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## Agenda setting, agenda blocking and policy silence: Why is there no EU policy on prostitution?

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### ABSTRACT

The EU has expanded its policy remit into all kinds of areas, and has made a clear commitment to gender equality. However, issues such as prostitution, abortion and same-sex families, which many would argue are closely linked to gender equality, have remained absent from the EU policy agenda. This article takes the case of prostitution, and asks how we explain the EU's policy silence on this issue, despite its clear action on the closely related issue of trafficking in human beings (the 2011 Anti-Trafficking Directive (European Parliament & The Council, 2011); the appointment of an Anti-Trafficking Coordinator; and the Strategy towards the Eradication of Trafficking in Human Beings (2012–2016) (European Commission, 2012)). Using a combination of process tracing and document analysis, it examines how prostitution has been kept off the policy agenda; how it has been framed as a policy issue; which actors have been able to define the issue, and which have been excluded. The article contributes to a broader understanding of why some issues become defined as problems requiring public policy responses and others do not; how they appear on, or are excluded from, the policy agenda at the member state and EU level; and how issues, frames and proposals are ignored or actively silenced within policymaking structures and processes.

### Introduction

The European Union (EU) has expanded its remit to such an extent that almost all areas of public policy are affected in some way by EU decision making (Buonanno & Nugent, 2013, p. 6; Nugent, 2017, p. 165). Many new issues have been brought onto the EU agenda by actors successfully framing them in such a way that they appear connected to the EU's central concerns, in particular the single market (Princen, 2011b, p. 936). However, in the case of issues such as prostitution, abortion and same-sex families, this strategy has failed. Actors seeking to place prostitution on the EU agenda by framing it as an economic activity have been met with the argument that it falls outside the competence of the EU. This article asks whether the competence argument provides a satisfactory explanation for the EU's policy silence on prostitution. It does not advocate EU action on prostitution, but tries to solve the puzzle of its exclusion from an expanding and almost all-encompassing policy agenda.

The aim of the article is to establish why some issues fail to gain traction on the EU policy agenda. It takes the case of prostitution and asks who has tried to place prostitution on the agenda or keep it off the agenda; how it has been framed, and how these frames have been rebutted or ignored or twisted; what are the institutional processes which have facilitated/blocked access; and what has been the impact of the

wider policy environment/political context. These questions are answered through an analysis of documents produced by the EU and civil society organisations. The analysis finds that silencing takes place through the use of the competence argument; framing plays an important part in silencing and in attempts to break the silence; there are differences between the EU institutions in the extent to which prostitution is present on, or absent from, the agenda; and sex workers' rights advocates and their discourse are excluded from decision making and debates. The Commission and the Council's silence on the issue effectively excludes it from the policy agenda. Sex workers' rights advocates are excluded from decision-making and debates, and their discourse is silenced.

The article challenges the argument that prostitution is absent from the EU because it falls outside its competence. It argues that competence is not fixed, but is the product of interpretation. Instead of explaining prostitution's absence from the EU agenda, competence is used to silence attempts to raise the issue. This shows that policy silence is not a passive state, but the result of active and repeated acts of silencing. The article shows how some problems, issues and frames are ignored, excluded or refused entry, actively or passively, knowingly or not. In so doing, it contributes to the scholarly literature on agenda setting and to the smaller literature on agenda blocking and policy silence. This is important because most agenda setting studies focus on

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issues which have achieved agenda status, ignoring those which have not.

The article is structured in the following way. First, it sets out the two dominant explanations for prostitution's absence from the EU agenda, which are suggested by the existing literature. These are that the issue is too controversial and that it lies outside the EU's competence. It then turns to the agenda setting literature which asks how and why some problems become defined as issues worthy of policymakers' attention and how and why some of these issues become the subject of decision making. Agenda setting scholars focus on how actors, frames, institutions and policy environment come together to open up opportunities for new issues to arrive on the agenda. Rarer studies of issues which fail to gain agenda status contribute to our understanding of agenda blocking and policy silence. Drawing on the conceptual tools developed in the existing literature, this article builds a framework to analyse documents produced by the EU and by civil society organisations. The findings of the analysis are presented in the empirical section, and this is followed by the conclusion.

### Controversy and competence

Some authors argue that issues that are too controversial or sensitive are not brought to the EU agenda, because of its consensus-seeking policymaking processes. [Princen \(2011a, p. 940\)](#), for example, writes: 'the high thresholds needed for decision-making in the EU (many institutions, qualified majority voting or unanimity in the Council) make it risky to stir up too much controversy. Controversy is likely to mobilize opponents, who in the EU system can relatively easily block policy initiatives'. [Hoskyns \(1996, p. 168\)](#), in her seminal work on women, law and politics in the European Union, asks why the EU had, by 1996 when her book was published, developed a women's policy, but not a common immigration and a race relations/anti-racism policy. She argues that immigration and race relations were too controversial, generating conflict between the Commission and the member states and within the European Parliament. Member state governments blocked any expansion of the Community's remit in areas that were sensitive, limiting them, at most, to intergovernmental coordination. More recently, [Kronsell \(2012, p. 31\)](#) has argued that the Commission's 'consensus-seeking character means that activist organisations presenting controversial or more conflicting positions do not stand much of a chance of having their voices heard.'

Certainly in the case of prostitution, there is evidence to suggest that member states disagree strongly. In 1999, Sweden became the first European country to criminalise the purchase of sexual services and, in the same year, the Netherlands legalised all aspects of the sex industry, including pimping and brothel owning ([Outshoorn, 2004, p. 6](#)). In just one year, prostitution policy in EU member states became starkly and visibly polarised. However, the exclusion of controversial issues from the EU policy agenda is not absolute, and policies unpopular in some member states have been successfully introduced. Examples of controversial legislation that has been passed include environmental policies, many of which are in the form of directives and many of which are met with very different views from member states ([Nugent, 2017, p. 198](#)). Sustainable development, climate change and energy security are all persistent policy problems that can pose serious challenges to the EU governance system ([Candel, Breeman, & Termeer, 2016, pp. 525–6](#)), but they nevertheless remain on the EU policy agenda. The controversial nature of the issue cannot on its own be taken as a satisfactory explanation for policy silence on prostitution, although it could be a contributory factor. The member states are divided and, for those with legalised sex industries, economic interests are at stake ([Elman, 2007](#)). It is certainly the case that less divisive issues have been separated from the issue of prostitution itself and legislated upon quickly and decisively. Such is the case for trafficking in human beings, and child prostitution and pornography.

Asserting that the EU cannot act on prostitution because it falls

outside its area of competence is the most frequent reason given for prostitution's exclusion from the EU agenda, as will be demonstrated later in this article. [Joyce Outshoorn \(2018, p. 1\)](#), for example, states that it is unsurprising that the EU has policy on trafficking in human beings but not on prostitution, because the transnational phenomenon of trafficking in human beings falls within the competences of the EU, whereas prostitution remains an issue for member states.

The EU's competence to act in any policy area is determined by the Treaties, which set out the competence of each institution in relation to the others and the competence of the EU in relation to the member states ([Nugent, 2017, pp. 105–6](#)). However, the EU's competence is not fixed. It has expanded with successive treaties to encompass a single market and everything associated with the free movement of people, goods, services and capital. New issues have been brought to the agenda, often by successfully framing them in such a way that they appear inextricably linked to the concerns of the EU and primarily to the single market ([Princen, 2011b, p. 936](#)). Is it possible to continue arguing that prostitution is inherently outside the EU's competence, when there are so many ways that it could be linked to EU concerns?

### EU agenda setting

A large literature contributes to our understanding of how new issues arrive on the EU policy agenda. A distinction is made between the governmental agenda – all issues that are being discussed without any concrete proposals for decision making – and the decision agenda – those issues on which active decisions are being made ([Princen, 2011a, pp. 108–9](#), [Princen, 2012, p. 35](#)). It is more difficult for actors to influence the EU's decision agenda than its governmental agenda ([Buonanno & Nugent, 2013, p. 103](#); [Princen, 2012, p. 36](#)). For the purposes of this article, an issue is deemed to be 'on the EU agenda' when it receives serious attention from the agenda setting and decision making institutions (the Commission, the Council and the European Parliament) ([Princen, 2012, p. 29](#)). It is possible for one of the institutions, for example, the European Parliament, to debate the issue and even to pass a Resolution on it without it being on the broader EU agenda.

Agenda setting involves the interaction of some or all of the following: actors, frames, institutions and political environment. Actors include institutional insiders, as well as social movements and advocacy coalition networks. They attempt to push their issue onto the EU agenda by targeting receptive individuals and institutions; mobilising support; and framing the issue in such a way that it resonates with EU priorities and concerns ([Princen, 2012, p. 29](#)). Framing means selecting for attention a few salient features and relations and organising them in a coherent manner to describe what is wrong with the current situation and what should be done about it ([Schön & Rein, 1994, p. 26](#)). Feminist agenda setting scholars have been particularly interested in activism and mobilisation as ways of bringing new issues onto the political agenda ([Joachim, 2007](#); [Kenney, 2003](#); [Montoya, 2013](#); [Randall, 1987](#); [Weldon, 2002](#)). They have shown, for example, that trafficking in human beings was brought onto the EU agenda by a coalition of actors, mobilising frames which brought the issue clearly into the remit of the EU ([Askola, 2007](#); [Locher, 2007](#)).

The institutional framework influences which issues arrive on the agenda and which are blocked ([Princen, 2007, p. 22](#)). The EU has a particularly complex institutional make-up, producing both opportunities and constraints. The number and variety of institutions means that policy advocates can normally find individuals or committees or bodies willing to pay attention to their attempts to place the issue on the agenda ([Princen, 2011b](#)). However, there are numerous veto points and it is difficult to move from discussion to decision ([Princen, 2011b](#)). Institutions, in the sense of the formal and informal rules of the game, can shape change or produce resistance ([Mergaert & Lombardo, 2017](#)) and can contribute to certain issues being seen to fall inside or outside the policy remit ([Gains & Lowndes, 2015, p. 5](#)). Feminist scholars have

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