with building law**

In the practice of local authorities, building law is of importance when dealing with businesses providing sexual services. The Round Table was able to make use of proven expertise.

#### **Planning law**

Planning law can provide an answer to the initial question of on which sites are the different forms of prostitution admissible. The major factor is the *Baunutzungsverordnung* (BauNVO – Building use ordinance), which summarizes the different buildings sites with mutually compatible types of occupancy.

In the case of prostitution, questions arise about the definition of the different forms of prostitution in terms of planning regulations for construction as well as the allocation of different types of establishments to the building sites.

Given the differences and complexities of the services provided (brothels, swinger clubs, flat-rate brothels, massage parlours, brothel-like establishments, escorts, bars, etc.) it is impossible to make a classification without considering all circumstances of each individual case. The so-called level of interference attributed to the various forms of business and processes is of great importance in terms of building regulations



The admissibility of prostitution in terms of planning law is modelled on the hand on the fact that prostitution is not an “independent occupation” in the sense of BauNVO. In terms of building regulations, practicing prostitution is a commercial use. This is true for the practice of indoor prostitution as well as for brothels and similar establishments.

In addition, when examining an application, it is often assumed a priori that prostitution causes disturbances that will be incompatible with the relevant district. Prostitution is thus, in terms of building regulations, a commercial enterprise that will cause major disturbances.

### **Definitions**

In the case of indoor prostitution, two questions are of relevance when filing an application: “How should indoor prostitution be defined in contrast to brothels and similar establishments?” and “In which building sites is indoor prostitution admissible?”. Legislation provides important clarification.

For instance, case law differentiates “indoor prostitution” from “similar establishments” on the basis of certain criteria. First, in the case of indoor prostitution, a mixture of living and commercial spaces must be given over a rather long period of time. Secondly, the persons living and working there must remain the same. Thirdly, case law formulates the requirement that commercial use of the building must be visible from the outside only as housing and may not characterize the building where it takes place.

Some major aspects have been mentioned. However, case law has not yet established what size a “flat-sharing community” must be to be considered a brothel. Evaluation criteria for “model and dating houses” where nobody lives are still lacking.

### **Classification in terms of planning law**

Prostitution in flats or brothels and similar establishments is not permitted in any residential area. However, the Federal Administrative Court recognised that a potential disturbance in terms of building use can be inferred from the type of business (BVerwG, Decision June 28, 1995, Az. 4 B 137.95). In a case, the higher administrative Court (*Oberverwaltungsgericht*) NRW has noted that indoor prostitution is, as a rule, not inadmissible in mixed areas since the impact of disturbance is not as large as with a brothel-like business (OVG NRW, Decision July 19, 2007, Az. 7 E 623/07). However, there has been no high court decision so far on the permissibility of indoor prostitution in mixed areas.

According to case law, brothels and similar establishments are basically not permissible – regardless of their legal classification as trade or entertainment facilities – not only in residential areas, but also in mixed areas since they entail a use which will significantly disturb the residents. They are regularly permitted in commercial and industrial areas.

By excluding the above mentioned issues, the administrative court in Berlin considered admissible the change in use of a ground floor commercial unit in a mixed area into a brothel-like establishment in an individual case (Decision of May 6, 2009, Az. 19 a 91.07).

### **Building law**

The expert explained that building law regulates preventive emergency responses in contrast to planning law. From the perspective of “danger to life or limb”, it lays down requirements relative to buildings and structures (e.g. fire protection, statics). For example, as far as “healthy living conditions” are concerned, there are also regulations on windows and illumination of flats and common rooms. On the contrary, requirements for workplaces are not laid down in building regulations. They are regulated in the special provisions for occupational safety and labour health; in this case, building regulations are not the appropriate instrument.

### **Evaluation**

The unsolved issue - local authorities can be inconsistent when evaluating the different forms of prostitution in terms of building regulations - was not confirmed by different local authorities and associations of local authorities. It remains to be seen whether the new regulation of prostitution as planned by the Federal government is going to impact the issues of building regulation.

### **3.4 The Round Table recommends**

1. The Round Table considers it necessary to set up an adequate legal basis for regulating brothels and similar establishments. The regulations must be tailored to the specific requirements of prostitution and should be based on public economic law. There is a need for instruments that provide a federal framework of binding legal requirements and take into consideration heterogeneous conditions in Germany.
2. The Round Table considers regulating brothels and similar establishments a central instrument for reinforcing the situation of prostitutes and securing the

assets of operators. This would be an incentive to invest in adequate working conditions.

3. A central element for regulating the running of a brothel or a similar establishment is the control whether the operator is reliable. In this context, personal grounds for refusal should not be limited merely to previous convictions for offences related to the red-light scene. For example, it can be sensible to record tax offences. In cases of unreliable persons, the regulation prohibiting the occupation must be precise.
4. Working conditions can be sustainably improved only if binding, verifiable and enforceable standards (for example regarding health or occupational safety) are laid down. When developing standards, the competence and experiences of sex-workers should be taken into account. Should the standards not be complied with, sanctions should be implemented, in extreme cases this should include shutting down the establishment.
5. Particular attention should be paid to the definition of the term “locations of prostitution”. Flexible and mobile commercial forms of prostitution taking places at changing locations (e.g. events) should also be taken into account. This requires a definition taking into account dynamic developments in the market.

## 4. Street prostitution

### 4.1 Challenges for local authorities

#### **Street prostitution as a specific sector**

Street prostitution forms a separate category of prostitution. It offers, in particular to women and men who, for diverse reasons, are denied access to regulated employment, the opportunity to earn money relatively quickly, without any qualifications. Many others favour the practice of street prostitution because it is linked with great flexibility and independence: there is no need to rent a room, there are no professional expenses, it is not necessary to be involved with a company and its processes, in particular working hours, can be chosen spontaneously without constraint. For some clients, this form of prostitution is attractive, too, whether because of the low-threshold access or for other reasons. It is estimated that approx. 10 percent of prostitutes are working as street prostitutes.

Because of this opportunity to earn money that, from the point of view of many prostitutes, is easy, quick and without prerequisites, street prostitution attracts particularly vulnerable groups. Street prostitution is thus typical for drug addicted prostitutes who work to finance their drug habits, young male prostitutes and men and women who have emigrated from Bulgaria and Romania in the wake of the EU enlargement. Socially and physically vulnerable persons who are poorly informed of their rights and obligations, but are in dire need of support favour this form of prostitution, which is frequently induced by distress or poverty. Their prices are the lowest.

This form of prostitution mostly takes place on the outskirts, near industrial areas or on thoroughfares. There are places where street prostitution has taken place traditionally for many years or even decades; male-to-male prostitution also frequently takes place in pubs, nearby stations or parks. Sexual services are provided in love caravans, love hotels, directly in the client's vehicle or outdoors. As a rule, there is a lack of hygiene or any protection.

Over the last few years, sexual services has been provided in so-called "*Verrichtungsboxen*" (drive-in boxes), which are typical elements of protected street prostitution.

As an example, the project "*Geestemünder Straße*" should be mentioned which the city of Cologne created for drug-addicted prostitutes as early as 2001. The premises are located in an industrial area in the north of Cologne and covers an area the size of a football field. In this isolated place, there are garage-like cubicles and "standing boxes" in a former barn. The area is secured by alarms; at the

entrance, there is a container where the prostitutes can find guidance and further support every day, such as how to leave prostitution. Since this facility is not commercial, but a social project of the city, it is exempted from the local entertainment tax.

### **Regulation instrument: restricted area ordinance**

As a principle, municipal authorities can define restricted areas on the basis of the Restricted Area Ordinance (*Sperrgebietsverordnung*) as a specific instrument for regulating street prostitution.

Pursuant to Section 297(1) of the Introductory Act to the Code of Criminal Procedure (EGStGB) and on the grounds of protecting minors and public morality, the State government can prohibit the practice of prostitution by ordinance

1. in the whole area of a municipality of up to 50,000 inhabitants,
2. in parts of the area of a municipality of over 20,000 inhabitants or an independent area,
3. regardless of the number of inhabitants, in roads, paths, public spaces and other places which can be overviewed from there, in the whole area or in parts of the area of the municipality of an independent area.

It can limit this prohibition at certain times of the day pursuant to section 3.

In NRW, this authorisation has been transferred to the heads of the district governments by ordinance pursuant to Section 2.

However, as the discussion at the Round Table has shown, the municipalities have different ways of dealing with street prostitution. The Restricted Area Ordinance is not applied everywhere. For instance in Berlin, such an ordinance has not been passed so far.

Even though street prostitution is just one sector of prostitution, it is particularly visible and, consequently, has considerable influence on the general image of prostitution. In this respect, local conditions are essential, i.e. how far street prostitution is accepted, tolerated or considered as objectionable and unacceptable.

At the Round Table, an expert from Duisburg described a practice applied for many years without any trouble:

The Restricted Area Ordinance passed in 1974 prohibits every practice of prostitution in the city centre. It takes place therefore at two or three places outside.

Street prostitution has been taking place in particular on a parking place at the zoo since the 1970s and is tolerated by the owner. It is noteworthy that this area has been organised mainly by the prostitutes themselves who have been working there for years. Certain places are attributed to "newcomers", the tenders are mainly submitted via the internet. The women make regular use of the health consultation offered. The women welcome the contact with the police.

It is more difficult when street prostitution takes place in the direct vicinity of residential areas. The unintentional confrontation with possible concomitant aspects, such as noise pollution, increased car traffic, pollution, aggressive soliciting, even sexual activities in public spaces causes resentment among the population and put pressure on the political decision-makers of the municipality.

In North Rhine-Westphalia, the possibility for the municipalities to exert control through the Restricted Area Ordinance is increasingly the focus of public attention. The approach by the city of Dortmund became the subject of controversial debate and action has been brought before the High Administrative Court of Münster.

As early as 2000, Dortmund had instituted so-called “controlled” street prostitution. As of 2006, so called “*Verrichtungsboxen*” (drive-in boxes) with safety systems were set up and the women working there were attended to by Kober, the project by the welfare agency of catholic women. As a consequence of the EU enlargement in 2007, the situation changed significantly: the number of prostitutes soared, street prostitution became a transregional attraction for clients from neighbouring cities or municipalities, and large number of complaints came from the inhabitants. The city of Dortmund decided therefore to declare the whole city area a restricted district (*Sperrbezirksverordnung Bezirksregierung Arnsberg*, May 2, 2011). However, the Administrative Court Gelsenkirchen declared it inadmissible. According to the court, the decision that the practice of prostitution throughout the city area would result in a danger for youth and public morality was not sufficiently substantiated (decision of March 21, 2013, Az.: 16 K 2082/11). The city of Dortmund and the State of North Rhine-Westphalia filed a petition for review by a court of appeal. A decision by the Higher Administrative Court Münster is still pending. The pending process has a suspensory effect for the enforceability of the decision, so the Restricted Area Ordinance passed by the district government Arnsberg on May 2, 2011 remains valid and street prostitution is still prohibited in Dortmund, with the exception of the *Linienstraße*.

The outcome of the proceedings is anticipated by other municipalities. Some parts of the population were excited by the idea that problems caused or made visible by street prostitution could “disappear” by declaring the whole area a restricted area. This was all the more as many people still believe, in spite of the long existing legal system, that prostitution is illegal or can be prohibited. In addition, the image of the dire circumstances of street prostitutes, which is also visible to outsiders, confirms the idea that prostitution cannot be practised voluntarily, that it is typically human trafficking for sexual exploitation. This attitude is reinforced by the media coverage.

In North Rhine-Westphalia, some municipalities linked making new or larger areas a restricted area with action aimed at relocating street prostitution in selected and partly protected areas. The objective was, on the one hand, to take into account the legitimate interests of the residents and, on the other hand, to avoid mere displacement of the prostitutes. Locations should be proposed where prostitution can take place within a safe framework. The Round Table was briefed in detail about

practical experiences. A particularly interesting example that combined stringent control, participation and cooperation was presented for Essen.

## 4.2 Practical example Essen

In Essen, female street prostitution took place in different parts of the town up to 2009. This resulted in many problems, such as pollution with syringes and condoms, risks for minors, associated offences, violent assaults and increased car traffic because of the clients. Complaints made by residents and shopkeepers became more frequent.

The city of Essen was then faced with three challenges: concentrating street prostitution in one place, acceptance of this new location by prostitutes/clients and preventing prostitution at the former locations.

As a first step, an action plan for public order and safety aimed at relocating street prostitution was elaborated in cooperation with police, regulatory offices, justice, counselling centres and residents. The common objectives of relocation and criteria for the location selection were coordinated within the “*Bündnis für Sicherheit im Essener Konsens*” (Alliance for safety – Consensus in Essen). The department in charge of aid for drug users of the city of Essen managed the action plan and overall coordination. The action plan for public order and safety was supplemented by other plans: complaints management, an early warning system, rules for cleaning the location, technical support of organisations and quality management were developed and agreed on.

The new location for street prostitution since 2003 is the ground of the former funfair in the northern part of Essen. The ground is located outside the restricted district, this central location with excellent transport links ensures safe working conditions for the women because it is easy to survey and has so called “*Verrichtungsboxen*” (drive-in boxes) with alarms. There is a container where the women can find tailor-made guidance and support in cooperation with drug advice centres, advice centres for victims of human trafficking and the health authority.

An expert from an advice centre in Essen explained that street prostitution is also relevant for male-to-male prostitution, which is admittedly subject to special conditions:

In contrast to other big cities in North Rhine-Westphalia, e.g. Cologne, Düsseldorf, Dortmund, where male-to-male prostitution takes place mainly in specific pubs, there is an established male prostitute scene in Essen. The target group of the counselling centres are men practising prostitution, almost one third of them are under 25 years. Approx. 100 men were reached over one year by the services of the “*Nachtfalke*” (nighthawk) (contact point, internet guidance, street work). Most of the time, there is no identification with the prostitution activity; it is mostly prostitution induced by poverty or drug-addiction. According to estimates, the sexual orientation is homosexual for one third of male prostitutes, heterosexual for one third and one third could not be classified. Approx. 30 percent of the prostitutes have a migration background, mainly from Poland, Turkey, Serbia, Lithuania; male-to-male prostitutes from Romania and Bulgaria were less common in Essen. .

The outreach work of the project *Nachtfalke* takes place regularly on a car park in Essen (Wackel). This meeting point is primarily frequented by homosexual and bisexual men for social exchanges and

searches for like-minded sexual partners. These meeting points are not prohibited and thus legal. As far as prostitution is practised in individual cases and can be verified, it is sanctioned accordingly. The experts estimate that a combination with female prostitution is excluded, since male-to-male and female street prostitution differ significantly. An official exemption would be appropriate since this location is ideal for continuous outreach work.

### **4.3 Solutions**

An answer to the question of how to make space for street prostitution without infringing upon the interests of others was the starting point of a study by the Centre for Technology and Society (*Zentrum für Technik und Gesellschaft*) of the Technische Universität Berlin.

The scope of the survey “Neighbourhood and street prostitution” conducted in 2011 included a description of problems related to street prostitution in a district of Berlin and proposals for improving the situation. The objective was precise formulation of the problem and development of recommended action, whereby all persons living and working in this district should be involved. Various solutions were developed from the results of the questionnaires and discussions with a variety of persons (residents, business persons, representatives of schools, day care services, politicians, administrators, police, prostitutes and clients).

The Round Table presented the three following options for organising street prostitution on site and the experts recommended the third solution in particular:

#### **Prohibition and relocation**

A frequent solution for controlling street prostitution is the prohibition of the practice of prostitution at some locations or at certain times, which means creating restricted areas and times. However, the creation of restricted areas must be combined with the delimitation of tolerance zones. There seems to be a sort of “memory of location” that makes it difficult to relocate prostitution from established locations to others.

#### **Maintaining a fragile balance**

This option focuses on the conditions on-site in Berlin: One has to accept the fact that where prostitution is conducted is a historical location and there is no Restricted Area Ordinance in Berlin. Prostitution must be seen as “part of the district”. In this context, an attempt is made to reduce the existing disturbances and pollution to a minimum using a mixture of reactive-repressive, social-communicative and educational approaches, in order to achieve a general mutual acceptance (limiting prostitution locations, social action, information events for residents etc.)

#### **Recognition and acceptance**

Since prostitution is a legal trade, street prostitution, which is present anyway, should be accepted and actively organised. From this point of view, all persons concerned and participating must be acting autonomously. In this solution, a process should be enacted that involves all persons concerned, in particular residents, prostitutes, business people, clients, etc., in order to look for concrete and constructive solutions together. How shall we develop our district? What kind of togetherness are we striving for? The expert emphasized that this common process must always be negotiated and the district must always be in charge so that it can develop positively and take control of the situation.



#### **4.4 The Round Table recommends**

1. Street prostitution is a category of prostitution of its own. It gives prostitutes and clients specific opportunities which they make use of for various reasons.
2. Street prostitution does not regulate itself. Ignoring and passively tolerating it lack as much sense in the long run as displacing it and concentrating on repressive action only. The situation, as it exists in the municipality, should rather be analysed, organised and controlled within the framework of an overall programme.
3. Since prostitution induced by poverty and misery (for instance drug-addicted women) is practiced more as street prostitution, spaces should be set up on-site where it can be practised safely, while protecting the legitimate interests of others. Passing Restricted Area Ordinances can contribute to delimiting and defining such spaces; however they should be supplemented by further action.
4. Personal experiences show that solutions are all the more sustainable when the interests of all persons concerned (prostitutes, clients, residents, public order and health authorities, police, counselling centres, etc.) are involved.
5. This process cannot be successfully organised without informing public opinion and winning acceptance. An objective discussion and a fair and respectful mutual treatment of all persons is necessary.

## **5. Health protection**

### **5.1 The situation of prostitutes' health**

Health issues have occupied a large part of the debate around prostitution. The public perception is mainly from the viewpoint of street prostitution, where particularly vulnerable groups, such as drug-addicted, poverty-induced and young male prostitutes, are to be found. The fear that prostitution creates ideal conditions for infection with sexually transmitted infections (STI) is still widespread. It is one reason why many people consider the demand for obligatory and regular medical screening or condom use, as frequently made in the political debate, to be admissible in the sense that it would improve the protection of prostitutes too.

The Round Table "Prostitution" dedicated a meeting with the support of many external experts to debate this basic problem - among others the demands made by politicians.

Even though representative (long-term) data on the health situation of female, male and transsexual prostitutes are not available, some research findings enable an estimation. For instance, the findings of an unrepresentative study by the Robert Koch Institute (RKI) indicate that the risk for sex workers to contract a STI is apparently not higher than for the general public. This study was launched in order to estimate the prevalence of STI and STI risk factors in this group of persons and also to explain which sex workers were being reached by the public health authorities. Between January 2010 and March 2011, a total of 29 public health authorities participated in this study in Germany (KABP-Surv STI, RKI).

According to this study, the widespread fear that prostitutes would play a key role in the transmission of STI is untenable.

However, the experts at the Round Table pointed out that significant health risks and strains are definitely linked with prostitution. Moreover, some groups of prostitutes have a higher risk profile (N.b. this comes from the above mentioned study). Finally, some forms of prostitution must be evaluated in a differentiated way as far as their impact on health is concerned.

### **5.2 Health strains and risks**

From the point of view of occupational health, prostitution can be seen as a hazardous activity. It belongs to a widely free market economy without any social

components and without standardized employment protection or regulated health care.

Representatives of counselling centres pointed out that prostitutes are exposed to significant structural and personal strains and thus to health risks. The increased difficulties of being self-employed, such as long working hours, lack of leisure time and relaxation, personal strains, economic uncertainty and unclear occupational prospects as well as increasingly competitive pressure to market oneself, have to be managed. Weather conditions, cigarette consumption, contact with allergens, the frequent obligation to consume alcohol when soliciting sexual contacts, strains on the skeleton due to standing for prolonged periods of time, as well as the disruption of biological rhythms due to shift work and malnutrition have a hazardous health impact.

All consulted experts consider existing stigmatization of particular importance: living a double life and accepting social isolation endanger mental health.

There was broad agreement in the assessment that self-determination and more professionalism are of central importance for improving the health situation of prostitutes. Self-confident and mature prostitutes can manage their own health and protect themselves through adequate working conditions, health care and early diagnosis not only of infections, but also of other health risks.

Individual problems and distress lead to a particularly hazardous situation, for instance immigration due to poverty or drug purchase due to addiction. In this case, the following is applicable: the more precarious the health situation, the greater the health risk. Massive competitive pressures and the resulting price deterioration can lead to accepting clients' requests for unsafe sexual intercourse. It was also mentioned that the health of transsexual prostitutes is exposed to particular strains: a particular risk is the (illegal) intake of hormones without medical supervision and inadequate operations being performed.

### **5.3 Prostitution due to poverty**

The experts described the situation of prostitutes from Eastern Europe as particularly precarious. Many women are visibly under significant mental pressure. They have low knowledge of sexual health and contraception. Poor language skills make any medical care more difficult. It has been reported that a pressure of high competition results in prices falling, the increased practice of risky sexual behaviours, violence, unwanted pregnancies, abortion and the development of addiction. There is also evidence of growing incidence of sexually transmitted infections increasing.

Physicians occasionally volunteer to give free consultations and treatments or the local public health authority provides basic medical care; sometimes, aid organisations provide care as far as they can. However, this is generally considered to be insufficient.

The lack of or unsettled health insurance is a major problem of medical care. Although health insurance has been made compulsory for years for all people living (legally) in Germany, concrete protection by means of a compulsory or private health insurance is often linked with extreme difficulties when there is no employment subject to compulsory insurance. When the insurance situation in the country of origin is unsettled, access to compulsory health insurance is problematic. In addition, as a rule, these people do not have the financial resources necessary for taking out insurance as a voluntary member of statutory health insurance (*Gesetzliche Kranken-versicherung* - GKV) or private insurance (*private Krankenversicherung* - PKV). As a consequence, they have no medical care, only a right to medical treatment in emergencies, which raises the question of financing.

These issues are dealt with by the interministerial working group of the State government "Immigration from Eastern Europe", who, in joint cooperation with the Ministry for Internal Affairs and Local Authorities and the Ministry for Employment, Integration and Social affairs, elaborates and updates an action plan for supporting the municipalities particularly affected. An interim report submitted on January 14, 2014, to the President of the NRW Parliament, presents actions and considerations by the State government aimed at securing access to health insurance and medical care (LTDrs. 16/1550). With a view to clarifying unsettled health insurance cases, among others regarding the Federal government, North Rhine-Westphalia requested that a competence centre should be set up at federal level. This request was discussed at the Bund-Länder working group of the Conference of the Ministers for Employment and Social Affairs (ASMK) with the participation of the *Deutscher Städtetag* (German Association of Cities) and adopted by a large majority of the States at the ASMK (November 27 and 28, 2013).

At the same time, the State examines how access to regular medical care can be improved at State level. Given the fact that the related issues are relatively new, very complicated and based on different legal interpretations, the creation of a virtual, internet-based competence centre has been considered; since it is to be expected that clarified cases are transferable, they could be fed into a data bank and contribute thus to a comprehensive and practice-oriented knowledge pool. The knowledge thus generated could be made available to all advisory centres.

In addition, advice for the target group should be provided on-site in the advisory facilities with the participation of external people (for instance GKV staff). The existing advising structures should be used and access to the target group should be made easier. Discussions on both issues are in progress.

#### **5.4 Male-to-male prostitution**

When looking at the number of newly diagnosed HIV cases according to the risks of infection, the group of men having sex with men (MSM) made up the largest group of new HIV cases in North Rhine-Westphalia with 52 percent. When taking only reports that give sufficient information about the routes of transmission as a basis, the MSM group makes up 69 percent (Epidemiological Bulletin no. 26, Robert Koch Institute).

A differentiated approach is necessary to estimate the risk profile of male-to-male prostitution. Indeed, both forms of male-to-male prostitution – callboys and *Stricher* (young street prostitutes) – differentiate according to the degree of professionalism, self-image and risk-related behaviour: Callboys tend to be men from the middle class who, as a rule, are financially and socially well-off and living in a socially safe environment. They are highly professional, self-determined and mostly well-informed of the risks of HIV infection, other sexually transmitted diseases and safer sex. Callboys seldom offer their sexual services on the street, contact takes place mostly via the internet.

Prostitution practised by *Stricher* is a form of need- or poverty-induced prostitution. These men are mostly young, work rather unprofessionally, live in socially precarious conditions, do not identify with their activity and are in need of multiple forms of assistance. Their sexual orientation is seldom homosexual. *Stricher* are particularly ostracized by the gay community. Younger *Stricher* frequently have no interest in health care, so that they are particularly prone to infection transmitted sexually. Surveys conducted in North Rhine-Westphalia in 2001 and 2008 have shown a high infection rate for STIs and HIV. *Stricher* from foreign countries are in particularly difficult situations (for instance no access to information, increased risk of infection and no HIV tests, since the treatment necessary for an HIV infection cannot be provided to uninsured *Stricher*).

#### **5.5 Drug-related prostitution**

Drug-addicted women, who prostitute themselves to fund their addiction, are at a high risk of infection with HIV/AIDS, hepatitis (B/C) and other sexually transmitted diseases. Prostitution is frequently their only source of income for financing drugs. It has been reported that some clients look specifically for drug-addicted prostitutes, in

order to practise unprotected or special sexual intercourse. Because of their situation, psychological suffering and the stress of procuring drugs, these women are rather willing to take risks. They do not define themselves as prostitutes and are severely stigmatized in the “drug subculture”. Overall, these women tend to be in a bad health condition.

## **5.6 Risky sexual practices**

Some prostitutes advertise with “sex without taboo”. “Oral sex without a condom” is almost a standard service. Some experts report an increase in complaints by prostitutes who find it difficult and even impossible to use condoms because of the increasing competitive pressure. According to them, the internet pushes this tendency; extreme forms of unprotected intercourse are advertised there. It was observed that the internet makes it possible to organise parties for which the condition for participating is that no condoms can be used: “bare back” and “gang bang parties” were mentioned. There are always people who get a special kick out of the infection risk. However, it is not possible to conclude from this advertisement that it is an actual practice.

## **5.7 Work done by the public health authorities**

Section 19 of Law on Prevention of Infection (*Infektionsschutzgesetz* - IfSG) stipulates that the public health authority s should provide guidance and support on sexually-transmitted diseases and tuberculosis or ensure that these services are provided by other medical institutions. The services are targeted at persons whose life conditions and behaviours are linked with an increased risk of infection for themselves or for others and can also take place via outreach work. In individual cases, physicians of the public health authority can provide ambulatory treatment when it is necessary to prevent the transmission of STIs and tuberculosis. It is also possible to make anonymous use of this service, provided that the reimbursement of costs is secured.

However, due to the financial situation of municipalities, lower-level public health authority only provide specific support, such as STI prevention and care for prostitutes in few municipalities. Experts deplored the fact that services provided by the public health authority rarely bear in mind the health of prostitutes as a whole, but are limited to sexual health from the point of view of STIs. It would be good to conduct surveys at local and regional levels to assess the situation (number of female prostitutes, working conditions on the spot, need for prevention) and to develop standards for support services (outreach, medical care).

## **5.8 Cologne, an example of good practice**

The city of Cologne is a good example of well-established services. A special service in charge of STI and sexual health has been set up at the public health authority.

This service is a multi-professional team composed of female physicians and social pedagogues. The attitude towards sex workers focuses on open-mindedness and acceptance; anonymous guidance on STI, personal protection and hygiene are specifically provided to this target group. Prostitutes can also be tested anonymously and free of charge for all STIs as part of the STI consultation. Their existing language skills (among others, English, Russian, Polish, and Spanish) help to overcome barriers. If need be, interpreters can be called in. In order to better reach prostitutes and inform them of existing services, staff of the public health authority do outreach work at brothels and places of street prostitution and cooperate with other counselling centres.

In this context, the special service of the public health authority of Cologne takes into account the specific requirements and various health problems of this target group. Activity-related hazards are taken into account not only from the viewpoint of sexual health (for instance STIs and pregnancy), but also of general health (for instance work load, addiction problems, stigmatization). Since 2007, over 1,500 female sex workers and over 200 male sex workers have been visiting the consultation, for many of them multiple times. The STI consultation is the first and major contact point for migrants who are otherwise frequently referred to as “hard to reach”. Just as for sex work, the consultation has a high turnover: less than 15 percent of the prostitutes make use of this medical service for longer than five years.

## **5.9 Possible methods for promoting the health of prostitutes**

Discussions at the Round Table made it clear that taking responsibility for one’s own health depends on the degree of self-determination when practising prostitution. As a principle, professionalism and empowerment as well as preventing discrimination and exclusion are essential starting points for improving the health situation. Accordingly, prevention of ill-health in Germany is targeted at the ability to act in a self-determined and autonomous manner. Instead of criminalization and repression, there is a need for education, information and prevention, as underlined in the paradigm shift from the Federal Law on Contagious Diseases (*Bundessteuergesetz*) to Law on the Prevention of Infection (*Infektionsschutzgesetz*). Thanks to this approach, and in comparison with other European countries, Germany has the lowest HIV infection rate.

In addition, it is important to be aware that not all health problems have a causal link with prostitution. There are no representative long-term data about prostitutes that it would make it possible to make conclusive statements about the health problems of prostitutes as a consequence of their past history (experience of familial abuse or sexual violence, addiction, poverty). It is known that many individuals in the group of Eastern European poverty-induced prostitutes have been in dire straits in their home

countries. Poverty, experiences of violence and lack of medical care in the past have an impact on the present time. Last but not least, actions that focus only on prostitution as an occupation to prevent ill-health fall short.

### **5.10 Introducing mandatory medical screening**

Mandatory regular medical screening is in contradiction with the principle of empowerment and individual responsibility, as has been applied successfully for years in HIV prevention. In addition, any mandatory examination is a significant interference with an individual's fundamental rights, which can be justified only under special circumstances. The experts pointed out that no epidemiological data prove that such medical screening could keep the spread of STIs in check. It was feared, instead, that this would result in reinforcing the stigmatization and ostracization of prostitutes, what is counterproductive in terms of infection prevention: due to the supposed test-proven "risk freedom", clients would be almost encouraged to request unprotected sexual services, which is an argument against the introduction of mandatory medical screening. This medical screening is quite often carried out in an undignified manner in the past, all the more so as prostitutes and brothel operators used this examination certificate to attract clients, the so-called "*Bockschein*". However, mandatory medical screening would only offer false security, because tests deliver reliable results after three months only. Finally, the Round Table expressed concern that such screening could make people more hesitant to resort to education, guidance and care in difficult social situations. As a result, mandatory medical screening was unanimously rejected. As an alternative, still to be assessed, the Round Table proposed the obligation to provide instructions for prostitutes, the "*Belehrungspflicht*" (mandatory instruction) - as laid down in the food industry (Section 43 - Protection against Infection Act).

### **5.11 Mandatory condom use**

Most experts consulted at the Round Table rejected the legal obligation of using condoms during sexual intercourse, as is already the case in Section 6 of the Hygiene Ordinances of the States of Bavaria and Saarland. It is poorly justified by epidemiologic evidence; in addition, there is no adequate means of control. Random inspections by civil servants in plain clothes pretending to be clients, as practised in Munich, was rejected, as this only affects sex workers, not the clients. This undermines the necessary confidence between police and prostitutes for combatting criminal behaviour.



The mandatory use of condoms cannot prevent demand for unprotected intercourse. Because of high competitive pressures, many prostitutes will be willing to agree to the request for unprotected intercourse, just like before. In addition it creates the risk that prostitutes could be blackmailed by brothel operators and clients. Finally, it is to be feared that such a regulation would act as an incentive on clients looking for risk and a chance to exercise power.

Furthermore, it is difficult to define the limit between private and professional sexual contacts when sexual services and their monetary returns are not seen as such by both parties. This is the case when a prostitute who does not identify as such meets a client who does the same. Such an arrangement occurs in the *Stricher* subculture in the case of male-to-male prostitution, which is still steeped in taboos; vague agreements and statements are made (“the boy stayed overnight at my house and not on the street”). A mandatory use of condoms makes access to the male-to-male prostitution more difficult and results in the client retracting. This makes any efficient prevention work impossible.

As an alternative to the introduction of the mandatory use of condoms, the Round Table supports prohibiting advertising for unprotected sexual intercourse. In this context, members pointed out positive steps made in some cities where brothel operators have committed themselves to comply with prevention standards

It was discussed how to directly address clients as a target group and to campaign for condom use. As a practical example, the web site [www.sexsicher.de](http://www.sexsicher.de) shows how to motivate clients to support sexual health. The website for clients was developed in 2003 on the initiative of the Federal Centre for Health Education (*Bundeszentrale für gesundheitliche Aufklärung* - BZgA) together with clients' forums. A website of the city of Dresden was mentioned as an example for addressing men directly and including educational elements for a self-reflection on general sexual health issues.

### **5.12 Prevention work by counselling centres**

Action tailor-made to the different target groups was reported. Access to the prostitution subculture is of particular importance. Only when it has been developed, are individual guidance, contacting and informing the environment (brothel operators, pub operators, etc.) possible. Not only are language skills necessary, but also cultural sensitivity about the individual's ethnic background. In cases of drug-related prostitution, the exchange of syringes, distribution of condoms and vaccination campaigns are recommended as adequate methods to reduce infection risks. Everybody was in agreement that the longer the individual is involved in distress-

induced prostitution, the stronger is their physical and mental deterioration, which makes leaving prostitution more difficult. Early guidance and support are thus all the more important. It was also pointed out that counselling centres are ill-prepared to target some groups, for example transsexual prostitutes. There was a call for developing the existing guidance and support facilities.

### **5.13 The Round Table recommends**

1. The Round Table considers that reinforcing the self-determination, personal responsibility and professionalism of prostitutes is the major solution to improving health. Information, education and guidance tailor-made to specific needs play a major role. The Round Table rejects repressive action, as currently debated at the political level as inadequate and counterproductive.
2. Mandatory medical screening of prostitutes is disproportionate, inappropriate, stigmatizing and counterproductive.
3. Even the mandatory use of condoms would counteract the preventive objective of the Prevention Act and is to be rejected because control, enforcement and sanction opportunities are lacking. However, the Round Table recommends investigating the prohibition of unprotected intercourse advertisements.
4. Preventive action tailor-made to the target groups are necessary; it should involve the work environment, including the clients. Examples of good practice are available and should be used.
5. Guidance and examination regarding STIs by the public health authorities as provided in Section 19 of the Prevention of Infection Act is an important element. The establishment of open consultations and the reinforcement of on-the-spot visits are useful.
6. The Round Table welcomes the efforts made by the State government to support migrants so that they could either claim insurance in their countries of origin or obtain insurance coverage in Germany. This also benefits the target group of poverty-induced prostitutes.

## **6. Protecting against violence, combating human trafficking**

### **6.1 Combating human trafficking for the purpose of sexual exploitation as a policy field of its own**

Human trafficking for the purpose of sexual exploitation is a serious offence with severe mental and physical consequences for the victims. It is also an achievement of gender policy that this serious violation of personal freedom and sexual self-determination has increasingly been in the public spotlight.

For approx. two decades, North Rhine-Westphalia has been supporting an exemplary protection and aid programme for the victims at federal level. This includes the financial support of eight specific counselling centres, the allocation of funds for accommodating women at high risk and interpreter services. Apart from this, the Round Table “International human trafficking with foreign women and girls in North Rhine-Westphalia” has been addressing this issue since the 1990s (cf. Chapter 1.6). In addition, NRW has been using reliable guidelines “Suspicion of and processing cases of human trafficking” for quite some time and is implementing them consistently. These guidelines include basic principles and recommendations for conducting investigations by police and case processing, police protection for victims and cooperation with all relevant authorities and organisations, in particular with non-governmental specific counselling centres.

A major issue the Round Table “Prostitution” has been repeatedly working on is the attempt to differentiate voluntary prostitution from human trafficking for sexual exploitation. It was agreed that economic distress which may induce someone to work as a prostitute is not the opposite of free practice of sexual services. The Round Table is aware that differentiating between categories is always difficult and that there is a grey area that cannot be clearly defined (cf. details in Chapter III.1).

### **6.2 Significance of the Prostitution Law and associated penal reforms for the prosecution of human trafficking for the purpose of sexual exploitation**

Even though, from a legal point of view, prostitution and human trafficking for the purpose of sexual exploitation should be strictly differentiated (legal occupational/criminal offence), the frequent confusion of terms in public discussions is a pattern of argument to be dealt with. In addition it is often argued in the political debate that the position of the pimps, not the position of prostitutes, has been reinforced by the prostitution law and following penal reforms. According to this perspective, Germany has become the hub of organised human trafficking.

The Round Table did not find any evidence supporting this statement. All scientific experts consulted confirm that there are no empirically reliable data from which a causal relationship could be deduced.

The police criminal statistics of the federal government and of the State NRW illustrate this different picture:

The number of victims did not increase despite an increase in investigation proceedings since the Prostitution Act was put into effect. The annual reports "Human Trafficking 2001 – 2012" drawn up by the State Criminal Police for NRW show only finalised proceedings. Even with an increase in investigative activities, comparable results show no significant variations of the (small) number of cases (Investigation proceedings in 2001: 68; in 2012: 81 - number of victims in 2001: 189, in 2012: 95). The reports of the Federal Criminal Police show similar data (Investigation proceedings in 2001: 273; in 2012: 491; number of victims 2011: 987; 2012: 612).

However, it must be recognised that these figures represent only the number of reported offences. We have to assume a dark figure typical for control-related offences. Just as before, verifiable testimonies of victims of human trafficking are of crucial relevance. Unfortunately, in reality victims are rarely willing to report offences and to give evidence. This is the decisive factor for this dark figure.

No other findings come from the study drawn up in 2011 under the auspices of the Scientific Faculty in Göttingen "*Führt Legalisierung von Prostitution zu mehr Menschenhandel*" (Does Legalization of Prostitution Increase Human Trafficking?, Seo-Young Choo, Axel Dreher, Eric Neumayer, Georg August University Göttingen, 2011) which is often mentioned as the scientific evidence for an increase in human trafficking in Germany. There is this summarizing sentence: „On average, countries with legalized prostitution report a greater incidence of human trafficking inflows.” Nevertheless, an intense debate at the Round Table showed that this study cannot prove this causal relationship because of unreliable data, research method and the period covered by the study:

When this economics-focused study was presented, it was clear that its conclusions were based on data from an UNDOC (United Nations Office on Drugs and Crime) report of 2006.

This report gives an index for the inflow of human trafficking in 161 countries on the basis of publications by various international and national institutions that reported information on human trafficking from 1996 to 2003. UNDOC only mentions the scope of the reports on human trafficking and not the scope of human trafficking. In developed industrialised countries with a progressive and liberal policy, there are naturally more reports on human trafficking than in totalitarian systems. In addition, the cumulative figures of the study cannot represent developments from 2002 (when the Prostitution Act came into effect); therefore, conclusion on the relationship between legalisation and human trafficking cannot be drawn.

### **6.3 Is there a need for legislative action in police or criminal law in order to improve investigations?**

It has been repeatedly criticized that the Prostitution Act and the associated amendments of criminal law make it more difficult for the police to exercise control; it is much more difficult than before for the police to detect human trafficking for sexual exploitation, as well as the associated criminality. This criticism is not supported at the Round Table.

Just as the Prostitution Act subject to private law cannot directly regulate the fight against human trafficking for sexual exploitation, the objective of substantive criminal law is not to institute powers of intervention for the police. Criminal law is rather focused on protecting assets.

The Round Table was unanimous in the evaluation that the paradigm shift of the criminal law as a consequence of the establishment of the Prostitution Act – from protecting against prostitution to protecting prostitution – is consistent with the law.

As far as concrete practice is concerned, police pointed out that the existing powers laid down in Section 12 of the Law on Police (*Polizeigesetz*) NRW (Identification) and in Section 41 (Entry into and searching private homes) are sufficient. The assessment made by the expert consulted on prosecutors' practices was uncontested. It is true: some regret that the promotion of prostitution is no longer an offence (Section 180a(1) No. 2 Criminal Code, old version) since it made it possible to start investigation into offences; but Section 232 Criminal Code (human trafficking) is a sufficient legal basis for starting judicial measures aimed at combating human trafficking for the purpose of sexual exploitation, especially since it is often coupled with pimping (Section 181a Criminal Code). The Round Table rejected thus unanimously the re-establishment of former offences.

### **6.4 Is there a need for legislative action in criminal law for better protection of prostitutes against violence and exploitation?**

The Round Table also addressed the issue of whether establishing new offences or increasing the accuracy and/or supplementing the existing offences could achieve a better protection of prostitutes.

A current item on the political agenda is the request to punish clients who make knowing use of the services of victims of human trafficking. The Round Table dealt with this in two meetings (Issues: "Clients" and "Criminal law/Police law").

Some consulted experts argued that this should be made a punishable offence. The current problems with the evidence are not underestimated, but they are typical for offences against sexual self-determination and must not play a role for the protection of assets. This argument was countered by reference to Section 138(1) No. 6 Criminal Code (Omission to bring planned offences to the attention of the authorities) that is an appropriate legal basis. Difficulties in real life show that this provision has not found any practical relevance so far.

Most members of the Round Table considered it hardly possible for a client to grasp the plight of a prostitute immediately. This position is substantiated by the findings of the Round Table at its meeting on the issue "Clients": Since prostitution has a basis in performance, very few clients are able to realistically evaluate the prostitute's situation. There is a great danger of misunderstanding – whether that significant clues are ignored or the dream of rescuing a prostitute influences the perception. The regular association of prostitution with human trafficking in the media and public opinion makes it difficult to escape this view. In addition, the threat of punishment would create additional insecurity for the prostitutes too. Police and counselling centres point out that a large number of reports of cases of human trafficking already come from clients and the prostitution scene.

Following an overview of all arguments, the Round Table rejected a specific criminal provision for clients who use the services of victims of human trafficking.

As a starting point for improving protection in the Criminal Code, the Round Table discussed the withdrawal of the so-called "landlord privilege" (Section 180a(2) No. 2, Criminal Code). This provision refers to exploitation by landlords and makes them subject to a lower threat of punishment than pimps (Section 181a(1) No. 1 Criminal Code). This is difficult to understand. The Round Table was of the opinion that all forms of exploitation should be sanctioned the same way. A possible solution would be cancelling this provision and classifying this offence as exploitative pimping.

A clearer distinction between the owner's admissible right of organisation and instruction from the offence of "dirigiste pimping" (Section 181a(1) No. 2 Criminal Code) is considered to be necessary for creating legal certainty for all persons concerned and for respecting the self-determination of prostitutes as far as possible.

In addition, there were clues that offences against sexual self-determination must be systematized and age limits for protection be coordinated.

## **6.5 The Round Table recommends**

1. Criminal law aims at protecting assets and shall not give the police powers of intervention. Criminal law cannot supplement the provisions lacking for prostitution and its control. The focus of necessary regulations is based in public economic law.
2. The Round Table does not see any major need for legislative action in order to achieve better protection of prostitutes against violence and exploitation on the basis of the Criminal Code. In particular, it rejects any specific criminal provision which would extend beyond the existing legal provision (section 138(1) No 6 Criminal Code) for clients who make knowing use of the services of victims of human trafficking as unnecessary and counterproductive.
3. The Round Table recommends withdrawing the so-called landlord's privilege pursuant to Section 180a (2) No 2 Criminal Code, clarifying legal provision on differentiating admissible right for an operator to organise and give instructions from the offence of dirigiste pimping pursuant to Section 181a (1) No 2 Criminal Code as well as any systematisation.
4. The Round Table does not recognise any positive evidence that the changes generated by the Prostitution Act could make combating human trafficking more difficult. However, a paradigm shift has taken place so that the willingness of victims of human trafficking to press charges and testify has become more significant. This is supported and promoted in particular by comprehensive aid and guidance services as well as by a network of victim protection by the police and aid organisations.

## **7. Taxes**

Fiscal law is a dry matter; hardly anybody likes to pay taxes and very few people like to work on taxes. However, the Round Table addressed this issue in a special session. The first thing was to gain transparency on the legal situation, but practical problems had to be addressed and what is perceived as injustice had to be expressed. For the Round Table, it was once more impressive that, in this complex matter, experts could be found without any problem. Representatives of the competent ministries, of the Federal Court of Auditors (*Bundesrechnungshof*), the State Finance office (*Oberfinanzdirektion*), Treasury and Tax Office (*Kassen- und Steueramt*) of the City of Cologne and a financial and fiscal consultant provided detailed information and answered critical questions.

All agreed that taxes must be levied on remuneration paid for sexual services. But the State is faced with a particular difficulty, as sexual services are mostly provided against cash. This form of immediate exchange of services, which happens behind closed doors, has the result that there is hardly any transparency about the amount paid and the income earned. The danger that the federal government may lose out on considerable tax revenues is obvious.

It was thus no surprise that the Federal Court of Auditors took the opportunity in the Prostitution Act 2003 to check the taxation of prostitutes and brothel operators. As a result, it found that the “red light scene” is not taxed enough. It assumed that less than one percent of prostitutes active in Germany are recorded for tax purposes and an estimated € 2 billion in income tax revenue is lost each year. In addition it reported this to the Bundestag and recommended a flat-rate taxation on sound legal basis.

### **7.1 Federal taxes**

How does the current legal situation look? The Federation has concurrent legislative power over legal regulations governing income and VAT law. Taxation of income and turnover from sexual services is based on substantive law.

#### **Prostitutes**

As far as taxation of individual prostitutes is concerned, the major question is to differentiate – similar to social security law – self-employed and independent prostitutes. In practice, this differentiation is difficult. As a rule, and by mutual agreement, operators and prostitutes assume that prostitution is a self-employed activity. Similar to the social security law, criteria must be investigated and checked in tax law in order to justify an objective classification and base it on legal certainty.



The concrete activity is classified “in the light of overall conditions and circumstances”.

Prostitution is practised as self-employment when the activity is largely freely organised and working hours can be determined. In addition, other important aspects are proper business premises, personal equipment or personal advertising. The risk of not being paid, the possibility of fixing prices, having assistant workers and keeping accounts are also important.

On the contrary, a prostitute is not self-employed when she is part of a business. In this context, an important criterion is a subordinate relationship regarding duration, working hours, workplace and services to be rendered (limited by the right to self-determination). If prostitutes have no or limited influence on organising their work or providing equipment, are subject to shift schedules, behaviour regulations or even to fines, there is no self-employment. Fixed prices or payment regulations indicate that the prostitute is largely integrated in a business.

Since difficulties with classification always arise in spite of the above-mentioned criteria, the Federal Court of Auditors considers it acceptable to assume self-employment in cases of doubt, insofar as it is not obviously a “dependent activity”.

When self-employment is established, the question then arises as to which type of income this is to be classified to. With this established, the Federal Finance Court (*Bundesfinanzhof*) renounced its former opinion: prostitutes would not produce income “from commercial trade”, but “other income” as provided by the Income Tax Act. For that reason, higher courts have now clarified that self-employed prostitutes produce income from commercial trade pursuant to Section 15 of the Income Tax Act (decision by the Federal Finance Court of February 20, 2013 GrS 1/12). In this context, the classification as a trade or trade registration has no relevance. In terms of tax law and in contrast with the debate relating to economic law, the classification of this activity as trade is no longer contested.

Self-employed prostitutes are therefore subject to income, corporation and trade and VAT tax. There are different exemptions and credits. Like all businesses, self-employed prostitutes are subject to the obligation to file income tax each year, as well as VAT and corporation tax declaration and to make payments in advance.

The salary of prostitutes who are not self-employed is taxed by means of *Lohnsteuerverfahren* (i.e. withholding tax on an employee’s personal income tax that is withheld by the employer). The salary includes remuneration for the sexual

services rendered, tips, commissions, but also benefits in kind (accommodation and food provided by the employer).

Taxation of foreign self-employed sex workers active in Germany is subject to special provisions since there is no right to taxation as they have neither business premises nor permanent residence in Germany.

### **Brothels and similar establishments**

The running of a brothel (flat-rate brothels, walk-in brothels) is a commercial activity and, as such, subject to VAT tax, insofar as the contacts between clients and prostitutes are facilitated or promoted not only by renting accommodation to prostitutes, but also by organisational measures. Otherwise, they can earn VAT-free income from letting and leasing.

Similar establishments (night clubs, sauna clubs, nude clubs) are taxed on the basis of trade income and turnover law. They are commercial activities since other services than accommodation are rendered to the prostitutes and clients.

When renting accommodation within the framework of indoor prostitution, the operator obtains an income from letting and leasing these rooms. Exemption from the turnover tax occurs when the accommodation is rented not only on a daily or weekly basis or when prostitution is supported by other measures or facilities.

### **7.2 “Düsseldorf procedure”**

Under this procedure, applied by seven German states, including NRW, the finance offices levy a flat-rate tax on operators per each day a self-employed prostitute is present in the facility. Participation is voluntary and based on an agreement between the operator and the relevant finance office. Participation rates are, accordingly, variable.

There is no explicit basis in law for the Düsseldorf procedure. It is largely described in administrative directives and is the attempt to tax at least some sexual services using a simplified procedure. According to information given by the State Finance Office North Rhine-Westphalia, approx. 320 establishments take part in this procedure.

The lump-sum tax differentiated according to local conditions amounts to no less than between € 10 and € 25 a day. The representative of the State Finance Office explained that, according to administrative rules in effect in the finance district of the Rhineland, participating in the Düsseldorf procedure is linked with the obligation for the operator to file a monthly declaration indicating the number of prostitutes active in

the facility along with their full name. Registration under a pseudonym with further personal details, for example birth date, is acceptable. In addition, when the prostitute wishes, the operator must certify the amounts really paid to the finance office so that these amounts can be taken into account as part of personal income tax and turnover tax procedures.

This procedure is not definitive; participating does not exempt them from filing a tax declaration. The lump sum is thus a tax advance for the prostitutes.

### **7.3 The situation of federal taxes throughout the Federal Republic**

As part of a survey conducted in 13 German states and finalized at the end of 2011, the Federal Court of Auditors found shortcomings in the taxation of sexual services. According to their findings, income, turnover and possibly trade tax cannot be assessed and levied under normal procedures or require great deployment of staff because of the high mobility of prostitutes. Besides this, he criticized an inconsistent taxation by the German states.

Five Northern German States have developed a system on the basis of general tax regulations in order to carry out taxation procedures on self-employed prostitutes who have not been assessed previously. The finance offices have seldom succeeded in levying taxes on prostitutes. In Bavaria, the tax investigation office in Munich has assessed some prostitutes working in similar establishments as employees and demanded additional tax on their wages from the brothel operators. In contrast, the tax investigation office of Nuremberg basically assumes that prostitutes are self-employed.

At the beginning of 2014, the Federal Court of Auditors therefore called on the Finance Committee of the Bundesrat to lay down legal regulations on “operators withholding tax owed for prostitutes working in their businesses and associated measures for enforcing these regulations”. The Federal Court of Auditors would welcome the introduction of a harmonised taxation procedure with a legal basis, similar to the Düsseldorf procedure, in all 16 German States.

### **7.4 Evaluation and practical experience of federal taxes**

The discussion at the Round Table showed that the various criticisms did not target the basis of taxation in substantive law, but rather the selected procedures which are perceived as “a special taxation of prostitutes”.

According to the fundamental principles of the rule of law, all members pointed out that the Düsseldorf procedure has no direct legal basis.

They pointed out that there are issues with aspects of this procedure: the lump sums are fixed regardless of turnover, for which there is no comprehensible reference; in addition, any agreement is made between the operators and the finance office, whereby the prostitute, as the actual taxable person, is left on the outside

Another factor are the difficulties associated with implementation, as the counselling centres pointed out. As a rule, prostitutes cannot choose whether they want to participate in this procedure or not. If they reject it, they risk losing their job. Frequently there is no information on how this procedure can be properly handled. Many prostitutes were of the opinion that the obligation to file a tax declaration is cancelled when the lump sum is paid. However, the lump sums could not be taken into account in the tax assessment procedure, because receipts of the paid amounts had not been issued or were not taken into account by the finance office, despite being correctly issued. Quite often, the authorities lack sensitivity towards this group of people. There are also frequently linguistic barriers.

## **7.5 Expenditure tax levied by the local authorities**

Apart from the “Düsseldorf procedure” applied on federal taxes, criticism focuses on the so-called “sex tax”. It is an “expenditure tax levied by local authorities” (*Aufwandsteuer*).

Apart from taxes regulated by federal law, the Local Tax Act for the State of North Rhine-Westphalia authorises municipalities to levy their own duties on their territory, i.e. taxes, fees and contributions. The municipality is responsible for making the decision to levy such an expenditure tax which is based on a statute to be adopted by the municipal council. All revenue flows into the municipal budget. A new municipal expenditure tax needs to be authorised by the Ministry for Internal Affairs and Local Authorities.

“Expenditure taxes” refer to expenditure for personal lifestyle needs, in addition to basic needs. According to the definition, a local expenditure tax is entertainment tax, such as tax on the entrance fee to an event (*Kartensteuern*), a tax on slot machines and, recently, taxation on “the provision of targeted opportunity to engage in sexual entertainment and providing sexual services against payment“.

This tax, known as the “sex tax”, was levied for the first time in NRW in the cities of Gelsenkirchen and Dorsten in 2003; further municipalities followed suit. After the

Ministry for Internal Affairs and Local Authorities and the Finance Ministry of the State NRW authorised this tax, the municipalities of NRW were in a position to decide how to introduce this tax in their cities on their own responsibility.

This “sex tax” taxes “the provision of targeted opportunity to engage in sexual entertainment” in facilities (for instance brothels, similar establishments, bars, sauna clubs) and, in some municipalities, providing sexual services against payment, for instance in private flats, caravans, motor vehicles or, occasionally, in performances boxes, too. In the city of Cologne, prostitution takes place in so called “*Verrichtungsboxen*” (drive-in boxes) only at the Geestemünder Straße and this prostitution (mostly drug-addiction-induced) is not taxed for social reasons.

The tax is levied according to the size of the rented room, the event area or the duration of the event. The person liable for tax is basically “the operator of the event”, for instance the operator of the brothel, club or the self-employed prostitute. The ticketing machines installed in the prostitution district in Bonn, which resulted from the introduction of this tax, received special attention from the media.

The objective of this sex tax is to basically tax the expenditure of a person demanding sexual services. By its very nature, it is aimed at shifting the person liable for tax to the person using the service. It means that the tax can be shifted to the client and that is also possible when the prostitute is self-employed and, as such, tax liable.

## **7.6 Evaluation and practical experience with sex tax**

It was helpful to have a look at the practice at the municipal level as was described by a representative of a city in NRW levying a sex tax. Based on a decision by the High Administrative Court NRW of August 21, 2012, prostitution outside closed doors is taxed differently than prostitution behind closed doors. Previous to this decision, the city taxed prostitutes uniformly (€ 150 a month). Sauna clubs, swinger clubs, etc., where the opportunity to engage in sex for free is given against payment of an entrance fee, had to pay € 3 for each 10m<sup>2</sup> of an event area and day the event ran. Now, prostitution behind closed doors is taxed according to the size of the “event area”. The positive aspect is that it is not only the prostitutes who are tax liable anymore and must not appear by name to the town as the competent tax authority. The operator of the brothel or similar establishment is alone tax liable. This procedure can also result in street prostitution becoming less attractive since the individual prostitute is still tax liable and has to provide personal data to the city as the tax authority.

The expert explained to the Round Table that taxing prostitutes, similarly to every other expenditure tax, is difficult in practice. However, these difficulties are not worse than for other expenditure taxes, they are merely different. We should mention that the almost exclusive use of pseudonyms and frequent linguistic barriers are the major issues. A further difficulty is high mobility of prostitutes because a change in address always ends an individual's tax liability. At the same time, the expert advocated promoting particular sensitivity by the local authorities when taxing this group of persons. Overall, difficulties and particularities are less than was presumed.

The municipal "sex tax" was critically analysed at the Round Table. A representative of the counselling centres summed up the concerns as follows: sex work is no pleasure, but work. According to her, it would be possible to speak of the client's pleasure at most; shifting tax onto the client is unrealistic. De facto, the prostitutes pay the tax, as the installation of ticketing machines in the city of Bonn shows: it was not the client who bought the tickets, but the sex workers. However these worries concern only the cases where prostitutes, as self-employed worker, are also sex tax liable and they do not (cannot) include the tax in the payment for the sexual service they render.

#### **7.7 The Round Table recommends:**

1. The Round Table understands the objective difficulties linked with the assessment and levy of taxes on sexual services: in addition to the fact that the exchange of services takes place in cash behind closed doors, social stigmatization and exclusion, high mobility, poor knowledge of legal proceedings and linguistic barriers make it even more difficult.
2. The current taxation of prostitution is unsatisfactory. The Round Table considers the development of a taxation system, which would be uniform throughout Germany, transparent, non-discriminatory and at the same time effective, to be a major objective. It assumes that increasing professionalism of prostitutes and fiscal regulations which would supplement the Prostitution Act would make taxation easier. Reducing the stigma on prostitution is of significant importance.
3. "Sex tax" as a local expenditure tax is, by its very nature, a tax levied on the person who makes use of the service. The Round Table points out that shifting the tax burden to self-employed prostitutes is not realistic. The fact is that street prostitutes alone bear the tax burden. This aspect should be taken into account when introducing this tax which alone the local authorities are competent for.

4. The Round Table considers a comprehensive information on tax rights and the obligations of prostitutes as well as on details of the taxation procedures, necessary.

## **8. Necessity of a broad knowledge-based debate**

### **8.1 Stigmatization of prostitutes – one of the major problems when trying to reinforce their position**

As part of the comprehensive work by the Round Table “Prostitution”, it was repeatedly pointed out that one of the major factors conflicting with a reinforcement of the position of prostitution and improvement of work conditions is the persistent social stigmatization. Sex workers at the Round Table repeatedly expressed their wish for respect. Discrimination is mostly experienced as painful. In spite of the abolition of the immorality classification within civil law, prostitutes are still forced to lead a double life; they lack confidence in dealing with police and authorities; the lack of personal identification with the activity makes it difficult or even impossible to view it as a professional exercise, to protect oneself and to safeguard personal interests. This concerns issues of health care and financial precautions, protection of the person as well as protection against harassment and violence (cf. more details in III 2). Prostitution regularly results in losing previous social contacts. Another result is the often mentioned “holding force of prostitution” which prevents switching to another activity.

### **8.2 Development and modification of ethical positions in progress**

The history of the Prostitution Act shows that ethical opinions cannot be simply classified. Even if the label of immorality pursuant to section 138 *Bürgerliches Gesetzbuch* (BGB – Civil Code) which invalidated any contract concluded between a prostitute and a client, was removed, prostitution is still far from being a socially accepted activity. The Round Table has repeatedly tried to elaborate differentiated positions. Neither minimization of the situation (“prostitution is an occupation like any other”) nor the reduction to a relationship between victim and offender were considered to be suitable.

This resulted from the procedure: the more clearly the complexity of prostitution was perceived, the more clearly the different living conditions and interests of sex workers appear, the fewer generalisations could be made. The familiar saying “Certainty decreases as knowledge increases” came true in this case. It has proven to be a great advantage to gather people from very different backgrounds to debate this issue. As a rule, they did not have any professional contact before; all participants pointed out unanimously after this exchange at the Round Table that their own horizons had broadened. This was true for the experts as well as for the members of the Round Table.



Unscientific and practical evidence put forward has prompted participants to question and change established and subconscious opinions. It was meeting and speaking with sex workers that achieved a sustainable impact.

On the other hand, the Round Table “Prostitution” attempted to develop new perspectives by highlighting some facets which have been given less attention in the previous debate on sex work.

### **8.3 Clients**

In public debates on prostitution, focus is mostly laid only on the people offering sex services. Whoever is on the demand side and why there is obviously a functioning market for these services – these aspects are virtually never the focus. However, according to the victim-offender model, punishing clients is requested (across the board as in the Swedish model or when services of victims of human trafficking are used). It is striking that the clients of male-to-male prostitution are totally blanked out in public debates and considered particularly taboo. It corresponds to the self-image of the Round Table that not only experts from science and practice are consulted on the issue of clients, but that clients had their say.

Who are these people who demand sexual services and thus give prostitution an economic basis? And which are their motives? These two questions show how closely the prostitution issue is linked with sexuality as an issue and how unusual this perspective is.

In spite of limited data, some conclusions can be drawn about heterosexual male clients. The proportion of clients to the sexually active male population is estimated at approx. 20 percent. But, this figure does not reflect the frequency of demand for prostitution; this can range from a one-time visit to a prostitute to sporadic use of their services or regular contacts. All experts agreed that clients do not represent a uniform group. They come from all social classes and age groups. They have no particularities compared with the general male population.

Clients have become more visible with the new opportunities presented by digital communication, especially the “clients’ forums”. These forums give them the opportunity to exchange views and to present themselves without identifying themselves with this particular group. An important objective of these forums is for clients to protect themselves from the dubious behaviour of prostitutes. The style of clients’ forums is quite often disparaging to women; it depends mostly on moderation. However, only a small number of clients make use of this internet-based form of communication.

No similar figures about male-to-male prostitution are available. There are only few women as clients.

The failed integration of sexual needs in a personal relationship and the resulting dissatisfaction are – as indicated by the findings of scientists and counselling centres – important motives for the demand for prostitution. Clients are definitely aware that their desire is confronted with a professional service and is thus unilateral. In this respect, they qualify prostitution as a substitute. When staging sexual encounters within the framework of prostitution, it is important that the client ignores this imbalance, to his detriment.

Even if some clients want to play the dominant part with prostitutes and may, therefore, be looking for particularly vulnerable groups, this cannot be assumed to be the normal case, which is the unanimous view of all consulted experts. The very fact that a man needs to fall back on paid sex is perceived as humiliating and taboo. Instead of seeing prostitution as a violent relationship between a man and a woman, mutual dependencies and negotiation processes must be taken into account. Clients are driven by longings, desires, fears and illusions. Handing over the responsibility for successful sexuality to a “specialist” is as a motive as common as the wish to indulge sexual desires within a framework that lacks any danger for the social relationship.

The Round Table had different views on the question of whether clients can be won as “allies” for improving the working conditions of prostitutes. They could be involved if more of their interests are concerned (for example health care). It is important to work with concepts appropriate to the target groups, for instance betting on cooperation with clients’ forums.

As a rule, respect can be expected from clients only if they are met with respect

#### **8.4 Sexual assistance, sexual accompaniment**

Unlike the debate on prostitution, the expert and social debates on sexual assistance and sexual accompaniment basically happen from the perspective of demand because the objective is to give elderly people or people with disabilities a fulfilled sexuality with professional support.

The terms are clearly defined in the relevant scientific literature. Passive sexual assistance is a supportive activity conducted upon instruction, such as providing contraceptives and AIDS, or pornographic literature. Active sexual assistance covers all forms of assistance when a third party is involved in sexual interaction. “Sexual accompaniment” is active assistance when the person providing this assistance has pedagogical and care functions. In practice, the boundaries are fluid, the terms are

not protected by law. There is certified training in “sexual accompaniment”, for example by ISBB Trebel and Pro Familia in cooperation with the prostitute guidance centre Kassandra in Nuremberg.

There are no data available on the need for and the use of sexual assistance or sexual accompaniment. According to observations made by an expert, the demand is high in care and retirement homes, whereby more men seek after sexual accompaniment and women sexual assistance. According to the view shared by most Round Table members, the extent of the demand depends mostly on the attitude of third parties (family members, nursing staff, the supporting organisation) and of the local conditions on site.

The Round Table members agreed that professional sexual accompaniment is a sexual service against payment and, as such, prostitution. However, it is obvious that, especially for some groups (for instance people suffering from dementia), special qualification is necessary. It must not necessarily be certified by a formal diploma. In practice, there are prostitutes who adjust to these clients, work with the necessary skills and bring the necessary sensitivity to the existing constraints.

In the political debate on sexual assistance/sexual accompaniment, and in contrast with the general debate on prostitution, the needs of the people who demand these services are recognised. In this respect, this prostitution sector could have a destigmatizing impact.

If elderly people or people with disabilities are entitled to express their sexuality and accept support against payment from an ethical point of view, it is difficult to reject the different needs of other people; it is hardly possible to draw a line.

However, the Round Table had to deny this impact after an intensive exchange of views. Sexual assistance/sexual accompaniment are by no means widely accepted. These services were described as therapeutically overloaded, since the objective is not fulfilling sexuality, but rather avoiding sexual assaults. It is feared that the current sensationalist debate about prostitution falls back on sexual accompaniment.

It was mostly witnessed as rewarding that stakeholders from the sexual assistance/sexual accompaniment sector spoke with representatives from the prostitution sector and that it was possible to build a bridge.

## **8.5 The Round Table recommends**

1. The Round Table sees the stigmatization of prostitutes as one of the major factors which make difficult the reinforcement of their position and the improvement of their working conditions. Better knowledge that would make

possible a socially differentiated view and evaluation of prostitution is absolutely necessary.

2. Even if there are significant research gaps, there is already enough expertise from science and practice available that should be collected and consulted. This builds significant knowledge that can be made use of.
3. The exchange of views between experts from the most disparate fields was particularly enriching. Some sectors which have been less focused on so far (for instance sexual accompaniment) should be included in the public discussion on prostitution. Sex workers must be directly involved.
4. There are stigmas associated with clients, as well as prejudices. A comprehensive understanding of prostitution is not possible if the demand side is ignored or stereotyped. Clients have to participate in the public debate.
5. There is much interest for prostitution as an issue. There are no adequate forums that allow the acquisition and exchange of knowledge in appropriate form. The Round Table "Prostitution" NRW is only one possible approach. Municipal round tables, expert meetings, participatory projects and others are also possible approaches.

#### **IV. Concluding remark**

Of course, significant findings have been integrated into the work undertaken by the State government during the process. The knowledge delivered thanks to unusually intensive work on some aspects benefited all participants during the meetings.

For instance, the resolution passed by the Bundesrat “Measures to regulate prostitution and sex businesses” of April 11, 2014 (BR-Drs. 71/14) refers to a motion for a resolution tabled by North Rhine-Westphalia which was supplemented by Rhineland-Palatinate only in one item (action for victims of human trafficking). Thanks to its expertise, North Rhine-Westphalia was able to convince most German states and give a strong legislative impetus at the federal level.

In spite of the unusually intensive work on this subject, which was exceptional in this form, no definitive and ready-made solutions could be presented. Many specific issues remained unanswered and have to be dealt with in a different framework. The declared intention of the federal government to regulate prostitution and legislative activities carried out for this purpose require technical and political action work at the state level. Of note is the fact that the paid sex market stands out as having particular dynamics which needs attention and, if need be, further action.

## Annex

In 14 meetings of the Round Table “Prostitution”, over 70 experts from science and practice were consulted on different key topics of prostitution on the basis of specific questions.

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| <b>1<sup>st</sup>. Meeting - January 25, 2011:</b><br><b>“Outcomes of the evaluation of the Prostitution Act - Status Quo and possible prospects”</b> |  |
| <b>Expert</b>   | Prof. Dr. Barbara Kavemann, Sozialwissenschaftliches FrauenForschungsinstitut, Freiburg; <a href="http://www.soffi-f.de">www.soffi-f.de</a>  |
| <b>Key issues</b>   | <p>What knowledge on prostitution can be gained from the following expert reports?</p> <ul style="list-style-type: none"> <li>- Survey “Impact of the Prostitution Act – Final report (by order of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, 2005)</li> <li>- “In-depth study of specific issues on the impact of the Prostitution Act : Leaving prostitution, combatting criminality and Prostitution Act” (by order of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, 2007)</li> </ul>  |
| <b>2<sup>nd</sup>. Meeting - March 15, 2011:</b><br><b>“Data, facts and opinions on prostitution in North Rhine-Westphalia”</b>                       |  |
| <b>Experts</b>  | <ul style="list-style-type: none"> <li>▪ Mechthild Eickel, State working group Law/Prostitution; <a href="http://www.madonna-ev.de">www.madonna-ev.de</a></li> <li>▪ Gudrun Angelis, SOLWODI e.V.; <a href="http://www.solwodi.de">www.solwodi.de</a></li> <li>▪ Ulrike Rothe, Sex worker</li> <li>▪ Holger Rettig, trade association Erotik Gewerbeverband Deutschland ; <a href="http://www.uegd.de">www.uegd.de</a></li> <li>▪ Wilhelm Erkens, Regional criminal police office NRW</li> <li>▪ Gisela Zohren, Mitternachtsmission Dortmund; <a href="http://www.mitternachtsmission.de">www.mitternachtsmission.de</a></li> <li>▪ Markus Willeke, LAG Male Prostitution; <a href="http://www.aids-nrw.de">www.aids-nrw.de</a></li> </ul> |
| <b>Key issues</b>   | <p>a. What do we know about prostitution?</p> <p>b. Which data, facts and findings about the numbers of</p>  |

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|  | <p>prostitutes and different forms of prostitution are available?</p> <p>c. Which criteria differentiate voluntary prostitution from forced prostitution/human trafficking for sexual exploitation?</p> <p>d. Are specific findings about special access to the subject “prostitution” available?</p>  |
| <p><b>3<sup>rd</sup>. Meeting - May 18, 2011</b></p> <p><b>“How local authorities deal with the different forms of prostitution and related aspects”</b></p> |  |
| <b>Experts</b>   | <ul style="list-style-type: none"> <li>▪ Heike Tasillo, Public order agency, Dortmund</li> <li>▪ Robert Kilp, Public order agency, Cologne</li> <li>▪ Heidrun Nitschke, Public health authority, Cologne</li> <li>▪ Michael Beninde, Administrative authority, district Paderborn</li> <li>▪ Jörg Hortmann, Police authority, district Paderborn</li> <li>▪ Ingeborg Josting, State working group Local Gender Equality/Women Offices NRW; <a href="http://www.frauenbueros-nrw.de">www.frauenbueros-nrw.de</a></li> </ul> |
| <b>Key issues</b>  | <p>a. How is the image of prostitution at the local level?</p> <p>b. What value does a local authority place on prostitution as an issue in its practical work?</p> <p>c. Is there cooperation with other agencies on the subject of prostitution?</p> <p>d. What political and legal consequences emerge?</p>   |
| <p><b>4<sup>th</sup> Meeting - July 20, 2011</b></p> <p><b>“How Sweden and the Netherlands deal with prostitution”</b></p>                                   |  |
| <b>Experts</b>   | <ul style="list-style-type: none"> <li>▪ Dr. Susanne Dodillet, University Göteborg; <a href="http://www.susannedodillet.com">www.susannedodillet.com</a></li> <li>▪ Sietske Altink, University Leiden</li> </ul>   |
| <b>Key issues</b>  | <p>a. How is prostitution regulated by law in Sweden and in the Netherlands?</p> <p>b. How does society evaluate prostitution mainly?</p> <p>c. What are the political objectives of these regulations?</p> <p>d. Are experiences from implementing the legal regulations</p>  |

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|  | <p>available (Success and problems)?</p> <p>e. Is consideration given to reforms?</p>  |
| <p><b>5<sup>th</sup> Meeting - September 28, 2011</b></p> <p><b>“Street prostitution”</b></p>  |  |
| <p><b>Experts</b></p>  | <ul style="list-style-type: none"> <li>▪ Christine Noll, Nachtfalter, Caritasverband für die Stadt Essen e.V.; <a href="http://www.caritas-e.de/nachtfalter">www.caritas-e.de/nachtfalter</a></li> <li>▪ Manuel Hurschmann, Nachtfalke, AIDS-Hilfe Essen e.V.; <a href="http://www.nachtfalke-ruhr.de">www.nachtfalke-ruhr.de</a></li> <li>▪ Beatrix Spohr, Criminal police office Duisburg</li> <li>▪ Sabine Reichert, Projekt Mäc up, Sozialdienst katholischer Frauen Köln e.V.; <a href="http://www.skf-koeln.de">www.skf-koeln.de</a></li> <li>▪ Elfriede Steffan, SPI Forschung GmbH, Berlin; <a href="http://www.spi-research.eu">www.spi-research.eu</a></li> <li>▪ Christiane Howe, Zentrum Technik und Gesellschaft, Technische Universität Berlin, <a href="http://www.tu-berlin.de">www.tu-berlin.de</a></li> <li>▪ Eva van Rahden, Pilot project „SOPHIE-mobil“, Volkshilfe Vienna; <a href="http://www.sophie.or.at">www.sophie.or.at</a></li> </ul> |
| <p><b>Key issues</b></p>   | <p>a. Against the backdrop of your own experience, what are the major problems regarding street prostitution, in legal terms and in reality?</p> <p>b. How could streetprostitution be “improved” from your personal point of view?</p> <p>c. How could the State of North Rhine-Westphalia contribute to improving the situation?</p>   |
| <p><b>6<sup>th</sup> Meeting - November 30, 2011</b></p> <p><b>“Brothels and similar establishments” (Looking at the differentiated reality)</b></p> |  |
| <p><b>Experts</b></p>  | <ul style="list-style-type: none"> <li>▪ Armin Lobscheid, Manager of the love hotel “Pascha” in Cologne</li> <li>▪ Gisela Zohren, former club operator</li> <li>▪ Kathleen, prostitute in residential apartment</li> <li>▪ Stephanie Klee, highLights-Agentur Berlin; <a href="http://www.highlights-berlin.de">www.highlights-berlin.de</a></li> <li>▪ Beatrix Spohr, Criminal police office Duisburg (Police unit Sexual and Domestic Violence)</li> <li>▪ Iris Sperg, Public health authority, Duisburg</li> </ul>  |



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| <p><b>Key issues</b></p> | <p><u>General view</u></p> <ol style="list-style-type: none"> <li>a. How big is the sector “brothels/similar establishments” when compared to prostitution as a whole (indicators)?</li> <li>b. In how many different types of businesses/branches can this sector be subdivided? How is this field structured?</li> <li>c. Which developments can be observed on this market (fewer establishments because of the competition through websites and swinger clubs, trend towards more expensive services, etc.)?</li> <li>d. How do you rate flat-rate brothels or other brothels/similar establishments that practise social dumping or sensationalist advertising that the women are unrestricted available?</li> <li>e. How far do brothels and similar establishments provide employment for transsexual prostitutes and for male-to-male prostitutes?</li> </ol> <p><u>Operator</u></p> <ol style="list-style-type: none"> <li>a. What information is available about operators (the market dominant position of a few, family businesses, opaque structures, etc.)?</li> <li>b. To what extent are operators professional?</li> <li>c. How well are operators organised?</li> <li>d. To what extent is cooperation with authorities (local authorities such as public health authority, police, etc.) looked after?</li> <li>e. Are attempts to open up to society by means of public relations (e.g. “Open days”) only a few isolated cases or a trend?</li> <li>f. What efforts have been made to set oneself apart from “dirty competitors”?</li> <li>g. Is organised crime a danger for some operators?</li> <li>h. In the opinion of operators, where is the most urgent need for supplementing the regulations of the Prostitution Act?</li> </ol> <p><u>Prostitutes</u></p> <ol style="list-style-type: none"> <li>a. Which types of prostitutes prefer brothels/similar establishments to other forms of prostitution and why?</li> </ol> |
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|   | <p>Proportion of migrant women?</p> <p>b. Which kind of contract is chosen in the practice? Where does self-employment prevail?</p> <p>c. What obligations do operators impose on prostitutes?</p> <p>d. What is the interest of prostitutes in the opportunities opened up by the regulations of the Prostitution Act or other legal form of insurance?</p> <p>e. How far do prostitutes prefer the frequent practice of paying only a small price for the room and unofficially sharing half their earnings with the brothel operator?</p> <p>f. What are the earning capacities of prostitutes in different forms of brothels and similar establishments?</p> <p>g. What practical working conditions (working hours/ premises/services) can prostitutes expect from operators of brothels or similar establishments and to what extent can they influence them?</p> <p>h. In what direction should regulation of prostitution be moving?</p> |
| <p><b>7<sup>th</sup> Meeting - February 15, 2012</b></p> <p><b>“Brothels and similar establishments” (Legal discussion and proposals for reforms)</b></p> |  |
| <p><b>Experts</b></p>   | <ul style="list-style-type: none"> <li>▪ Prof. Dr. Elke Gurlit, Johannes Gutenberg University Mainz; <a href="http://www.jura.uni-mainz.de/gurlit/">www.jura.uni-mainz.de/gurlit/</a></li> <li>▪ Heike Tasillo, Public order agency, Dortmund</li> <li>▪ Claudia Münster, Ministry for Building, Housing, Urban Development and Transport NRW</li> <li>▪ Elisabeth Heitfeld-Hagelgans, Ministry for Building, Housing, Urban Development and Transport NRW</li> </ul>  |
| <p><b>Key issues</b></p>  | <p>a. What legal basis and instruments are available at present for regulating brothels and similar establishments and which are already being used in practice?</p> <p>b. Is the existing regulatory framework sufficient, especially trade law (including licensing law) or must legislative action be taken?</p> <p>c. Are the existing proposals for regulating brothels and similar establishments moving in the right direction?</p>   |

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|  | <p>d. How could uniform practice be achieved at state level?</p> <p>e. What instruments should NRW prioritize in order to quickly improve the working and living conditions of prostitutes?</p>   |
| <p><b>8<sup>th</sup> Meeting - April 18, 2012</b><br/> <b>“Prostitution and health”</b></p>                                |   |
| <p><b>Experts</b></p>  | <ul style="list-style-type: none"> <li>▪ Summary of the report by Andrea Weppert (absent due to illness), Public health authority Nuremberg</li> <li>▪ Claudia Fischer-Czech, Hydra e.V., Berlin;<br/> <a href="http://www.hydra-berlin.de">www.hydra-berlin.de</a></li> <li>▪ Dr. Annette Düsterhaus, Head of the Public health authority Dortmund</li> <li>▪ Heidrun Nitschke, Public health authority Cologne</li> <li>▪ Manuela Brandt, AIDS-Hilfe Westmünsterland e.V. ;<br/> <a href="http://www.aidshilfe-westmuensterland.de">www.aidshilfe-westmuensterland.de</a></li> <li>▪ Sabine Reinke, State Working Group Male-to-male prostitution, <a href="http://www.aids-nrw.de">www.aids-nrw.de</a></li> <li>▪ Martina Tödte, manager of BELLA DONNA, State coordination office Women and Addiction NRW;<br/> <a href="http://www.belladonna-essen.de">www.belladonna-essen.de</a></li> </ul> |
| <p><b>Key issues</b></p>   | <p>a. Which health hazards are male and female prostitutes particularly exposed to?</p> <p>b. What is done to protect the health of prostitutes, in particular to prevent/to control STD/STIs?</p> <p>c. Are these activities focused enough on the details of prostitution? What is still lacking?</p> <p>d. What speaks for/against the mandatory use of condoms?</p> <p>e. Are there practical proposals for improving the health protection of prostitutes?</p>   |
| <p><b>9<sup>th</sup> Meeting - July 4, 2012</b><br/> <b>“Male-to-male prostitution and transsexual prostitution” „</b></p> |   |
| <p><b>Experts</b></p>  | <ul style="list-style-type: none"> <li>▪ Prof. Dr. Michael T. Wright, Catholic University of Applied Social Sciences Berlin ; <a href="http://www.khsb-berlin.de">www.khsb-berlin.de</a></li> <li>▪ Markus Willeke und Sabine Reinke, State Working Group ;<br/> <a href="http://www.aids-nrw.de">www.aids-nrw.de</a></li> <li>▪ Brigitte Menze, AIDS coordination, Public health authority</li> </ul>  |

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|   | <p>Essen</p> <ul style="list-style-type: none"> <li>▪ Marco (escort); Member of the Round Table “Prostitution” Dortmund</li> <li>▪ Deborah Reinert, Lesbian and Gay association NRW, Köln; <a href="http://www.nrw.lsvd.de">www.nrw.lsvd.de</a></li> <li>▪ Armin Lobscheid, Manager of the love hotel “Pascha” Cologne</li> </ul>   |
| <b>Key issues</b>                                 | <p><u>Male-to-male prostitution</u></p> <ol style="list-style-type: none"> <li>a. What are the characteristics of male-to-male prostitution and how does soliciting take place? How many male prostitutes have female clients? Is it possible to identify the approach to soliciting?</li> <li>b. What are the main problems of male-to-male prostitution? Are there current – positive and negative – developments?</li> <li>c. Which (new) approaches are developed in social work and prevention for male-to-male prostitutes?</li> <li>d. Are improvements of the situation of male-to-male prostitutes expected from a further regulation of prostitution? Are the findings and recommendations made so far by the Round Table for Prostitution, in particular regarding street prostitution, brothels and similar establishments and health situation, applicable to male-to-male prostitution?</li> </ol> <p><u>Prostitution of transsexual persons</u></p> <ol style="list-style-type: none"> <li>a. Definition: Transsexuality as a sexual identity issue.</li> <li>b. Which are the forms of transsexual prostitution and to which extent?</li> <li>c. Which are the particular problems?</li> <li>d. Regarding prostitution of transsexual persons: Which are the demands made to and expectations from politics?</li> </ol> |
| <b>10<sup>th</sup> Meeting - October 24, 2012</b> |   |
| <b>“Clients”</b>                                  |   |
| <b>Experts</b>                                    | <ul style="list-style-type: none"> <li>▪ Dr. Sabine Grenz, Comenius Institut, Münster; <a href="http://www.comenius.de">www.comenius.de</a></li> <li>▪ Christiane Howe, Centre for Technology and Society, Technische Universität Berlin, <a href="http://www.tu-berlin.de">www.tu-berlin.de</a></li> </ul>   |

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|   | <ul style="list-style-type: none"> <li>▪ Irmgard Schewe-Gerigk; CEO TERRE DES FEMMES – Menschenrechte für die Frau e.V.; <a href="http://www.frauenrechte.de">www.frauenrechte.de</a></li> <li>▪ Dr. Matthias Stiehler, Public health authority Dresden Dresden; <a href="http://www.matthias-stiehler.de">www.matthias-stiehler.de</a></li> <li>▪ Harriet Langanke, Non-profit foundation Sexuality and Health Cologne, <a href="http://www.stiftung-gssg.de">www.stiftung-gssg.de</a></li> <li>▪ Mr Michalski and Peter, Rheinforum</li> </ul>   |
| <b>Key issues</b>   | <ol style="list-style-type: none"> <li>a. Who are these men who demand sexual services – from women and men - and thus give prostitution an economic basis as a market? Is it possible to typecast and quantify them?</li> <li>b. Can clients who visit particularly vulnerable prostitutes (drug-addicts, minors, victims of human trafficking) be identified as a specific group? Are there typical features?</li> <li>c. How can clients as a target group be reached?</li> <li>d. Can clients be “allies” in the attempt to reinforce the rights and situation of prostitutes?</li> <li>e. How can clients be brought to supporting strategies to protect against STIs?</li> <li>f. How can clients be involved in combatting human trafficking for sexual exploitation? Or does punishing clients who use the services of victims of human trafficking knowingly make sense?</li> </ol> |
| <b>11<sup>th</sup> Meeting - February 14, 2013</b><br><b>“Criminal/Police law and prostitution”</b> |  |
| <b>Experts</b>  | <ul style="list-style-type: none"> <li>▪ Prof. Dr. Joachim Renzikowski, Martin Luther University Halle Wittenberg; <a href="http://www.renzikowski.jura.uni-halle.de">www.renzikowski.jura.uni-halle.de</a></li> <li>▪ Mechthild Eickel, State Working Group Recht /Prostitution, <a href="http://www.madonna-ev.de">www.madonna-ev.de</a></li> <li>▪ Alexandra Rudolph, Ruprecht Karls University of Heidelberg; <a href="http://www.uni-heidelberg.de">www.uni-heidelberg.de</a></li> <li>▪ Dr. Ina Holznagel, Ministry of Justice NRW</li> <li>▪ Uwe Jacob, Ministry for Internal Affairs and Local Authorities NRW</li> <li>▪ Beatrix Spohr, Criminal Police Duisburg</li> </ul>   |

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| <p><b>Leitfragen</b></p>  | <p>a. Is there any indication that the changes in criminal law introduced by the Prostitution Act have made the fight against human trafficking more difficult? Or have they even increased human trafficking? Would going back to the former understanding of offences make sense?</p> <p>b. Is there any need for legislative action in penal law from other perspectives? For instance regarding :</p> <ul style="list-style-type: none"> <li>- Age of consent (section 232 section 1 sentence 2 Penal code)</li> <li>- Landlord's privilege (section 180a(2) No. 2 Criminal code)</li> <li>- Knowing use of the services of victims of human trafficking/Punishment of clients</li> <li>- Incorporating some offences, for instance pimping as a "listed offence" pursuant to section 100a Code of Criminal Procedures</li> <li>- Differentiating employment from dirigist pimping</li> <li>- Protection of minors</li> <li>- Other reasons?</li> </ul> <p>c. Is there need for action in other legal fields – apart from criminal law – with a view to better protecting the right to self-determination of prostitutes? Examples:</p> <ul style="list-style-type: none"> <li>- Licensing of prostitution establishments, duty to be registered, information and review</li> <li>- Police law in NRW</li> <li>- Regulation of advertising (sections 119,120 Act on Regulatory Offences)</li> <li>- Data on criminal prosecution: Are figures on investigations, opening of investigation procedures, convictions for crimes related to prostitution available? Which forms of prostitution are particularly susceptible to criminal activities?</li> </ul> |
| <p><b>12<sup>th</sup> Meeting - June 12, 2013</b><br/> <b>"Internet and prostitution"</b></p> |   |
| <p><b>Experts</b></p>   | <ul style="list-style-type: none"> <li>▪ Prof. Dr. Nicola Döring, Institute for Media and Communication Science, Technische Universität Ilmenau;<br/> <a href="http://www.nicola-doering.de">www.nicola-doering.de</a></li> </ul>   |

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|  | <ul style="list-style-type: none"> <li>▪ Melanie, escort</li> <li>▪ Henning Mellage, Media Agency NRW; <a href="http://www.lfm-nrw.de">www.lfm-nrw.de</a></li> <li>▪ Manuel Hirschmann, AIDS-Hilfe Essen e.V., <a href="http://www.aidshilfe-essen.de">www.aidshilfe-essen.de</a></li> <li>▪ René Lamsfuß, Nielsen Media Research GmbH, Hamburg</li> <li>▪ York Diehl, RTO Werbe- und Medienagentur, Frankfurt</li> </ul>  |
| <b>Key issues</b>  | <ol style="list-style-type: none"> <li>a. What internet services are aimed at prostitutes? In your opinion, what is the limit of pornographic content?</li> <li>b. What developments can be observed?</li> <li>c. What do we know how these contents are used? Data situation, major trends?</li> <li>d. How does the internet as “virtual street prostitution” change prostitution?</li> <li>e. What are the practical experiences regarding the regulation of presenting and offering sexual services on line? Who is in charge of observing, regulating and punishing?</li> <li>f. What should be regulated, what is conceivable or desirable?</li> </ol> |
| <b>13<sup>th</sup> Meeting - October 17, 2013</b><br><b>“Taxation of prostitution”</b> |  |
| <b>Experts</b>   | <ul style="list-style-type: none"> <li>▪ Christoph Schmitz, Ministry of Finance NRW</li> <li>▪ Hans-Dieter Rondorf, Federal Court of Auditors</li> <li>▪ Monika Schneider, Ministry for Internal Affairs and Local Authorities NRW</li> <li>▪ Mechthild Eickel, State working group Law/Prostitution ; <a href="http://www.madonna-ev.de">www.madonna-ev.de</a></li> <li>▪ Bernd Kreutzer, State Finance office NRW</li> <li>▪ Josef-Rainer Frantzen, Treasury and Tax Office Cologne</li> <li>▪ Joachim Bölting, Dipl. Finanzwirt and tax advisor</li> </ul>  |
| <b>Key issues</b>  | <ol style="list-style-type: none"> <li>a. Which (federal and municipal) taxes do prostitutes have to pay? What is the legal basis of these taxes?</li> <li>b. How are the taxes collected and for which reasons? Experiences so far?</li> <li>c. Do you consider the current legislative situation for the</li> </ol>  |

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|  | <p>taxation of prostitutes and the procedures to be fair and appropriate?</p> <p>d. What could the State government do as a first step to improve the situation (pragmatic approach)?</p> <p>e. In your opinion, what would be the ideal taxation of prostitutes?</p>  |
| <p><b>14<sup>th</sup> Meeting – April 10, 2014</b><br/> <b>“Sexual assistance, sexual accompaniment”</b></p> |  |
| <p><b>Experts</b></p>  | <ul style="list-style-type: none"> <li>▪ Prof. Dr. Barbara Ortland, Catholic University NRW Münster; <a href="http://www.katho-nrw.de">www.katho-nrw.de</a></li> <li>▪ Oliver Fries, Lebenshilfe Aachen</li> <li>▪ Detlef Rüsing, University Witten/Herdecke; <a href="http://www.uni-wh.de">www.uni-wh.de</a></li> <li>▪ Sebastian Riebandt, Representative of the professional association of nurses e.V., <a href="http://www.dbfk.de">www.dbfk.de</a></li> <li>▪ Patrizia Kubanek, Sexual advisor for people with disabilities Düsseldorf; <a href="http://www.lustvollbehindert.org">www.lustvollbehindert.org</a></li> <li>▪ Stephanie Klee, highLights-Agentur Berlin; <a href="http://www.highlights-berlin.de">www.highlights-berlin.de</a></li> </ul>  |
| <p><b>Key issues</b></p>   | <p>a. In your opinion, are the services “sexual assistance, sexual accompaniment” clearly defined and are they practically relevant, especially in facilities for elderly people and people with disabilities? What is the demand of men and women?</p> <p>b. What are the criteria differentiating this activity from prostitution?</p> <p>c. Do you see any need for regulating the activities “sexual assistance, sexual accompaniment” and what would be the benefit? What purpose should regulations have, should it be akin to prostitution or nursing and therapeutic activities?</p> <p>d. Regarding “sexual assistance, sexual accompaniment” is there a context within the present debate about regulating prostitution for you?</p> <p>e. Do you think that better acceptance of “sexual assistance, sexual accompaniment” can contribute to destigmatizing prostitution?</p> |



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