

CHAMBRE DES DEPUTES

Session ordinaire 2010-2011

TB/pk

Commission juridique

Procès-verbal de la réunion du 06 septembre 2011

ORDRE DU JOUR :

Echange de vues avec une délégation de la Commission juridique du Parlement suédois

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Présents : M. Xavier Bettel, M. Alex Bodry, M. Félix Braz, Mme Christine Doerner, Mme Lydie Err, M. Léon Gloden, Mme Lydie Polfer, M. Gilles Roth

Mme Tania Braas, de l'administration parlementaire

Excusés : M. Jacques-Yves Henckes, M. Jean-Pierre Klein, M. Paul-Henri Meyers, M. Lucien Weiler

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Présidence : Mme Christine Doerner, Président de la Commission

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Echange de vues avec une délégation de la Commission juridique du Parlement suédois

La délégation suédoise était composée comme suit :

- Monsieur Morgan JOHANSSON, Président de la Commission juridique, Parti social-démocrate ;
- Monsieur Johan LINANDER, Vice-Président de la Commission juridique, Parti du Centre ;
- Monsieur Krister HAMMARBERGH, Parti modéré ;
- Madame Ewa THALÉN FINNÉ, Parti modéré ;
- Madame Kerstin HAGLÖ, Parti social-démocrate ;
- Monsieur Christer ADELSBO, Parti social-démocrate ;

- Madame Helena BOUVENG, Parti modéré ;
- Madame Elin LUNDGREN, Parti social-démocrate ;
- Madame Anna WALLÉN, Parti social-démocrate ;
- Monsieur Arhe HAMEDNACA, Parti social-démocrate ;
- Monsieur Patrick RESLOW, Parti modéré ;
- Madame Maria FERM, Les verts ;
- Madame Caroline SZYBER, Les démocrates-chrétiens ;
- Monsieur Kent EKEROTH, Les démocrates suédois ;
- Monsieur Carl-Oskar BOHLIN, Parti modéré ;
- Monsieur Mattias JONSSON, Parti social-démocrate ;
- Madame Pia HALLSTRÖM, Parti modéré ;
- Monsieur Roger HADDAD, Les libéraux ;
- Madame Agneta BÖRJESSON, Les verts ;
- Monsieur Anton ABELE, Parti modéré.

La délégation était accompagnée par :

- Madame Pernilla FLANCK ZETTERSTRÖM, Secrétaire de la Commission juridique ;
- Madame Stina SVENSSON, Attachée à la Commission juridique.

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Après quelques mots de bienvenue, Mme Christine Doerner, Président de la Commission juridique, présente brièvement la manière dont la Chambre des Députés traite les dossiers européens, pour les détails de laquelle il est prié de se référer à la note établie à l'attention de Mme Doerner par le Service des Relations internationales annexée au présent procès-verbal.

L'oratrice souligne que la Chambre des Députés accorde depuis longtemps une grande importance aux dossiers européens et rappelle que cette dernière a participé, tout comme la Suède, aux tests de subsidiarité coordonnés par la COSAC¹.

Elle donne à considérer que le principe de subsidiarité n'est pas seulement soumis au contrôle politique, mais également au contrôle juridictionnel et que ce principe est justiciable. A titre d'exemple est citée la saisine par le Luxembourg de la Cour de justice de l'Union européenne d'un recours en annulation partielle de la directive 2009/12/CE sur les redevances aéroportuaires pour non-respect du principe de proportionnalité et de subsidiarité, ainsi que pour violation du principe d'égalité de traitement, recours qui a toutefois été rejeté par la Cour de justice de l'Union européenne en date du 12 mai 2011.

M. Morgan Johansson, Président de la Commission juridique suédoise, quant à lui, relève que les échanges de vues avec les autres parlements nationaux sont très importants,

¹ Conférence des Organes Spécialisés dans les Affaires Communautaires et Européennes des Parlements de l'Union européenne.

notamment pour les pays de petite taille et les pays de taille moyenne, étant donné que par moments on a l'impression que l'Union européenne est sous l'influence des grands Etats.

Aux yeux du Parlement suédois (Riksdag), les parlements nationaux jouent par le biais du contrôle de subsidiarité un rôle de plus en plus important dans le fonctionnement de l'Union européenne. Leur influence sur les processus de prise de décision au niveau européen se voit partant renforcée.

Il est encore précisé, d'une part, qu'il existe une étroite interaction entre le Parlement suédois et le Gouvernement suédois pendant les phases de négociation au sein du Conseil des ministres des dossiers soumis au contrôle du principe de subsidiarité et, d'autre part, que la Commission des affaires européennes suédoise constitue une instance de consultation entre le Gouvernement et le Riksdag pour tout ce qui concerne la politique à suivre au niveau européen. En fait, le Gouvernement suédois (gouvernement minoritaire au Parlement) ne poursuit pas une politique européenne qui ne reçoit pas l'aval du Riksdag.

L'orateur souhaite savoir s'il existe également une interaction entre le Gouvernement luxembourgeois et la Chambre des Députés et de quelle manière ce dernier veille à ce que la position du Luxembourg défendue au sein du Conseil des ministres s'aligne sur celle de la Chambre des Députés. En outre, est posée la question de savoir s'il existe des cas où la Chambre des Députés était d'avis que les initiatives de l'Union européenne allaient trop loin.

Mme le Président explique que la Commission juridique est informée de façon continue et informelle par le Ministère de la Justice non seulement sur toutes les questions relevant une importance particulière pour le Luxembourg, mais également sur l'état d'avancement des dossiers européens qu'elle a analysés.

La représentante du groupe parlementaire LSAP cite un exemple récent d'une initiative européenne jugée aller trop loin. Il s'agit de la proposition modifiée de directive établissant des normes pour l'accueil des demandeurs d'asile et de la proposition modifiée relative à des procédures communes pour l'octroi et le retrait du statut conféré par la protection internationale². Elle explique que la Commission des Affaires étrangères et européennes, de la Défense, de la Coopération et de l'Immigration élaborera un avis politique dans lequel il sera relevé entre autres que la mise en œuvre matérielle de la disposition prévoyant que les demandeurs d'asile devront avoir accès au marché du travail dans un délai de 6 mois à compter de la date de dépôt de la demande de protection internationale se révèle quasiment impossible.

Echange de vues

De l'échange de vues subséquent, il y a lieu de retenir succinctement les éléments suivants :

- un représentant de la Commission juridique suédoise souligne que le contrôle du principe de subsidiarité constitue en quelque sorte une « période d'essai » pour tous les parlements nationaux ;
- le représentant du groupe parlementaire DP souligne que la Chambre des Députés est depuis les dernières années de plus en plus impliquée dans les affaires européennes et que les députés européens du Luxembourg assistent régulièrement aux réunions de la Commission des Affaires étrangères et européennes, de la Défense, de la Coopération et de l'Immigration. Aux yeux de l'orateur, l'importance accordée aux dossiers européens par les différentes commissions parlementaires

² COM (2011) 320 et COM (2011) 319.

est tributaire de leurs présidents respectifs. Il souligne en outre qu'il faut démontrer que les parlements nationaux jouent un rôle important en matière de politique européenne et que les décisions politiques ne sont pas toutes prises à Bruxelles ;

- en ce qui concerne les négociations au sein du Conseil des ministres, la représentante du groupe parlementaire DP souligne qu'il est évidemment important que les ministres connaissent leurs lignes directrices de négociation, mais ils doivent néanmoins disposer d'une certaine marge de manœuvre, sinon les négociations sont quasiment vouées à l'échec ;
- quant à la question de savoir si la Commission juridique procède à un échange d'informations avec d'autres parlements pendant la procédure de contrôle du principe de subsidiarité, Mme le Président répond par la négative et le représentant du groupe parlementaire déi gréng précise encore que les délais impartis pour réagir sont tellement courts, de sorte qu'il est pratiquement impossible de se concerter avec d'autres parlements nationaux ;
- le représentant du groupe parlementaire déi gréng relève les liens très étroits qui existent entre le Gouvernement et la Chambre des Députés. L'orateur souligne que les commissions parlementaires font appel aux membres du Gouvernement en charge des dossiers européens de venir les éclairer sur les questions qu'elles jugent particulièrement importantes, de sorte que la position de la Chambre des Députés reflète largement celle du Gouvernement. Quant à la question de Mme Helena Bouveng du Riksdag de savoir si les liens très étroits existant entre le Gouvernement et la Chambre des Députés ne constituent pas un risque pour la démocratie luxembourgeoise, le représentant du groupe parlementaire déi gréng répond que d'un point de vue démocratique, la situation actuelle n'est effectivement pas satisfaisante, d'autant plus que la Chambre des Députés est supposée contrôler le Gouvernement, mais qu'il s'agit pour l'instant de la seule solution possible vu la taille de cette dernière. Il souligne que cette façon de procéder constituera à long terme un problème qu'il faudra résoudre. A ses yeux, la Chambre des Députés devrait disposer de plus d'experts afin qu'elle n'ait pas besoin de recourir toujours aux services du Gouvernement ;
- quant aux questions de la représentante du groupe parlementaire LSAP de savoir quelles sont les réactions de la population suédoise à l'égard de la loi interdisant l'achat de services sexuels adoptée en 1999 et s'il existe une évaluation de cette loi, M. Morgan Johansson, Président de la Commission juridique suédoise, répond que cette loi est aujourd'hui très bien acceptée, vu qu'elle a eu l'effet escompté et qu'une évaluation de cette loi a été réalisée. Un résumé de cette évaluation est annexé au présent procès-verbal.

La Secrétaire,
Tania Braas

Le Président,
Christine Doerner

Annexes :

- Note établie à l'attention de Mme Doerner par le Service des Relations internationales;
- Summary of the report on the Swedish ban on the purchase of sexual services;
- Brochure of the Committee on Justice of the Swedish Parliament.

Visit of a parliamentary delegation of the Committee on Justice of the Riksdagen, led by Mr Morgan Johansson, Chairman of the Committee.

5-6 September 2011

Éléments d'information à l'attention de Madame Doerner

Introduction

Dear Chairman, dear colleagues,

It is a great pleasure for me to welcome you in the Chamber of Deputies of Luxembourg. The purpose of our meeting is to exchange our common experience about EU draft legislation in the context of the Lisbon Treaty. I suggest that I briefly describe how we deal with EU matters here at the Luxembourgish Parliament and how we do so more specifically in the Legal Affairs Committee.

In times, where the EU takes more and more important decisions in all areas, especially in the economic and financial domain, but also in matters of justice, it is of outmost importance for parliaments to step in and monitor EU actions as well as to pursue a reinforced dialogue not only with our respective governments but also with our citizens on EU issues.

As the Treaty of Lisbon came into force, the Luxembourgish Parliament has adapted its procedures. Although EU matters have already been a priority for the Chamber of Deputies for a long time, there was a need to implement new procedures.

I have no doubt, that we can learn a lot from each other as we discover our new European responsibilities and I hope that we will be able to cooperate more in the future.

1. The subsidiarity and proportionality principle

The setting up of a European strategy, including a new political and administrative modus operandi, dates back to the time where the European constitution was being debated. In 2005, the referendum on this EU constitution - where only 56% of the citizens casted a yes-vote - showed that there is a need for a strengthened dialogue with citizens on EU matters and that Parliament could play an important role in this regard.

It was also for this reason that the Chamber of Deputies started setting up a new EU-related procedure in 2006 and, progressively, as the ratification of the Treaty of Lisbon came closer, this written procedure has been improved and fine-tuned in order to be ready for the coming into force of the new Treaty in December 2009.

On the 14th of July 2010, the new procedure has been officially integrated into our Rules of Procedure.

What does our procedure look like in detail?

1. It begins at the level of our administrative services. An official is specifically responsible for the classification of all the European Union draft legislation that we received.

All the documents provided by the European Commission are reviewed - not only draft legislation but also reports, communications, white papers, green papers, and so on.

The various documents are sorted first by their importance to the Grand Duchy. The issues that pertain to the national interest are classified as "B" documents and if they do not require control because Luxembourg is not directly concerned, the documents are classified as "A" documents.

We attach a lot of importance to making our own categorisation, independently of the Commission's own assessment on whether or not a piece of draft legislation falls under the banner of subsidiarity.

Conversely, an EU document that clearly falls under the subsidiarity principle, but which is not relevant for Luxembourg will be classified as an A-document.

Our administrative services also establish summaries of the B-documents. Moreover, our administrative services suggest which Committee might be best suited for further review.

2. In a second step, the classification of EU files in A- and B-documents, as well as the summaries are transmitted to the Committee of Foreign and European Affairs. After a further scrutiny of all these documents with regard to their importance for Luxembourg by the political groups, the draft EU legislation is then submitted on a weekly basis to the various relevant committees by the Speaker of the Chamber of Deputies upon recommendation by the Committee of Foreign and European Affairs. If an issue relates to the sphere of competence of several Committees, the document in question is sent to all the concerned Committees.
3. In a third phase, the competent sectoral Committee reviews the European document at hand. Generally, a rapporteur is nominated. When a reasoned opinion is drafted, it must be adopted by a majority of its members.

There are three more specific elements, which I'd like to draw your attention to in this context:

- First of all, any political group can submit a proposal for a reasoned opinion in the Committee where a draft legislative proposal is being debated. The same applies for the so-called political sensitivities – at the Chamber of Deputies, those Parliamentarians who are members of a party which has less than five members in Parliament cannot form a political group as such, but they can organize themselves as a political sensitivity.
- As you know, national Parliaments have only eight weeks to send their reasoned opinions on compliance of draft legislative texts with the subsidiarity principle to the Council, the European Parliament and the Commission. We believe this

timeline to be rather short, but we try to organize ourselves in order to keep up with our responsibilities - hence a four week time limit for the Committees has been introduced in our Rules of Procedure.

- Thirdly, we send the latest A- and B-document list to the five Luxembourgish professional chambers each week, as well as to the Council for Economic and Social Affairs, which has a consultative role with the Government, and the umbrella organization of the Luxembourgish enterprises.
4. In a fourth phase, the decision to send a reasoned opinion to the European Commission has to be taken by a simple majority during a plenary session in the form of a resolution. If no plenary session is scheduled within the eight week time limit, the decision to send a reasoned opinion to the EU institutions can be made by a majority vote at the Conference of Presidents. The political sensitivities, which do not usually take part in the Conference of Presidents, are in this case invited to join and the Chamber of Deputies is informed of the decision at the next plenary.

All these elements have been incorporated into the rules of procedure of the Chamber of Deputies (article 169), which also includes others aspects pertaining to the European Union. For example, the relevant article also refers to a memorandum the Chamber of Deputies has signed with our Government in 2008 on, among else, the exchange of information, cooperation and confidentiality issues relating to EU issues.

Furthermore, the Chamber of Deputies continues to refine the way EU issues are being dealt with on a procedural basis. For instance, our administrative services are currently working on a new software system, which is most probably going to be launched in 2012, and which will optimize the internal management of European affairs. The goal is to centralize information and data on various European issues and to automatize the information flow of EU documents. Once the system is in place, it will be possible to research on the evolution of work on the files, access to related documents (such as reasoned opinions, minutes of committee meetings, etc.), to be informed of the expiry of eight weeks for the control of subsidiarity or the expiry of the transposition of directives or to view statistics. All the EU documents that are being dealt with are also going to be put on the website of our Parliament.

2. The scrutiny of EU legislation in numbers

During the 2010-2011 legislative session which is still in progress, we received 511 documents from Brussels until now, 252 of which have been classified as B-documents. Out of these 252 documents, there were 89 proposals for directives, regulations or decisions which

fell directly under the scope of the subsidiarity procedure and which thus opened for the possibility of writing a reasoned opinion.

Since the entry into force of the new procedure, the Chamber of Deputies has issued five reasoned opinions. Also note in this context, that the Chamber of Deputies has decided to write a review of subsidiarity only in cases where a violation of the subsidiarity principle is recognized. This means that we do not send out any opinions to voice our support for a given European legislative proposal.

The Chamber of Deputies also sends political opinions to the EU institutions, when it considers that the subject matter of an EU document is not in line with the position of our country. 8 such opinions have been sent to Brussels since the current parliamentary session started in 2010.

3. The Legal Affairs Committee and the EU

During the 2010-2011 legislative session, the Legal Affairs Committee of the Chamber of Deputies itself has received thirty-three subsidiarity documents until now, 12 of which fell under the scope of the subsidiarity procedure.

The documents related, among others, to data protection, the Schengen system, the new EU security strategy, patent protection, gambling, fundamental rights, transnational criminality or corruption issues.

The workload is of course a problem in this regard. Besides the constant strengthening of internal procedures, I also hope that in the future, the cooperation between parliaments and sectoral committees of national parliaments is also going to help to survey the incoming EU draft legislative proposals ever more efficiently.

With regard to this inter-parliamentary dialogue, I'd also like to mention that the Legal Affairs Committee regularly participates in interparliamentary meetings on issues that relate to its competences.

Together with the Committee on Foreign and European affairs, the Committee moreover monitors the actions of Eurojust. In November 2010, the Luxembourgish representative at Europol came to the Chamber of Deputies in order to present the evolution and the actions of this agency, as well the proposal for a directive on attacks against information systems. In 2009, the same representative had already been invited to present the evolution of Eurojust in the context of the Lisbon Treaty as well as the annual report of that organization.

The Committee insists on the fact that in the context of the Area of Freedom, Security and Justice, parliaments shall be informed more and better on the activities of the EU institutions and in particular the implementation of the decisions taken in Brussels by the governments.

Forms of control, as they currently exist, are still insufficient and closer cooperation to control these very intergovernmental policy areas is necessary. Therefore, we call to establish an interparliamentary body in which representatives of national parliaments and the European Parliament discuss all issues related to the structure, operation, planning and work of Eurojust (as well as Europol).

Finally, it is perhaps noteworthy to mention that the Luxembourgish Legal Affairs Committee has also created a sub-Committee, which is chaired by my colleague Léon Gloden, to deal

specifically with the Green Paper from the Commission on policy options for progress towards a European Contract Law for consumers and businesses. This is a very important issue for a small country with many neighbouring countries like Luxembourg. The sub-Committee has drafted a political opinion regarding this matter in April this year.

Conclusion

In conclusion, I'd like to say that the control of subsidiarity and proportionality allows national parliaments to make more than a symbolical return to EU matters. Instead of merely acknowledging the decisions that are being made in Brussels, national parliaments are now among those players which can actually contribute to shape European policy – and the more we cooperate, the more we will be able to do so.

I also hope that in the future, once we will all be more familiar with our new role in EU politics, our interparliamentary cooperation is also going to contribute to shape EU policies. This is very important not only for our institutions, but also for the legitimacy of the EU in the future. I am indeed convinced that through our cooperation, we can make a small but very important contribution to bringing the EU closer to our citizens.

And this is why, I am very glad that you took the initiative to visit us.

Thank you very much for your attention.

Mr. Johansson, maybe you could tell us if there are any notable differences or similarities on how we deal with EU documents in our two parliaments.

Elément d'information lié à l'actualité constitutionnelle luxembourgeoise:

In 1974, a new so-called “Instrument of Government” became part of the Swedish Constitution which stripped the King of virtually all formal powers, while still retaining him as Head of State. Many of the Monarch's previous political functions were transferred to the Speaker of the Riksdagen at the time (before, the King used to chair the Committee for Foreign Affairs for example). Thus, in Sweden, unlike most constitutional monarchies, the Monarch is no longer even the nominal chief executive. Bills passed in the Swedish Parliament become law without having to acquire royal assent.

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Summary

The Inquiry's remit and work (Chapter 1)

On 1 January 1999, Sweden became the first country in the world to introduce legislation criminalising the purchase, but not the sale, of sexual services. The penal provision – the prohibition of the purchase of sexual services – is currently found in Chapter 6, Section 11 of the Penal Code.

The ban on the purchase of sexual services was introduced since it was deemed that fighting prostitution was of pressing social interest. Unlike previous measures and initiatives, criminalisation targeted the demand for sexual services, i.e. purchasers of sex and prospective purchasers of sex. The ban was intended to help fight prostitution and its harmful consequences in a more effective manner than was possible using the previous measures against prostitution. The legislative proposal stated that it is shameful and unacceptable that, in a gender equal society, men obtain casual sexual relations with women in return for payment and that Sweden, by introducing a ban on purchasing sexual services, also sent an important signal to other countries highlighting our outlook on purchasing sexual services and prostitution. It pointed out that prostitution entails serious harm to both individuals and to society. It was expected that criminalisation would have a deterrent effect on prospective purchasers of sex and serve to reduce the interest of various groups or individuals abroad in establishing more extensive organised prostitution activities in Sweden, which would have an inhibitory effect on the prevalence of prostitution here.

The ban on the purchase of sexual services has now been in force for over ten years. Different views have been presented on what consequences criminalisation has had. The issue of an evaluation of the ban has been raised in the Riksdag on several

occasions. The legislation prohibiting the purchase of sexual services has also received international attention, and there is great interest in learning what effect the ban has had. For example, the growing problem with trafficking in human beings for sexual purposes and prostitution has meant that many countries have found reason to consider new methods of fighting the purchase of sexual services and trafficking.

Our remit has been to evaluate the application of the ban on the purchase of sexual services and the effects that prohibition has had. We have investigated how the provision has worked in practice and what effects the ban has had on the prevalence of prostitution and human trafficking for sexual purposes in Sweden. One starting point of our work has been that the purchase of sexual services is to remain criminalised.

Some general starting points (Chapter 2)

The proposal to criminalise the purchase of sexual services was part of Government Bill Violence against Women (Kvinnofrid, 1997/98:55). The Bill proposed a large number of different measures in different social sectors to combat violence against women, prostitution and sexual harassment in working life. According to the Bill, one issue that was closely related to that of violence against women and a lack of gender equality was the issue of men who purchase sexual services, usually from women; i.e. the issue of prostitution.

The most important insight regarding the issue of prostitution, presented through the Bill, was that attention must be directed to the purchasers. It was a matter of a shift in perspective, which can be summarised by stating the obvious: if there was no demand there would be no prostitution.

On 10 July 2008 the Government presented Government Communication 2007/08:167, which was an action plan against prostitution and human trafficking for sexual purposes. Through the action plan, the Government once again emphasised that prostitution and human trafficking are not acceptable in our society and that far-reaching measures are needed to combat them. The action plan notes that the underlying reasons for people to be involved in prostitution vary, but the primary factor that perpetuates both human trafficking and prostitution is demand, i.e.

that people, mainly men, purchase sex. Human trafficking for sexual purposes mainly affects young women and girls. The exact scale of human trafficking around the world is not known since many cases are unreported, but it is generally accepted that human trafficking represents one of the most profitable forms of international organised crime.

There is thus a clear link between the existence of prostitution and human trafficking for sexual purposes.

Since it was introduced, the ban on the purchase of sexual services has caused debate in Sweden and internationally. Despite the official position, there is still a debate in Sweden regarding attitudes to prostitution. Those who defend prostitution argue that it is possible to differentiate between voluntary and non-voluntary prostitution, that adults should have the right to freely sell and freely purchase sex, and that the ban on the purchase of sexual services represents an outdated position, based on sexual moralism. However, based on a gender equality and human rights perspective, and shifting focus away from what is being offered, i.e. those who are exploited in prostitution, to demand, i.e. traffickers, procurers and sex purchasers, the distinction between voluntary and non-voluntary prostitution is not relevant.

Background and current law, etc. (Chapter 3)

The issue of criminalising prostitution was raised in Sweden in the 1970s. This was linked to social changes and an altered view of sexuality.

The Prostitution Inquiry of 1977 produced the most extensive survey of prostitution available to date. To highlight the fact that prostitution is not a women's issue but rather a human problem, the Inquiry chose to try to expand the concept and defined prostitution in the following manner. Prostitution occurs when at least two parties purchase and sell sexual services in return for (usually) financial compensation, which represents a condition for the sexual service. The Inquiry considered that prostitution was incompatible with the ideas on freedom of the individual and gender equality which have long been prevalent in Sweden. In its report *Prostitution in Sweden, background and measures* (SOU 1981:71), the Inquiry proposed that prostitution should remain exempt from

punishment, but highlighted other social and legal solutions to reduce prostitution.

The Prostitution Inquiry of 1993 used the term 'sex trade' to describe an activity in which at least two parties purchase or sell sexual services and which is intended to satisfy the purchaser's sexual drive. In its report *Sex Trade* (SOU 1995:15) the Inquiry proposed that prostitution should be criminalised by introducing a ban on both purchasing and selling sexual services. The Inquiry considered that criminalisation of prostitution was a necessary step to make it completely clear that prostitution as a phenomenon is not accepted by society. The Inquiry's proposal, particularly the idea of also criminalising the person exploited by prostitution, was met by extensive criticism and was not implemented.

The proposal that eventually led to the introduction of the Act prohibiting the Purchase of Sexual Services (1998:408) formed part of the Government Bill *Violence Against Women*, as described above. The proposal was based on the report of the Prostitution Inquiry from 1993 and on the final report of the Commission on Violence against Women, *Violence against Women* (SOU 1995:60).

A person who obtains a casual sexual relation in return for payment commits the crime of purchase of sexual service, which is currently found in Chapter 6, Section 11 of the Penal Code. Purchasing a sexual service on one single occasion is sufficient for criminal liability. Compensation can be in the form of money, but payment can also be made through such means as alcohol or drugs. Promising compensation so that payment is a condition for the service is sufficient to establish liability. A crime is committed even if someone other than the person who avails him or herself of the sexual service has provided or promised the compensation. An attempted offence is also punishable. The scale of penalties for the purchase of sexual services is a fine or imprisonment for at most six months.

As is the case with the crime of human trafficking, the ban on the purchase of sexual services is an important instrument to prevent and combat trafficking in human beings and to protect those people who are, or who risk becoming, involved in prostitution and other forms of sexual exploitation. Since human trafficking is a cross-border crime, combating it requires international cooperation. There are a number of international conventions in the area. Several instruments dealing with prostitution

and human trafficking have been adopted by the United Nations, the Council of Europe and the EU.

Work to combat prostitution has long been oriented around social initiatives, and both of the previous prostitution inquiries have emphasised the value of such initiatives. Unlike in many other countries where efforts focus on harm reduction, the initiatives targeting prostitution in Sweden are mainly aimed at fighting prostitution by helping people out of prostitution or to stop purchasing sex.

Extensive work is being carried out in Stockholm, Gothenburg and Malmö aimed directly at people who are exploited in prostitution. People with experience of prostitution have complex help needs, and special knowledge and skills are required when implementing initiatives targeting these people. Work in the prostitution groups involves a number of different components. It includes outreach activities, motivational interviews, different forms of therapy and psychosocial support. Less is known about the extent to which people in prostitution and victims of human trafficking are detected and helped in other areas. Knowledge about the most effective methods of helping those affected is also limited.

In its action plan against prostitution and human trafficking for sexual purposes, the Government emphasises that initiatives to combat demand for sexual services are crucial for dealing with the problem. For ten or so years, social services in Stockholm, Gothenburg and Malmö have been operating what are known as KAST groups (purchasers of sexual services) to motivate potential and active sex purchasers to change their behaviour.

Different preventive measures are needed to help prevent people from ending up in prostitution. Of particular importance are initiatives aimed at those who are particularly affected, i.e. children and young people. Professional groups that have contact with young people at risk of falling into prostitution must develop the ability to see signals and improve their skills to be able to work with these issues in the best possible manner.

Prostitution in Sweden 1999–2008 and a comparison with the situation in some other countries (Chapters 4 and 5)

Evaluating the effects of the ban on the purchase of sexual services has proven to be a difficult task. Prostitution and human trafficking for sexual purposes are complex and multifaceted social phenomena which partly occur in secret. Increased internationalisation and the Internet as a new arena for prostitution also make it difficult to assess its prevalence. Even though there are many reports, articles and essays that address these phenomena, knowledge on the scale of prostitution and human trafficking for sexual purposes is consequently limited. This particularly applies to knowledge of people who are active as prostitutes in arenas other than street settings and on the Internet, and knowledge of the prevalence of prostitution outside metropolitan areas.

On the whole, 'prostitution' has traditionally referred to heterosexual prostitution, with women providing the sexual service and men purchasing it. The measures that are implemented and the knowledge available are also largely based on this customary view. Accordingly, we do not know very much about men who provide sexual services and about young people who are exploited in prostitution. Purchasers of sexual services are still fairly invisible despite the political will expressed to shift the focus.

The empirical surveys that have been carried out have, in some cases, had limited scope, and different working procedures, methods and purposes have been used. In light of these and other factors, there can at times be reason to interpret the results with caution.

However, despite these reservations, we still consider that it is possible to draw conclusions based on the material to which we had access, and the results we are presenting based on this data give, in our view, as clear a picture as is currently possible to produce.

Street prostitution halved

It is considered that the data available on the scale and prevalence of street prostitution describes the actual conditions. Since the introduction of the ban on the purchase of sexual services, street prostitution in Sweden has been halved. This reduction may be

considered to be a direct result of the criminalisation of sex purchases.

In a comparison, we have noted that the prevalence of street prostitution was about the same in the three capital cities of Norway, Denmark and Sweden before the ban on the purchase of sexual services was introduced here, but the number of women in street prostitution in both Norway and Denmark subsequently increased dramatically. In 2008, the number of people in street prostitution in both Norway and Denmark was estimated to be three times higher than in Sweden. In light of the great similarities that in many respects exist between these three countries, economically and socially, it is reasonable to assume that the reduction in street prostitution in Sweden is a direct result of criminalisation. This assumption is supported by the fact that, according to a study by Bergen Municipality, an immediate, dramatic reduction of street prostitution occurred there when, on 1 January 2009, Norway became the second country after Sweden to introduce a general prohibition of the purchase of sexual services.

The number of foreign women in street prostitution has increased in all the Nordic countries, including Sweden. However, by comparison it can be noted that the dramatic increase in the number of foreign women in street prostitution reported from both Denmark and Norway has no parallel in Sweden.

Internet – a new arena

Prostitution where the initial contact is made over the Internet is an important and growing arena for prostitution that has received increasing attention in recent years. Compared to street prostitution, the scale of Internet prostitution is more difficult to verify and assess, but knowledge of this form of prostitution is gradually growing.

In the last five years, Internet prostitution has increased in Sweden, Denmark and Norway. However, the scale of this form of prostitution is more extensive in our neighbouring countries, and there is nothing to indicate that a greater increase in prostitution over the Internet has occurred in Sweden than in these comparable countries. This indicates that the ban has not led to street prostitution in Sweden shifting arenas to the Internet. In light of this it should be possible to conclude that the halving of street

prostitution that took place in Sweden represents a real reduction in prostitution here, and that this reduction is also mainly a result of the criminalisation of sex purchases.

The Internet plays an important role particularly with regard to young people in prostitution. The National Board for Youth Affairs concludes that most young people who are exploited sexually in return for payment came into contact with the purchaser via the Internet. The results of other questionnaire surveys that examined young people's experiences of selling sexual services support this conclusion. The ban on the purchase of sexual services has not had an effect on the exposure of young people on the Internet. However, the risks of sexual exploitation and abuse that this exposure entails increase the need to protect young people from falling into prostitution.

No overall increase in prostitution in Sweden

There is nothing to indicate that the prevalence of indoor prostitution that is not marketed through advertisements in magazines and on the Internet, e.g. prostitution in massage parlours, sex clubs and hotels, and in restaurant and nightclub settings, has increased in recent years. Nor is there any information that suggests that prostitutes formerly exploited on the streets are now involved in indoor prostitution.

People working in the field do not consider that there has been an increase in prostitution since the ban was introduced. Since those involved in prostitution activities typically need to promote themselves in order to come into contact with clients, it is unlikely that prostitution could exist on any great scale and remain entirely unknown.

The overall picture we have obtained is that, while there has been an increase in prostitution in our neighbouring Nordic countries in the last decade, as far as we can see, prostitution has at least not increased in Sweden. There may be several explanations for this but, given the major similarities in all other respects between the Nordic countries, it is reasonable to assume that prostitution would also have increased in Sweden if we had not had a ban on the purchase of sexual services. Criminalisation has therefore helped to combat prostitution.

Ban on the purchase of sexual services has counteracted the establishment of organised crime

Trafficking in human beings for sexual purposes is a growing form of serious economic crime in large parts of the world. Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime is considered to be substantially smaller in scale than in other comparable countries. According to the National Criminal Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers considering establishing themselves in Sweden.

Increased public support for the ban

The ban on the purchase of sexual services was intended as a statement of society's view that prostitution is an undesirable phenomenon. To gauge Swedish public opinion concerning sex purchases, surveys were conducted before and after criminalisation was introduced. Judging by the results of four population-based opinion polls, there has been a change of attitude with regard to the purchase of sexual services that coincides with the criminalisation of the purchase of such services. The marked shift in attitude that has occurred here – without an equivalent shift in Norway and Denmark – must be interpreted as meaning that the ban itself has had a significant normative effect which, given that support for criminalisation is greatest among young people, can be expected to last. In all three surveys conducted since the ban was introduced, more than 70 per cent of those asked took a positive view of the ban.

How the ban has affected those involved in prostitution

When the ban on the purchase of sexual services was introduced, various misgivings were voiced. These included fears that criminalisation would risk driving prostitution underground, making it harder to reach out to the vulnerable people involved through social measures, and that the ban would bring an increased risk of physical abuse and generally worsen living conditions for prostitutes. As far as we can judge from the written material and

the contacts we have had with public officials and people involved in prostitution, these fears have not been realised.

Police officers and social workers report that purchasers of sexual services have become more cautious and that the ban has led to a decrease in demand, at least for street prostitution, as a result of criminalisation. According to the police, purchasers are afraid to be caught, but are more concerned about the offence of which they are suspected becoming known to family and acquaintances than about the penalties they risk. The impression that purchasers have become more cautious is shared by some of the current and former prostitutes who responded to the Inquiry's questions, while others have reported that criminalisation has not affected purchasers because so few are caught and the penalties are so lenient.

According to surveys conducted in Sweden in the period following criminalisation, the proportion of men reporting that they have, on some occasion, purchased sexual services has decreased, and it would seem that fewer men purchase sexual services in Sweden than in the other Nordic countries. In a survey conducted in 2008, a number of those asked also reported that the ban had affected their actions to the extent that they no longer purchased sexual services. All in all, the above must be interpreted as meaning that the ban has a deterrent effect on prospective purchasers of sexual services.

It is clear, and it seems logical, that those who have extricated themselves from prostitution take a positive view of criminalisation, while those who are still exploited in prostitution are critical of the ban. This pattern is reflected in many different reports and is also confirmed by the contacts that the inquiry has had with women with experience of prostitution.

Application of the ban 1999–2008 (Chapter 6)

Since the ban was introduced, the police have directed special operations against prostitution on many occasions. The majority of the investigations and operations against prostitution-related crime have been, and continue to be, carried out by the various special groups that have been established during this period in Stockholm, Gothenburg and Malmö, and in the National Criminal Police. Operations have mainly targeted street prostitution and more organised forms of prostitution that are linked to procuring or

human trafficking. The police have not ordinarily prioritised, or had the resources for, interventions against the purchase of sexual services via other forms of prostitution.

Street prostitution is seen by police to have great symbolic value in the eyes of the public, and the street setting is also used to market other forms of prostitution. The police officers with whom the Inquiry has had contact consider that operations against street prostitution have an immediate effect in terms of deterring prospective purchasers of sexual services, but also believe that such operations have a more long-term effect in terms of deterring and limiting the numbers of other promoters and organisers of prostitution.

The majority of prosecutions for infringements of the ban are cases where the purchaser of sexual services made the initial contact in a street setting. A new penal provision, trafficking in human beings for sexual purposes, came into force on 1 July 2002, and from 2003 onwards there has been a dramatic increase in the number of prosecutions for infringements of the ban on the purchase of sexual services that originate from procuring and human trafficking cases. The prevalence of these cases varies widely from year to year, depending on the resources invested and the priorities that the police, in particular, have set.

It is clear that monitoring compliance with the ban depends largely on the priorities set by the police and the resources they have available. According to both police officers and prosecutors with whom the Inquiry has spoken, considerably larger numbers of purchasers of sexual services could be prosecuted if priority had been given to this type of crime in day-to-day activities. One reason why priority is not given to sexual purchase offences is the low penal value of this type of offence.

Eight out of ten cases in which purchasers of sexual services are prosecuted involve situations in which the offence has been admitted to. This applies to both street prostitution and other forms of prostitution. When suspects admit to an offence, the prosecutor does not generally bring legal proceedings; instead a summary fine is imposed on the suspected purchaser of sexual services. The majority of the offences that have been prosecuted were committed in the three metropolitan areas. All of those prosecuted between 1999 and 2008 were men, with a median age of 43. They most commonly paid for sexual services in cash.

Our review of the judgments and summary fines imposed during the period studied shows a great deal of uniformity in terms of assessment of penal value and choice of penalty. Since the Supreme Court examined the question of culpability in a case of the purchase of sexual services in 2001 (NJA 2001, p. 527), more than 85 per cent of all prosecutions for individual instances of such purchases have resulted in a penalty of 50 'day fines'. The offence is generally reported rather summarily, and judgments seldom refer to any extenuating or aggravating circumstances associated with the offence.

When the ban was introduced, some feared that it would be difficult to monitor compliance with the ban and to define and prove the criminal act. However, our investigation of the application of the ban shows that, following an initial period of some uncertainty, police officers and prosecutors now consider that in general the provision works well. The prosecutors with whom the Inquiry has spoken have stated that they do not currently see any application problems directly linked to the penal provision. Sexual purchase offences are usually considered to be easy to investigate and relatively uncomplicated to process. There can be evidentiary problems, but almost half of the offences reported have been linked to an individual, meaning that a decision has been taken either to bring charges, impose a summary fine or grant a waiver of prosecution. This is double the number compared to other reported sexual offences.

The uncertainties that remain when it comes to applying the provision concern whether those who have been exploited should be considered witnesses or injured parties in court proceedings, and the point in time at which an attempted offence has been committed. It is considered difficult to prove attempted crimes, with the result that, in connection with street prostitution, the police deliberately wait until the sexual act has begun before intervening, and the offence has thus been committed in full.

Deliberations and proposals (Chapter 7)

Our assessment shows that the ban on the purchase of sexual services has had the intended effect and is an important instrument in preventing and combating prostitution.

Continued and sustained social work is necessary

Criminalisation can never be anything other than a supplement to other efforts to combat prostitution. It is therefore necessary to ensure continued and sustained social work to prevent and combat prostitution and trafficking in human beings for sexual purposes. It is important to increase the measures directed at purchasers of sexual services. Further research is needed here on who purchases sexual services, and suitable treatment methods. It is also important to give support to children and young people at risk of ending up in prostitution and to continue information initiatives to influence public opinion in this area. The professional groups working with these issues must be assured access to greater knowledge in order to be able to offer vulnerable people adequate help and support. The Inquiry does not present any specific proposals in this area, but it does call attention to – and particularly emphasises – the value and necessity of continued and sustained social measures.

A national centre against prostitution and human trafficking for sexual purposes should be set up

In the course of our work, we have established that there is an almost improbably large quantity of information available in the form of reports, articles and essays produced by both government agencies and researchers and containing facts and discussions linked to prostitution and human trafficking. One important conclusion we have drawn is that, despite the great interest in this issue, there is a lack of both continuous follow-up and systematic knowledge of these phenomena. The knowledge available is difficult to grasp and, in part, difficult to assess, and is shaped by the operational focus and perspective of the agencies and organisations concerned.

This makes it impossible to draw entirely reliable assessments and comparisons using the available knowledge. This hampers efforts to establish the training, methods development and support initiatives needed in order to combat prostitution and human trafficking for sexual purposes as effectively as possible. It is necessary to create better conditions for coordination, follow-up and knowledge production for the future, in order to both utilise

existing knowledge and also make new knowledge available to everyone who works in some capacity with these issues.

We therefore propose the establishment of a national centre against prostitution a human trafficking for sexual purposes.

Maximum penalty for the purchase of sexual services should be raised

In our view, variations between different sexual purchase offences are far too seldom taken into account when deciding on a penalty. From the review of current practice undertaken by the Inquiry, it is clear that in some cases there is reason to take a more serious view of the offence than has been the case in practice. Examples of such cases include exploitation of a person with a psychiatric disability, contact being made through a third party or an ordering service, exploitation of one person for several hours by several sex purchasers or exploitation of a young person or a person under the influence of drugs. In our view, the current level of penalties for certain sexual purchase offences is not proportionate to the seriousness of the crime. There is a need to be able to make a more nuanced assessment in more serious cases of the purchase of sexual services than is possible within the current penalty scale for the offence. We therefore propose that the maximum penalty for the purchase of sexual services be raised from imprisonment for six months to imprisonment for one year.

The person exploited in prostitution may normally be considered the injured party

Neither legislation nor legal doctrine offer a clear answer to the question of who is to be considered an injured party. In our assessment, there is nothing to prevent a person who has been exploited in prostitution from having the status of injured party in proceedings concerning the purchase of sexual services. An examination should be undertaken in each case to determine whether the person providing the sexual service is so directly affected by the offence that she or he should be entrusted with exercising the public function implied by a penal claim.

The question of where to draw the line in attempted crimes should be resolved through the application of the law

The question of the point in time at which the offence of the purchase of sexual services begins has been discussed, and it engenders certain problems with regard to its application in practice. In our view, the problems described by police officers and prosecutors with regard to the application of the offence of the purchase of sexual services do not fundamentally differ from those encountered with other types of offence. It would hardly have been possible, let alone appropriate, to attempt to pin down in legislation the point at which an attempted offence has been committed. The problems encountered should therefore be viewed as an matter for interpretation and application, not for legislation. Nor are the evidentiary problems such as to warrant any proposed legislative amendments or other measures.

There is a need to expand the scope of application of the ban with regard to offences committed abroad, but without deviating from the dual criminality requirement

We consider that there is a need to expand the possibilities to prosecute in Sweden sexual purchase offences committed abroad, particularly with a view to the fact that it should be possible to apply the Swedish ban in cases where a person representing Swedish public interests purchases sexual services abroad. The question of the ban's applicability for offences committed abroad was not referred to in any detail in the preparatory work on which the ban was based. Now that the offence is contained in Section 6 of the Swedish Penal Code, it is reasonable to regard it as universally applicable and not limited to offences committed in Sweden. Since the ban on the purchase of sexual services is universally applicable, there are no national or territorial limits on its applicability. However, this conclusion does not mean that the Swedish courts have the competence to pass judgment on the offence. The competence to pass judgment on offences committed outside Sweden is normally conditional on dual criminality.

The majority of countries do not have a ban on the purchase of sexual services equivalent to that in force in Sweden, nor is there international consensus on what methods should be used to

combat prostitution. Allowing the purchase of sexual services to be an exception to the dual criminality requirement for Swedish penal jurisdiction would therefore involve a clear deviation from the principles behind the introduction of a general requirement for dual criminality to prosecute a crime committed in another country. An exception of this kind could not be based on international consensus on the nature of the crime or a general perception of the crime as particularly serious. Nor could it be justified on the grounds of protecting any private or public Swedish interest. In light of this, we have deemed it impossible to propose that the dual criminality requirement be removed with regard to the crime of the purchase of sexual services.

The Committee on Justice of
the Swedish Parliament

Luxembourg and The Hague
5–7 September 2011



This brochure has been prepared on the occasion of a visit to Luxembourg and The Hague, 5th to 7th September 2011 by the Committee on Justice of the Swedish Parliament.

It contains information on the committee as well as on the members of the delegation.

- (S) The Social Democratic Party
- (M) The Moderate Party
- (MP) The Green Party
- (FP) The Liberal Party
- (C) The Centre Party
- (SD) The Sweden Democrats
- (V) The Left Party
- (KD) The Christian Democrats

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Mr Krister Hammarbergh (M)



Ms Ewa Thalén Finné (M)



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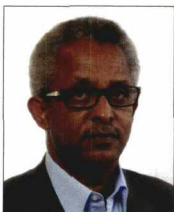
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Mr Patrick Reslow (M)



Ms Maria Ferm (MP)



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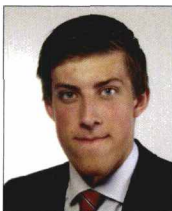
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Secretariat



Ms Stina Svensson
Committee Officer



**Ms Pernilla Flanck
Zetterström**
Secretary to the Committee

The Swedish Parliament – Sveriges riksdag

As stated in the Constitution: *All public power in Sweden proceeds from the people.* Democracy in Sweden, founded on freedom of expression and universal suffrage, is achieved through a representative and parliamentary system.

The 349 members of the Swedish Parliament are elected every fourth year in September. Although elections are based on proportional representation a party must receive at least four percent of the votes cast to be represented in Parliament. The minimum voting age is 18 years as is the age of eligibility for election.

165 members (47%) of the Swedish Parliament are women.

The Standing Committees

The Parliament has 15 standing committees, each committee having 17 members and approximately the same number of substitutes. The composition of the committees and allocation of the positions of chairman and vice-chairman is intended to reflect the relative strength of the parties in the Swedish Parliament.

All the issues to be decided on by the Parliament go through a “compulsory committee stage” and are prepared within their respective standing committees before being submitted to the chamber. This covers bills from both the government and private members. A standing committee may also itself take the initiative to submit a proposal to the chamber on issues within its working area.

The standing committees have their own secretariats, the main task of which is to present and administer the work of the committee as well as draft the reports to be presented to the chamber. Each committee has overall responsibility for a particular area when it

comes to legislation and the allocation of funds. When an issue overlaps a number of areas, the committee with overall responsibility will normally refer the matter to the appropriate committees for their views.

The various standing committees consider and submit proposals on all the matters referred to them, setting out in an official report, containing an account of the facts, the committee's reasoning and its recommendations to the chamber.

If the standing committee has not reached consensus, the dissenting views of the minority or individual members are attached to the report, which is then circulated prior to the debate and the vote in the chamber.

The Committee on Justice

The Committee on Justice deals with legislative matters regarding such areas as basic criminal law, procedural law and other legislation within the areas of responsibility of the authorities of the judicial system. General questions related to the judicial system also fall within the Committee's sphere of activities, covering for example the courts, the Prosecution Authority, the Police Authority, including the Security Service, the Prison and Probation Service, crime prevention work and support to victims of crime. The Committee on Justice also deals with matters regarding appropriations to the authorities of the judicial system in the national budget.

Questions dealing with the prevention of and fight against terrorism within Sweden's borders fall mainly within the sphere of activities of the Committee.

