



Dear Members of LIBE and FEMM Committees,

**On Monday 12 July 2021, LIBE and FEMM committees' members will vote on the amendments to the Draft Report** on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU. The undersigned Platforms and Initiatives that promote equality, gender and social justice and human rights of disadvantaged groups in Europe, welcome this FEMM and LIBE committees' report that aims at bringing concrete recommendations to the Commission. While we support the general aim and intent of the resolution, we do regret to see the below mentioned amendments.

The proposed amendments deny sex workers' agency to consent and conflate sex work with sexual exploitation. Moreover, the amendments ignore violence against sex workers, thus violating principles of equality and human rights. The so-called 'Equality Model', also known as the Swedish Model or criminalisation of clients has been evidenced to exacerbate vulnerabilities of sex workers to violence and HIV and is opposed by human rights and public health organisations.

We therefore call upon you to **vote against**:

**AM 264** (para 10b)

*10b. Stresses that consent cannot be bought, therefore considers all forms of sex purchase to be sexual exploitation; stresses that sexual exploitation and prostitution are forms of violence against women and girls and all persons in prostitution, and stresses the need for an end-demand approach to tackling this, including introducing the Equality Model, which criminalises both the buyers and pimps in the sex industry; stresses that sexual exploitation and prostitution are forms of violence that particularly impact women and girls with a lower economic status, including women and girls with a migrant or asylum-seeking background, or otherwise particularly vulnerable groups;*

**AM 269** (para 10 c)

*10c. Stresses that consent cannot be bought therefore considers all forms of sex purchase to be sexual exploitation;*

**AM 270** (para 10 d)

*10d. Calls on Member States to recognise sex purchase as a form of violence against women; calls on Member States to criminalise sex purchase in line with the Swedish Equality Model introduced in 1999;*

### **Justification for refusing these amendments:**

1. In the context of consensual adult sex and sex work, **criminal laws have proven to actually cause harm, especially for already marginalised groups**. Criminal sanctions against sex work contravene a number of human rights, including the non-discrimination principle, the right to equality before the law and equal protection of the law without discrimination, the right to be free from cruel, inhuman or degrading treatment or punishment, and the rights to privacy and to health. In addition, criminal sanctions do not address the structural factors that perpetuate women's economic and social inequality, which contribute to discrimination and violence. This has been proven and articulated by several UN agencies, including UNDP, UNFPA, UNAIDS and by the World Health organization.<sup>1</sup>
2. **A growing body of evidence points out that any criminalisation of sex work, including of clients, negatively impacts the safety, health and rights of sex workers.**<sup>2</sup> Criminalization of the purchase of sex and conflation of all prostitution with violence against women obscures the complex realities of sex workers' lives and work arrangements, and in consequence fails to address the diversity of exploitative working practices and violence that do occur in the sex industry.<sup>3</sup> Policies criminalizing the purchase of sex introduced in numerous European countries have been proven ineffective, having had significant negative impacts on sex workers' agency, wellbeing, safety, access to services and justice. Research from France,<sup>4</sup> Northern Ireland,<sup>5</sup> Sweden<sup>6</sup> and Norway<sup>7</sup> point out how such policies fail to protect people selling sex.
3. **Article 36 of the Istanbul convention clearly defines sexual violence and rape as absence of consent.** The proposed amendments suggest invalidating the key concept of consent by making consenting adult sexual intercourse a criminal act, if it is the subject to financial transaction. This exemption may create situation of legal uncertainty, as it will deviate significantly the debate about sexual violence. Consent is a central concept not only in defining sexual violence and rape as codified by the Istanbul Convention, but also a central concept for sex workers. For sex workers, consent means agreed upon terms and conditions, under which sexual services are provided. If these consented terms and conditions are violated, the incident should be defined as rape or sexual assault and sex workers should be able to complain and access non-judgmental support services and justice. Conflating all sex work/prostitution with sexual exploitation undermines the agency of people to make informed decisions about their private and sexual life. We believe all people should have access to this right.
4. In practical terms, the policies criminalizing purchase of sex and all third parties exacerbate vulnerabilities of sex workers in the following terms:
  - a. sex workers are pushed to operate in more isolated and dangerous environments
  - b. sex workers working together are routinely criminalized by authorities for illegal brothel-keeping; consequently, sex workers themselves are punished for prostitution related criminal offences, despite the important role working together plays in keeping sex workers safe
  - c. prostitution laws are disproportionately enforced in the spaces occupied by sex workers, their homes, neighbourhoods, working establishments and other workspaces. As a result, sex workers, not clients, incur the majority of profiling, surveillance and policing under these measures, not only while working but also in their day-to-day lives.

- d. sex workers risk to lose the custody of their children
- e. as a result of excessive enforcement of pimping laws, sex workers face evictions from their homes and risk homelessness
- f. sex workers who have precarious or irregular residence status face detention and deportation
- g. societal stigma and the notion of what is appropriate behaviour for women, together with the above mentioned risks, are drivers of structural violence, discrimination and have far reaching consequences of sex workers access to justice, access to health services, access to housing.

We further suggest **to vote against AM 271:**

**AM 271** (para 10 e)

*10e. Emphasises that women engaged in the sex industry, including in prostitution, due to poverty, discrimination or other types of distress, experience sexualised violence and abuse on a daily basis;*

We consider this amendment as unclear and incomplete. Sex workers face high levels of violence including sexual violence. It is therefore necessary to clearly recognise sex workers' capacity to consent and listen to sex workers who are victims of violence. Addressing violence against sex workers starts by listening to sex workers when they denounce and report crimes committed against them. Conflation of sex work and violence contributes to the exclusion of sex workers and under-reporting of crimes committed against them.

We urge you to consider our demands, and the evidence that supports them, and to vote against these paragraphs in the interests of promoting all women's rights and safety.

This statement is endorsed by:

- 1. International Committee on the Rights of Sex Workers in Europe (ICRSE)**
- 2. Equinox - Initiative for Racial Justice**
- 3. La Strada International - European Platform against Trafficking in Human Beings**
- 4. Platform for International Cooperation on Undocumented Migrants (PICUM)**
- 5. European Network against Racism**
- 6. ILGA Europe - European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association**
- 7. TGEU - Transgender Europe**
- 8. International Planned Parenthood Federation - European Network**
- 9. Correlation - European Harm Reduction Network**
- 10. European AIDS Treatment Group (EATG)**
- 11. Aids Action Europe**
- 12. IGLYO - International LGBTQI Youth & Student Organisation**

## References

1. See e.g.: WHO: Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: recommendations for a public health approach, 2020 Global AIDS Update – Seizing the moment – Tackling entrenched inequalities to end epidemics, 2012 UNAIDS Guidance Note on HIV and Sex Work, Joint statement of UNDP, UNAIDS and UNFPA [5] to the CEDAW committee; 2018 Risks, Rights and Health, Supplements, Global Commission of HIV and the Law;
2. Lucy Platt and others, ‘Associations between Sex Work Laws and Sex Workers’ Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies’ (2018) 15 PLoS Med; Vanwesenbeeck I, ‘Sex Work Criminalisation Is Barking Up the Wrong Tree.’ (2017) 46 Archives of sexual behavior 1631; Kathleen N Deering and others, ‘A Systematic Review of the Correlates of Violence Against Sex Workers’ (2014) 104 American Journal of Public Health E42; Global Alliance Against Traffic in Women, ‘Collateral Damage: The Impact of Anti-Trafficking Measures on Rights Around the World’ (2007).
3. ICRSE: **Exploitation- Unfair labour arrangements and precarious working conditions in the sex industry. Community report, 2016.**
4. **A study on the impact of the law against ‘Prostitution system’ in France.**
5. **Assessment of impact criminalization of the purchase of sexual service in Northern Ireland.**
6. Charlotta Holmström and May-Len Skilbrei, ‘The Swedish Sex Purchase Act: Where Does It Stand?’ (2017) 1 Oslo Law Review 82, 100.  
[https://www.idunn.no/oslo\\_law\\_review/2017/02/the\\_swedish\\_sex\\_purchase\\_act\\_where\\_does\\_it\\_stand](https://www.idunn.no/oslo_law_review/2017/02/the_swedish_sex_purchase_act_where_does_it_stand)
7. **Amnesty International: Norway: The Human cost of ‘crushing the market.**