

# Addressing demand in the context of trafficking in the domestic work sector: perspectives from seven European countries

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## About the project

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Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in it or protecting the human rights of victims. However, European countries are increasingly exploring ways in which to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves. **DemandAT** aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

**DemandAT** takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, in order to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking as well as demand-side policies of selected countries are examined, in order to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- Phase 1: Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.
- Phase 2: Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

## Project Facts

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**Abstract**

This report examines the demand-side of trafficking in the domestic work sector based on seven country studies (Belgium, Cyprus, France, Greece, Italy, the Netherlands, and the UK). The report i) provides an overview of the phenomenon of trafficking in domestic work, ii) examines the factors influencing the demand in the context of trafficking, and iii) discusses key challenges in responding to and tackling this issue.

The paper argues that measures addressing the demand-side (employers/labour market) can hardly be separated from tackling the 'supply' side, namely addressing the workers' situations. Domestic workers face vulnerabilities to exploitation: the work is performed in private homes within intimate relationships characterised by dependency and power imbalance, very often within informal and live-in arrangements. Some policies may also foster the precariousness of migrant domestic workers. Preventing trafficking from occurring and discouraging inappropriate demand includes the reduction of vulnerability to abuse on the side of workers and the limitation of the opportunities for exploitation on the side of employers. Thus, a holistic approach must be adopted to address the demand-side of trafficking. Establishing stronger regulations for domestic work is crucial, but it is not sufficient without simultaneously seeking ways of empowering domestic workers and fostering change in social norms and employers' behaviour, beliefs, and attitudes that tend to undervalue domestic work.

## 1 Introduction

Amidst the constant increase of interest and mobilisation of efforts in combatting trafficking, greater attention is being given to all forms of trafficking, including trafficking for labour exploitation. In the EU, the recent evolution is illustrated by more cases of trafficking in human beings (THB) for labour exploitation being investigated (Europol 2016), new tools for combatting this form of THB (Government of The Netherlands, 2016), and by the rise in the number of identified persons trafficked for labour exploitation (Eurostat, 2013, 2014, 2015)<sup>1</sup>. However, the anti-trafficking response addressing labour exploitation is less advanced (compared to measures taken to tackle trafficking for sexual exploitation) and unevenly developed across EU member-states (MS) (Government of the Netherlands, 2016). There are still gaps in knowledge and expertise and a weak inclusion of key actors (e.g. labour inspectors, trade unions, etc.). Domestic work is one of emerging areas of research concerning the issue (MIGS 2015).

On one hand, the domestic work sector is recognised as being highly vulnerable to exploitation and has been identified as one of the main sectors where human trafficking occurs worldwide (ILO, 2012), as well as in the EU member-states (FRA, 2015). On the other hand, there is very limited research examining trafficking for labour exploitation in the domestic work sector (Harroff-Tavel & Nasri 2013; HRW 2006; OSCE 2010, 2014). Away from the public eye, in private households, cases of THB are hardly detected (OSCE 2010). This invisibility limits the scope of actions taken to tackle trafficking in this sector.

Trafficking in domestic work involves issues beyond the labour market given that it includes family-based arrangements. Indeed, domestic work occupies a unique position at the intersection of the public and private realms, the labour market and the family. Also, given the roles of the state and welfare policies in shaping the employment arrangements of domestic workers, it is a three-sided intersection: market, state, and family. This entails multifaceted challenges when examining measures addressing trafficking, including the demand-side. To understand the dynamics of trafficking in domestic work one needs to include in the discussion the complex relations between the private household and the worker, and thus go beyond the economic dimension of the labour markets.

The traditional views on trafficking tend to portray this issue as being closely related to criminal networks and occurring outside of the mainstream economy (Rijken, 2011). The concerns regarding labour exploitation put these perceptions into question, given that labour exploitation does not only involve organized crime or criminal organizations. THB occurs in global supply chains, and in many sectors of the economy. Domestic work pushes this questioning further, incorporating into the discussion the family and private households of different socio-economic backgrounds. THB in domestic work happens at the individual and family levels.

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<sup>1</sup> While the data available suggest an increase in numbers, this information has to be used with caution, given that an increase may also reflect more awareness toward the issue, rather than an increase in its occurrence (Team work, 2016).

This report discusses the issue of the demand-side of THB in domestic work based on seven different national contexts in Europe: Belgium, France, Greece, Cyprus, Italy, The Netherlands, and the UK. The research conducted in these selected countries had three objectives: to investigate the types of exploitative situations in domestic work (DW) that may involve trafficking; to examine the factors driving and shaping the demand in the context of trafficking; and, to examine the conditions that render exploitation possible and the gaps in policies. Ultimately, the research aimed at drafting a set of recommendations to tackle this specific form of human trafficking.

Employment of domestic workers is a widespread phenomenon in Europe. The demand for domestic workers has grown steadily over the last three decades and this trend is not expected to decline in the near future. Demand for domestic workers has been driven by multiple factors: increased number of women in the labour market; demographic changes such as an ageing population; and an abundant and flexible migrant labour force from central and eastern European as well as from Asian and African countries (Ambrosini 2013; Lutz 2008; Parreñas 2001; Roit & Weicht 2013; Cox 2006). Gaps and cuts in the public provision of care services (e.g. child care or care for the elderly) have also contributed to this demand, giving rise to an ‘invisible welfare’ (Ambrosini 2013) in which domestic workers fill the gaps of a formal welfare regime.

Yet, despite its economic and social importance, this sector remains undervalued. Domestic workers still face sub-standard working conditions, precariousness, and protection gaps compared to other labour sectors. Of course, not all situations involve exploitation and not all employment relationships are abusive. However, domestic work may face a broad spectrum of labour and human rights violations, from breach of the contract to low pay, verbal violence, living conditions contrary to human dignity, and human trafficking (MIGS 2015; OSCE 2010; FRA 2011, 2015; ILO 2012, 2013).

It is in this context of high demand for domestic work, which often takes place without a proper contract, that situations of trafficking occur. It is not easy to distinguish and determine when the demand for domestic workers relates to patterns of exploitation, including trafficking.

This comparative report has four main objectives:

- 1) Provide an overview of the phenomenon of THB in domestic work and discuss the key patterns and dynamics of exploitation;
- 2) Analyse the demand-side of this issue by examining the factors influencing and shaping the demand;
- 3) Present and discuss the key challenges in responding and tackling this issue, including considerations for the demand-side.

The analysis will be presented through three main sections. The first part of the report will outline the background by discussing demand in the specific context of THB in domestic work. Sections 4 and 5 will present the policies and legal frameworks in place at national level of selected countries, as well as the patterns and processes documented in situations of THB in domestic work. Section 6 will directly answer one of the core research questions: namely, what are the main motivations and factors shaping demand in the context of THB in domestic work. Finally, Section 7 will review and push further

the reflection on key challenges and gaps in current policy and legal frameworks in tackling THB in domestic work. This discussion will lead to the conclusions and some avenues of potential actions to be taken.

## 2 Research design and methodology

This report is based on seven national reports and draws on the analysis of the country study's results<sup>2</sup>. Also, desk research based on literature at European level and few interviews with European stakeholders and scholars were conducted for the purpose of this report. In this section, the methodology and research design will be presented along with the different sources of data collected for the national studies.

The research was conducted by a team of national researchers in Belgium, Cyprus, France, Greece, Italy, the Netherlands and the UK. This selection is not exhaustive and does not cover all the European countries where the issue exists, but it does present a range of distinct examples of national contexts. Indeed, the countries selected present a diversity of policies and regulations and, in that regard, are representative of the variances in regulating domestic work, migration for domestic work (van Hooren 2012; Murphy 2013b; Triandafyllidou 2013; Triandafyllidou & Marchetti 2015; Williams 2012) as well as in relation with the anti-trafficking national response.

### 2.1 Working framework and working concept

A first step in conducting this study was to provide a common framework for setting the parameters of the topic under study and clarifying the definition and scope of the key terms. This framework guided the research design for the national studies (Ricard-Guay 2016).

Drawing on the international definitions of the two topics at stake, namely domestic work and THB, the national research nevertheless used the terms according to national legislation when applicable or when there were distinct elements. According to the definition of domestic work (employment-based situations) established in the ILO domestic workers convention, 2011 (no 189)<sup>3</sup>, the common feature is 'work performed in or for a household or households', encompassing different categories of work arrangements (such as live-in or live-out, full/part-time, etc). This definition is useful given that it provides a broad definition and illustrates the diversity of types of tasks that may be involved (e.g. cleaning, care work, gardening, cooking, etc.). However, this study focused on situations beyond this constrained employment-based frame. When looking at human trafficking, we expand the spectrum of situations under study to also include child fostering and situations of THB for domestic servitude within family-based arrangements (including arranged marriages).

For the definition of trafficking in human beings (THB) the common ground for this study is the definition of the Directive 2011/36/EU on preventing and combatting

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<sup>2</sup> See the list of country reports in the reference list: de Volder, E. (2016); Palumbo, L. (2016); Maroukis, T. (2016); Camargo, B. (2016); Angeli, D. (2016a); Angeli, D. (2016b); Levy, F. (2016)

<sup>3</sup> Convention Concerning Decent Work for Domestic Workers, International Labour Organization (ILO), PRNo.15A, 16 June 2011, available at: <http://www.refworld.org/docid/4e0d784e2.html>



trafficking in human beings and protecting its victims<sup>4</sup> (hereafter EU anti-trafficking directive). The tripartite definition encompasses the act (e.g. recruitment, transportation, harbouring a person), the means (e.g. threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of authority) and the purpose—, that is exploitation. Elements of all three components have to be present for a situation to qualify as human trafficking. In the list of means of coercion established in the EU anti-trafficking directive, the abuse of a position of vulnerability is further defined as ‘a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved’ (Art. 2.2). This dimension is particularly important in cases of THB in domestic work, as will be discussed in the report.

THB in domestic work may be referred to as: THB for forced labour, THB for servitude, and slavery and slavery-like practices. In some countries there exists a stand-alone offence for these separate crimes (meaning non-trafficking situation of forced labour or of servitude). Key cases brought to the European Court of Human Rights (ECtHR), related to THB in domestic work, were based on the violation of article 4 regarding servitude and/or forced labour. **Servitude is a specific and aggravated form of forced/compulsory labour** (COE & ECtHR, 2014, *C.N. v France*) and is associated with the **obligation to live in another person’s home** (*Siliadin v France*, 2005: § 123)<sup>5</sup>. The key distinction between forced labour and servitude “lies in the victim feeling that their **condition is** permanent and that the situation is **unlikely to change.**” (COE & ECtHR 2014: 7; COE & ECtHR 2012: 6). While slavery is internationally defined as being related to the notion of ownership over another person, it is often conflated with THB, without clarification if the element of ownership is present or not. Concerning domestic work, the term ‘domestic slavery’ is sometimes used and encompasses different forms of THB within the ‘domestic realm’: arranged marriage, au pair, domestic workers, etc.<sup>6</sup> The ILO Convention No. 29 (Forced Labour Convention) broadly defines forced labour as: ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.’ (Art.2). Many of the practices and means involved in forced labour may also be present in situations of trafficking such as: deception, threats, use of physical violence, manipulation of wages, etc. The ILO definition of forced labour does not explicitly include the element of recruitment or transport/transfer. The ILO “does not consider relevant how a person ended up in a forced labour situation, whether through trafficking or other systems (e.g. hereditary slavery)” (Hoff & McGauran 2015: 24).

However, despite the existence of international definitions of trafficking and forced labour, there is a conceptual ambiguity, for scholars and practitioners alike, between THB for labour exploitation and labour exploitation more broadly, including severe forms of labour exploitation. The contentious debate on the definition of trafficking is far from new and is, indeed, recurrent in the literature on trafficking. This lack of definitional clarity has to be accounted for in research and in the choice of research category.

<sup>4</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victim.

<sup>5</sup> Drawing on the report from the Commission in the case *Van Droogenbroeck v Belgium*, in the *Siliadin v France* court makes the distinction between servitude and forced labour by the fact that in case of domestic servitude, there is also the element of obligation to live on the other’s property and the impossibility to change his status (see Rapport de la Commission européenne des Droits de l’Homme, Request 7906/7, 9 July 1980, par. 79)

<sup>6</sup> On that matter, it is interesting to note that already in 2004, the Committee on Equal Opportunities for Women and Men of the Council of Europe, had prepared a report on ‘Domestic slavery: servitude, au pairs and mail-order brides’ (2004)

Thus, in line with what is being proposed by scholars in the field, this study embraces a definitional lens based on the notion of a continuum of exploitation (Anderson 2007; McGrath & Strauss 2015; O'Connell-Davidson & Anderson 2006; Skrivankova 2010) and relies on the importance of looking at a wider spectrum of severe forms of exploitation (FRA 2015) along which situations of trafficking may occur. Such a continuum includes situations of labour exploitation that may fall under civil/labour law to more severe forms which then fall under criminal law, including situations of trafficking. The use of the concept of continuum of exploitation is highly relevant when embarking on a study of a still ill-defined concept such as trafficking in the context of domestic work and for which there are important variations in the interpretation of the definition and scope of the criminal offence of THB (Psaila *et al.* 2015). The study explored different situations of severe exploitation that may not always fall under the narrow identification of cases of trafficking by national authorities.

## 2.2 Research design

In order to identify all possible situations of THB in domestic work, the research strategy for this study was to examine cases of trafficking happening in the following typology of situations:

- Migrant workers, unpaid (or little paid); debt-financed migration,
- Migrant workers from one foreign country to another accompanying their employers to a destination country:
  - Employer with diplomatic status
  - Au pair
  - Child trafficking for domestic work

The list was based on different situations in which THB had been documented in existing research (OSCE 2010). Given that the great majority of domestic workers in Europe are migrants, the study mainly focused on situations involving migrant domestic workers. The strategy was to use this typology as a point of departure, given that it is broad but not exhaustive nor exclusive, meaning that this list could be expanded according to the cases reported while conducting the research.

## 2.3 Data collection

The national-level research presented in the country reports was based on desk research and qualitative interviews. Desk research comprised of the review and analysis of multiple sources of data, including literature, legal and political texts, and case law. Literature reviewed included academic research as well as reports issued by governments, NGOs, and international organisations. Furthermore, special attention was given to analysing national legislation and relevant policy texts, namely: migration policies, anti-trafficking laws and policies, as well as, labour law or specific regulations applying to the domestic work sector. Thus, multiple sets of policies or legal frameworks interacting with the topic have been included in the study. Finally, desk research also included case law analysis. In each country, according to the existing cases of THB in domestic work, case law review was conducted on past and current cases of THB in domestic work.

Finally, data collection included individual and in-person interviews with key stakeholders at the national level.

### **Interviews with stakeholders**

In each country, between ten and fifteen interviews<sup>7</sup> (audio-recorded) were conducted in person with key stakeholders working in different sectors. The objective was to include a broad cross-section of the different work experience/background and perspectives on the phenomenon being studied. Stakeholders from the following sectors were interviewed for the research:

- Judicial authorities
- Lawyers with expertise in the field
- Policymakers and/or representatives of government institutions
- NGOs providing support to trafficked persons
- Trade unions, labour inspectors (or labour inspection agency)
- Law enforcement
- Experts (including researchers but also specialised journalists for instance)

In total, 104 interviews were conducted between March and August 2015. The sampling procedure and the interview guide were common for all countries.

<b>Country</b>	<b>Number of interviews</b>
<b>Belgium</b>	16
<b>Cyprus</b>	13
<b>France</b>	16
<b>Greece</b>	16
<b>Italy</b>	23
<b>The Netherlands</b>	15
<b>UK</b>	10
<b>Total</b>	<b>104</b>

In addition to the data collected at the national level, some interviews (n=5) with stakeholders and scholars working at the European level were also conducted.

### **Case law review**

The case law selection was made according to each distinctive national context and depending on the access to and the existence of cases. The common criteria in selecting cases was to choose those with the greatest relevance to this study's objectives, as well as cases that would contribute to illuminating gaps in understanding the process of trafficking in domestic work. Thus, where no or few cases specifically related to domestic work were found, the study also looked at cases of trafficking for labour exploitation or landmark decisions that had a significant impact on the way the human trafficking offence is understood. From this perspective, decisions by the European Court of Human Rights (ECtHR) have also been considered when relevant.

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<sup>7</sup> Exception of Italy, in which 23 interviews were conducted in total.

The analysis of legal proceedings not only offers insight into tangible obstacles and challenges in applying the law with regards to the criminal offence of human trafficking, but also provides information on how trafficking is understood and how its definition is interpreted.

### 3 Demand in the context of trafficking in the domestic work sector

*Trafficking feeds into a global market that seeks out cheap, unregulated, and exploitable labour and the goods and services that such labour can produce.  
(Gallagher & Skrivankova, 2015: 47)*

The demand-side of THB in domestic work will be analysed along two main axes: the factors that influence and shape the demand; and, how demand is addressed through regulatory tools, policies and laws, or any actions. This section discusses the conceptual and analytical lens that will be used.

Tackling demand is part of the larger umbrella axis of action of ‘P’revention, one of the three pronged lines of actions (the 3 ‘P’s) established by the Palermo protocol.<sup>8</sup> Prevention is understood as tackling the (root) causes of trafficking, which includes 1) the vulnerabilities of potential victims; 2) the demand for the goods or services produced by trafficked persons; and, 3) the factors related to the environment that render trafficking possible or within which traffickers and exploiters may operate (Gallagher & Skrivankova, 2015). While addressing demand is an international obligation—included in the Palermo Protocol, the Council of Europe Convention (Warsaw Convention)<sup>9</sup>, and the EU anti-trafficking directive—it is not a well-defined notion or concept (Cyrus & Vogel, 2015; Gallagher, 2010). From a top-down approach (Rogoz *et al.* 2016), EU member-states have only recently and progressively made efforts to address demand in their anti-trafficking agenda. However, the notion is not well understood and often focuses on the sex industry only. Furthermore, there is no clear understanding and indication of *how* to address the demand-side in practice or through what types of measures.

For this study, the definition and conceptualisation of the notion of demand builds mainly on the work proposed by Cyrus and Vogel (2015) and also on the work of other scholars (Gallagher, 2010; Gallagher & Skrivankova, 2015) and international reports (ICAT, 2014; Anderson & O’Connell-Davidson 2003).

#### 3.1 The applicability of the notion of demand

Within the economic framework, **demand refers to the willingness and ability to buy a particular commodity, namely goods and services** (Cyrus & Vogel 2015). It requires to identify the ‘markets’—composed of buyers and sellers—and clarify *who wants to buy what* (Cyrus & Vogel 2015). Cyrus and Vogel (2015) stress that there is no demand for trafficking or forced labour *per se*, given that trafficking is not a commodity that can be

<sup>8</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UN General Assembly 15 November 2000 (Palermo Protocol).

<sup>9</sup> Council of Europe Convention on Action against Trafficking in Human Beings, CETS No.197, Warsaw, 16 May 2005

bought or sold. It is rather demand for services that are provided in exploitative conditions. In practice though, as it is difficult to identify the threshold beyond which trafficking occurs, it is equally challenging to distinguish or delineate demand in a non-trafficking context from demand in a trafficking context. The applicability of this concept is thus quite challenging, and its relevance can be put into question.

In the domestic work sector, the services or work that are bought relate to care and domestic services and work (see the ILO domestic workers convention's definition above). The demand stems from the private household that is the client and receiver of the service.<sup>10</sup> The private household may also be the direct employer of the domestic worker. This is a distinctive feature of domestic work: in certain situations, client and employer may be the same person or within the same household. In contrast to a consumer who buys a given good resulting from trafficking for labour exploitation, the client of domestic work has a direct contact with the person being exploited.<sup>11</sup> There are also situations in which an employment agency is the direct employer of the domestic worker. Agencies can play an intermediary role by facilitating the recruitment and hiring process of domestic workers, thus creating a triangular dynamic between the domestic worker, the agency, and the private household. In that perspective, agencies may also create a demand for labour or services to sell to private household.

Another distinctive element is that unlike other forms of THB for labour exploitation and/or forced labour in which increasing profits is a strong driver; domestic work is not an activity that generates profits. Nevertheless, for private households there is an economic value to domestic work and financial gain from spending less. Of course, profit is a driver where there is involvement of agencies or intermediaries who charge fees to the domestic worker or profit from selling the domestic workers' services to a private household.

The demand itself, as defined previously, must be distinguished from the factors influencing and shaping the demand (Cyrus & Vogel 2015). Factors will influence the **ability** to purchase as well as the **willingness**. Ability refers to the price and the economic capacity from the individual to buy. Willingness relates to complex and subtle factors such as norms, preferences, cultural and social factors – such as the (under)valuation of domestic work – as well as the social acceptability of certain practices (ICAT 2014). It also relates to the perception of low risk of being caught (in other words impunity) (ICAT 2014). **As this paper will further illustrate, understanding factors related to the 'willingness' is quite useful and relevant in the context of THB in domestic work.**

While using the concept of demand in an economic context is useful in clarifying different components ("who buys what?", "demand from whom?", capacity versus willingness), it also has limitations—some of which are specific to domestic work.

One key shortcoming is that an economic definition of demand is not best suited to weighing **interpersonal and social relations**, including labour relations. Within labour

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<sup>10</sup> The term 'private household' includes the person(s) receiving the care, and the person managing the employment relationship, whether they are the same or not.

<sup>11</sup> According to the list of markets proposed by Cyrus and Vogel (2015: 24), there are two markets at play when dealing with domestic work/care: the labour market, where the private household or an agency is the employer, and the personal services market, in which the private household is the client.

relations, as noted by Cyrus and Vogel (2015), using the demand concept based on a market terminology is useful when looking at *before* and *entry* into the work relationship (and also the exit) (Cyrus & Vogel 2015)—in other words the recruitment and employment process. However, it is quite inadequate for understanding the relationship's development and evolution. This conceptual remark is important in the study of the demand-side of THB in domestic work. Indeed, the core of the dynamics of trafficking in domestic work rests on the complex relationship between the private household and the domestic worker. Also, as it will be highlighted in Section 4, some exploitative situations reported in the study were characterised by a deterioration of the relationship toward a situation that qualifies as human trafficking.

Beyond the 'labour relationship', there is an intimacy characterizing the 'interpersonal dimension' of relations between the private household and the domestic worker—whether it is an employment-based or a family-based arrangement. This intimacy is triggered by the type of work being performed—such as caring for someone—and also by the setting, which is a private home. This is crucial in understanding the dynamics of power imbalance that permeate domestic work and how it may evolve to the detriment of the domestic worker thus obscuring the presence of exploitation or trafficking.

The interpersonal dimension can be further differentiated between the family-based arrangement and the other forms of relationships that are not directly within a family but nevertheless involve rhetoric of 'like one of the family'. This dynamic has already been examined in the literature on domestic work (Anderson, 2000; Bakan & Stasiulis 1995; Bott, 2005; Ehrenreich & Hochschild, 2004). The rhetoric of the domestic worker being 'like one of the family' can be used and invoked to ask for more from the worker, including tolerating low standards. This rhetoric, however, falls short in providing equal rights.

Domestic work raises a specific challenge in the use of a market-based and economic approach to demand in the context of THB: if it is feasible to include the non-employment relationship within this conceptual lens of analysis and how to do this? The challenge is twofold: addressing the dimension of the interpersonal relationship and addressing the intersection of family and employment. A definition of demand based on demand's economic dimension fails to capture the interplay between the relational dimension (private) with the political and economic context that frame labour market dynamics and thus the parameters of demand. The concept of demand does not allow a complete understanding of all situations of human trafficking in domestic work, although it is more easily applied to those that clearly fall under a labour market dynamic. Indeed, it is conceptually challenging to address issues linked to child fostering or arranged marriage through the demand prism, as it is even to address family arrangements of providing a roof and food in exchange for performing domestic chores. These scenarios do not represent economic markets *per se*.<sup>12</sup>

Interestingly, these questions bring to the fore some important discussion that took place within the domestic work literature. Feminist scholars in the field of domestic work have argued for labour law considerations to be extended to include unpaid

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<sup>12</sup> Yet, these situations often represent an exchange between domestic chores and a promised access to education (in cases of children) and to a regularisation of the migration status. There is still a 'traded' service, albeit sometimes exchanged for material benefits other than salary.

domestic work (thus when being outside an employment-based relationship) (Fudge & Fredman 2013), which counteracts the gendered division of labour and the perception that domestic chores are outside of marketization and commodification (Ungerson 2003). Despite those challenges, and building on the work of these feminist scholars, **this paper argues that the ‘private and non-employment’ realm must be included in the discussion on demand in the context of trafficking rather than left out or dealt with separately.**

Additionally, the fact that the private household constitutes the **working environment** further complicates the appreciation of demand. It blurs the distinction between employment- and non-employment-based relationships, the private matters (outside of marketization and commodification) and the labour market. Demand then becomes confused with needs (need for care and domestic work). But we could still differentiate some ‘preferences’ that shape the demand and may also influence the exploitative nature of the relationship. There are preferences for vulnerable workers who will accept lower working standards and lower pay—and this appears hardly dissociable from demand in the context of trafficking (even if not all exploitative situations constitute trafficking).

Nonetheless, in situations involving intermediaries acting as exploiter—for example, recruitment and employment agencies—the notion of demand is much more clearly applicable. It affects mostly the recruitment aspect of the labour relationship. Agencies that act fraudulently and exploit workers are driven by a clear incentive to maximize profit. Those agencies may be involved at different moments of the recruitment process, from the countries of origin or destination and sometimes in transit countries.

As it will be further discussed in this paper, beyond the challenges that we encountered in looking at the demand-side of THB in domestic work, integrating this lens of analysis also presents **opportunities**. Looking at demand allows anti-trafficking efforts to move beyond the attention given to the vulnerability of certain groups or situations and include in the discussion the responsibility and accountability of those profiting from trafficking (ICAT 2014). Demand can be used to adopt a more comprehensive and holistic approach to anti-trafficking action. From that perspective, it gives importance to targeting societal norms, values, and attitudes that contribute to creating conditions that foster exploitation and do not prevent trafficking from occurring. It also brings to the fore the accountability of the exploiter. This study shows the lack or absence of recognition of responsibility in case of labour rights violations by employers. In certain cases reported during the research, the exploiter does not even perceive the ‘employment’ nature of the relationship. Indeed, it is perceived as a favour, as a form of help from the private household perspective rather than as an employment situation.

Furthermore, as underlined by UN Special Rapporteur on Trafficking in Persons Maria Grazia Giammarinaro in a public keynote speech (Giammarinaro, 2015), it is important to emphasise the context specifics of any form of trafficking and of the sector where it occurs in order to benefit from the added-value of the use of the concept of demand. Thus, interpersonal and social relations must be included in the discussion and analysis of demand in the context of THB in domestic work.

In order to do so, the scope of the study shall not be limited to labour market, and labour rights violations, but rather encompass a broader human rights approach, as further explained below.

### 3.2 How to tackle demand through policies? A human rights approach

Regarding policies and measures, Cyrus and Vogel (2015) suggest distinguishing between demand-side measures and alternatives to demand-side measures. Demand-side measures explicitly target demand for the final good or commodities. Alternative measures do not directly tackle demand, but contribute nevertheless to influence the context and conditions under which trafficking may occur. For example, measures intended for reducing worker vulnerability or employers' compliance with labour norms would be considered alternatives. As this report will illustrate, few of the measures identified in the study address demand explicitly and thus most of measures can be categorized as alternatives measures.

Furthermore, the report uses the **typology of regulatory tools** and policy intervention for steering behaviour proposed by Boswell and Kyambi (2016). Boswell and Kyambi distinguish between four categories: command and control approach, market-based measures, peer-pressure, and design. This paper focuses on the first three types of policy interventions for analysing the different sets of measures affecting trafficking in DW (Section 5). The more traditional **command and control** approach relies on sanctions in order to ensure compliance with the law (e.g. criminal offence of trafficking, labour law). The **market-based mechanisms** relate to incentives (often economic) that are given in order to change practices.

In response to the conceptual challenges discussed above, a human rights approach appears relevant and useful for this study. This approach is in line with the research results. The empowerment of workers and the enhancement of domestic workers' rights (both labour and human rights) cannot be dismissed within a demand-side analysis of trafficking. Policies (or the absence of thereof) that increase workers' vulnerability (given the lack of protection or its inaccessibility in practice) impact on the demand, policies influence the parameters, possibilities, and potential for a certain supply (namely vulnerable, cheap and in a disadvantaged position leading them to accept low-standard working conditions). In sum, there is a non-separable and reciprocal relationship between demand and supply. Also, as the report will show, the informality of recruitment and working arrangements prevail in situations of trafficking in the domestic work sector. The informality of the process, especially when it rests on a family arrangement, escapes a labour rights' approach.

A human rights approach is relevant when considering the precariousness of domestic workers given that it precisely **challenges the division between public and private** (Albin & Mantouvalou, 2012). A human rights approach also recognises the central link between demand and discrimination, which includes cultural attitudes (regardless of their irregular or regular status) (Gallagher & Skrivankova 2015: 48). Domestic workers face multiple forms of discrimination: gender discrimination and racial or ethnic discrimination as migrants (FRA 2011). **The reminiscence of the perception of domestic work as being chores undertaken by women within the family and being unpaid still shape, to varying degrees, today's views on domestic work.**



**Discrimination will shape the ‘willingness’ and preferences for certain types of workers. The way one form of labour is socially constructed (and valued) shapes the initial parameters of any given demand.** Additionally, undocumented migrants are more vulnerable to abuse and employing workers who are irregular may further facilitate their exploitation.

**A human rights approach connects the dots between an economic perspective focusing on markets and the private sphere.** Also, a human rights approach is a reminder of the importance of not violating established rights. While prosecuting traffickers is essential, the rights of the victims, even when undocumented, must be protected.

## **4 THB in domestic work: main observations from country reports**

It is difficult to provide a picture of the phenomenon given the limited number of documented cases to draw upon, and also given the diversity of cases. The settings or circumstances within which THB in domestic work may occur are multiple: diplomatic household setting, regular or irregular migrant worker, au pair programme, or family-based arrangements (child fostering or arranged marriage). This section will highlight some common processes that came out across the national studies as well as some emerging areas in which THB was documented.

### **4.1 THB in domestic work: low numbers or scarce data?**

Accessing reliable data on THB cases is already challenging—even more so when looking at specific sectors such as domestic work. The available official data do not provide a comparative baseline to assess the scope of THB in domestic work across the seven countries. The sources used in each national context differ.<sup>13</sup> Further, data collection mechanisms are far from being uniform across the countries. The definitions used are different, and there is often no detailed and disaggregated data for the different forms of exploitation. Generally, the forms of trafficking are divided between labour or economic exploitation and sexual exploitation<sup>14</sup> (there are also additional categories, such as begging, forced marriage). When data for THB for labour exploitation is provided, it is not disaggregated by labour sector in each country. For example, looking at domestic work specifically, cases may be counted as THB for labour exploitation and/or economic exploitation. Cases can also be counted under another category such as domestic

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<sup>13</sup> In Belgium for example, according to the country report (Camargo 2016), data comes from six different sources and are not systematised: the National Police, the Social Inspectorate, the General Prosecutors' College, the Immigration Office, Specialised Centres and the Department of Criminal Policy (convictions) at the FPD of Justice. In Italy, there is no uniform identification system for victims of trafficking, but the Department for Equal Opportunities (DEO) (of the Italian Presidency of the Council of Ministers) provides data regarding the number of victims who have received assistance. In the UK, since 2009, there are statistics provided from the National Referral Mechanism. In the Netherlands, the organization Comensha registers and supports victims also provide data to the Bureau of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (BNRM). In France, there is no detailed official data providing information on labour exploitation in DW, thus the country report relies on information provided by two key NGOs. In Greece and Cyprus, official police statistics provide data on trafficking based on the number of criminal investigations related to the offence of trafficking in that sector.

<sup>14</sup> In Cyprus, data are classified according to the following three forms of trafficking: sexual exploitation, labour exploitation, and forced marriage. The main labour sectors under 'labour exploitation' are: agriculture, animal farming, and domestic work. In Belgium, according to the legal definition, there is 'economic' or 'sexual exploitation', and other forms of exploitation such as obligation to beg, to commit a crime, organ trafficking or child pornography.

servitude in countries like the UK where such a specific category exists. In the Netherlands, another specific category, 'households as employers' (de Volder, 2016), is used for the registration of human trafficking cases<sup>15</sup>. Another difficulty with existing data is that data concerning severe forms of labour exploitation may be compiled without making a distinction between situations involving elements of THB and non-THB situations (this is the case in Italy, see Palumbo 2016).

The available data thus cannot be interpreted as representing the scale or the prevalence of the phenomenon in the countries. The countries that have registered higher number of identified cases of THB for labour exploitation most likely do not represent countries in which THB is more prevalent, and these numbers presumably suggest a better national mechanism for identification and data collection. For example, the sharpest contrast in the number of cases is between the UK and Greece. In 2009, the UK established a National Referral Mechanism (NRM). Trafficking cases are identified through this policy framework based on referrals, and once trafficking cases are confirmed, the mechanism ensures that victims receive support and protection. In 2014 alone, there were 305 cases of domestic servitude identified by the NRM (from a total of 2,340 referrals for THB). In Greece, only one case has been reported since 2002, when Greece began collecting data on THB for labour exploitation.

<b>Countries</b>	<b>Source of data</b>	<b>Numbers of cases</b>
Belgium	Federal Social Inspectorate (ECOSOC)/ Brussels region	Estimates (not official) for Brussels region only: Maximum of <b>5 cases per year</b> of THB for labour exploitation in the domestic work sector
Cyprus	Cypriot authorities	2011-mid 2015: <b>5 cases</b> of trafficking in domestic work investigated by the police
France	NO DATA	NO DATA
Greece	Police data	2015: 1 officially registered case (ongoing)
Italy	Department of Equal opportunities <sup>16</sup>	2013: 7 victims of domestic servitude 7 cases of labour exploitation in the sector of services to the person 2014: 2 victims of domestic servitude 1 cases of labour exploitation in the sector of services to the person
The Netherlands	Coordination Centre for Human Trafficking (CoMensha) (NGO, official registration for the government)	2014: A maximum of 37 registered victims who fall under the category of trafficking victims who had households as employers'
UK	National Referral Mechanisms	2013: 186 victims of domestic servitude 2014: 305 victims of domestic servitude

<sup>15</sup> Comensha indicated that a victim might fall under the category of 'other forms of services' but when any reference is made to domestic chores, this category will not be used (de Volder 2016: 7).

<sup>16</sup> Based on the system of collection of data on trafficking called SIRIT, and which lies on the number of victims who benefited from the assistance programmes from the government.

*Source: See Annexe 1: List of Country Reports and Policy Briefs. All data was cited in country reports.*

When disaggregated data is available regarding labour sector or form of exploitation (such as domestic servitude), the proportion of cases of THB in domestic work is similar: **the share of domestic servitude in cases of THB for labour exploitation is approximately 10-13 per cent in the UK in 2012-2014 and 11 per cent in Italy in 2013-2014; in the Netherlands, 10 per cent of the victims of exploitation outside the sex industry worked in households in 2013, a figure that rose to around 14.3 per cent in 2014.**<sup>17</sup>

Despite differences in the number of cases, the country reports suggest that there is an under-identification of situations of trafficking in the domestic work sector. On one hand, there is a low number of identified cases which raises questions as to whether such cases are sufficiently identified or are being dealt with under different legal provisions. On the other hand, there is a gap between the number of victims encountered by NGOs providing assistance and the number of victims officially registered by national authorities. The interviews with stakeholders suggest that the majority of domestic workers in situations of trafficking will prefer not to disclose their case to the authorities and remain invisible.

## 4.2 Patterns and situations in which THB occurs

For this study, in order to get data on cases of THB in domestic work, national researchers relied not only on official statistics (when available), but also on information provided by NGOs, national experts and key stakeholders and on the cases reported during interviews.

Cases were reported in the country reports for all the situations listed in the provisional typology proposed in the research design (Section 2.2). Additional scenarios were reported too, such as arranged marriages and mixed forms of exploitation (namely labour exploitation and sexual exploitation) and, scenarios that were not foreseen initially, such as situations involving nationals (non-migrants).

The specific contexts of each country shape certain patterns or render more prevalent certain paths for migrant domestic workers to the country (e.g. through the visa regime and placement agencies in Cyprus) and certain working arrangements. For example, in Belgium, given the high presence of international organisations, especially in Brussels, the number of domestic workers employed by diplomatic households is higher than in other countries (Camargo 2016). Also, in the UK and in Cyprus, the tied-visa programme (described in section 5) raises concerns regarding trafficking (Maroukis 2016; Angeli 2016a). In Cyprus, the study results suggest that the main route leading to situations of THB in domestic work is the misuse of the legal visa regime within which employment agencies play a central role and sometimes engage in abusive and fraudulent practices (Angeli, 2016a). This point is discussed further in this section.

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<sup>17</sup> It was noted in the country report that between 2012 and 2013, there was a notable increase in the share of cases of THB in private households as a percentage of the total number of victims.

With regard to the type of work, the great majority (if not all) of cases of severe exploitation and trafficking in the sector concern **situations of live-in domestic workers**. Within domestic work as a labour market sector, it is useful to distinguish among different types of working arrangements, notably live-in, live-out, self-employed or not, different types of tasks e.g. including paramedical/nursing care for invalid persons. These categorizations are much less useful, however, in relation to trafficking in domestic work so this report focuses specifically on live-in arrangements which can give rise to cases of trafficking.

Live-in arrangements involve a range of tasks and work: childcare, care for an elderly household member, care for a disabled member of the family, and different cleaning and domestic chores. In Italy, one type of work appears to be prevalent: care for an elderly family or household member. **Care work for a disabled child** also emerged in cases of THB (e.g. in The Netherlands and Belgium). Regardless of the specifics of the work, the common **need is for a full-time live-in domestic worker**, thus the provision of intensive or around-the-clock care.

Regarding the **au pair programme**, cases were reported in the Netherlands, the UK, Belgium, and France. Yet, it must be noted that there is ambiguity at times as to whether situations of exploitation (and misuse of the system) are cases of trafficking. Nonetheless this should be included as an area of concern within the broader context of severe labour exploitation as well as trafficking in the domestic work sector.

Domestic work in **diplomatic households** has been identified as an area where trafficking occurs, and cases have been reported in all countries except Cyprus and Italy.

In regard to trafficking occurring within marriage arrangements (arranged/forced), the study suggests that there are additional layers of difficulties in identifying those situations. There is a lack of definitional clarity concerning what constitutes trafficking within cases of arranged/forced marriage, or in other words a lack of knowledge about how the THB offence can be applied in these situations. Situations of THB for forced marriage and arranged marriage may be very similar, and there is no clear added value of using the offence of trafficking in these situations (Kraler & Raditsch 2014). As outlined in the case study of Netherlands (de Volder 2016), it is first being addressed as a domestic violence issue.

### 4.3 Beyond the work setting: commonalities across the countries

Beyond the different settings and working arrangements (au pair, diplomatic households, EU nationals, or non-nationals), the following paragraphs will outline the commonalities with regard to recruitment and coercion means.

#### 4.3.1 Who is involved and what types of situations were reported?

With regard to the information on the main characteristics of the victims, **most cases of THB in domestic work involve migrants**. The migration routes may differ greatly: entering legally on a tourist visa, entering with a work permit for other sectors, irregular

entry, or entry under the tied-visa scheme existing in the UK and Cyprus.<sup>18</sup> While irregularity appears to be strongly present, there are also EU nationals/citizens — mostly eastern Europeans, particularly Romanians—who stay legally in other EU countries and become trafficked. This has been noted in Italy.<sup>19</sup> This trend is in line with recent European data which show the strong presence of EU citizens among the THB victims (65 per cent of registered victims were EU citizens, Eurostat 2015), and this is regardless of the form or sector in which trafficking occurs. This is also reflected in a recent study published by the European Commission, “Study on case-law relating to trafficking in human beings for labour exploitation,” which shows that the majority of the victims in the analysed cases were EU citizens (Psaila *et al.*, 2015).

While very few, there were also reported **cases involving nationals**. In the Netherlands, two cases that resulted in convictions for THB involved national victims. In both cases, the victims had a mental health issue and the exploiter took advantage of their vulnerability (de Volder, 2016). Another example of a case law that led to a conviction for charges of holding someone in servitude and exacting from them forced labour was reported in the UK (*R v James and Josie Connors* [2012]).

### UK Case involving several victims: both nationals and non-nationals

#### *R v James and Josie Connors* [2012]

**Key facts:** British and EU national victims of domestic servitude and forced labour were among the victims. They were targeted on the basis of their vulnerability, which included factors such as: homelessness, drug/alcohol addiction, social isolated, etc. The recruitment was done on the street with the promise of providing food and accommodation in return for housework.

**Legislation applied:** It was the first prosecution and conviction of traffickers under *s.71 of the Coroners and Justice Act (CJA) 2009*. The traffickers were sentenced, respectively, to eleven and four years in prison.

(Cited in Maroukis 2016: 15)

The fact that trafficking has been historically associated with transnational border crossing, as well as irregular migration, may still influence the low detection of cases involving nationals, particularly for situations of THB for labour exploitation. Yet, those few cases shed light on the fact that **criteria establishing the vulnerability of the victim are not limited** to having a precarious migration status (this is also illustrated by the presence of EU citizens among the victims of THB).

Regarding arranged marriages, a case documented in the Italian country report illustrates not only the challenges in detecting such case—given that it is a situation stemming from the private realm—but also shows how the offence of trafficking is interpreted.

### Case of arranged marriage, under-age adolescents in a Roma community – Italy

<sup>18</sup> For example, the report on Greece clearly shows the different migration paths according to the regions/countries of origin: women coming from some African countries followed a common route of entering the country under a tourist visa, and within which the migration was arranged by a placement agency in the country of origin. For Filipino women the most common route is to enter with a work permit under Law 89/1967 regarding offshore companies hiring foreign employees.

<sup>19</sup> For example, in Italy, a study conducted in 2014 by Caritas has shown that the majority of victims of THB for labour exploitation, which includes DW, comes from eastern Europe (particularly Romania), followed by Africa, Asia, and Latin America.

**Key facts:** The case concerned an arranged marriage between a 15-year-old girl (from Bulgaria) and a teenage boy in a Roma community in Italy. The girl was forced to engage in sexual intercourse with the spouse and was sexually abused by the stepfather. The victim alleged to have been compelled to perform exhausting domestic chores. The victim also claimed restrictions on her freedom and control over contacts with her parents.

**Legislation applied:** The charges regarding trafficking (Art. 601 of the criminal code) and slavery (Art. 600 of the criminal code), and sexual violence were rejected. The conviction was made solely on the grounds of facilitation of irregular migration (Art. 12(3) Legislative Decree No. 286/98).

*(Cited in Palumbo 2016: 12)*

In this case, the Court of Assizes (first-level instance) rejected the allegations of sexual violence and slavery and reduced the offence from trafficking to facilitation of irregular migration (Art. 12(3) Legislative Decree No. 286/98). As discussed in the country report by Palumbo (2016), the charges related to trafficking were rejected by the court's interpretation of consent by the victim's family, on grounds that the girl's family had agreed to the arrangement and that her coming to Italy had been done voluntarily. Furthermore, the conditions of slavery were not recognized, on grounds that the severity or weight of the domestic chores the victim was compelled to perform did not amount to slavery-like conditions and were comparable to the work performed by other girls and women in the Roma community.<sup>20</sup>

Elements of sexual violence or sexual exploitation or both have been reported in some cases. However, the limited data available prevent from having a clear overview of cases of mixed forms of exploitation (both sexual and labour). Sexual violence can occur as an incident (sexual assault), or be part of a process and used as a mean of coercion, and even occur on a repeated basis. Below are some examples of cases of mixed exploitation reported in the country studies.

The following example, in Belgium, illustrates how women may be compelled to excessive workload and also be expected to be at the trafficker's disposal for sexual purposes.

### **Case of THB in domestic work involving sexual exploitation - Belgium**

**Key facts:** A young Moroccan girl migrated to Belgium to live with a Belgian man and help with domestic chores. The man used the false promises of access to education in Belgium and as well as the false promise of a possible marriage. The girl was compelled to satisfy the men's sexual demands as well as perform domestic work for him and the mother, without receiving any pay. The girl was a minor when the situation was initiated.

**Legislation applied:** The principal defendant was convicted on charges of trafficking and rape (Court of Appeal in Antwerp)

*(For further details, see: Camargo 2016, p. 22 and CEOOR 2010, p. 56-57)*

<sup>20</sup> In a case of arranged marriage in the Netherlands (arranged marriage in the country of origin and situation of exploitation in the Netherlands), the charges regarding THB were rejected given the impossibility of proving the accused's intention of having facilitated the migration of the alleged victim to the country with the intent of exploitation (de Volder, 2016). This has been an unpublished case discussed in literature by the public prosecutor. Therefore it is unknown to the author whether the suspect was accused of other criminal offences than THB.

Sexual exploitation has also been documented in cases involving criminal activities and organisations. For example, in the UK there was a case of a Vietnamese girl who was trafficked to work for irregular workers in a cannabis factory and forced to have sex with the house occupants (Maroukis, 2016). In Italy, in a case involving an illegal agency that organised the recruitment and placement of domestic workers, women were told that by providing sexual services, they could access a better job. Thus, sexual services and domestic services were part of the same scheme of recruitment and placement (Palumbo, 2016).

#### 4.3.2 Recruitment process

Drawing on the material collected in the country reports, the main processes of recruitment include the following scenarios:

- Hired directly by the family (no intermediaries). This scenario may also include:
  - o Domestic workers already working for the household and who migrate with them to the new country
  - o Family arrangement, child fostering, arranged marriage
- Recruited with the help of intermediaries who may include family members or acquaintances
- Recruited through intermediaries who do not relate to family or acquaintances, such as employment agencies

In the first two categories, the victim and the traffickers may have already known each other.

One type of recruitment is not restricted to one particular work arrangement. For example, situations involving diplomatic households might rely on different means of recruitment: domestic worker who was working for the family and accompanies them to the new country, or recruitment through formal placement agencies in the country of destination or through informal referral (word of mouth) in the country of destination.

Recruitment occurs mostly in the country of origin or of destination, and much less frequently in countries of transit. Also, a situation of trafficking in domestic work does not always involve the crossing of a border. For example, a domestic worker who has already migrated to the country of destination may be recruited in the country of destination or may change employer in the country of destination and end up in a THB situation.

The country studies confirm observations made in previous studies that recruitment are more frequently relying on **deception rather than coercion** (Harroff-Tavel & Nasri, 2013). The person thus voluntarily migrates and/or agrees to work in domestic work, either by approaching an agency or through informal referrals. Deception implies that there has been a breach of the initial arrangement, whether formal or informal, with or without a contract. Deception may be used by any actor involved both agencies, private households and informal intermediaries. It may relate to false promises about the working conditions and arrangements (workload, types of tasks, etc.), about obtaining a residence permit, and, in cases of child fostering, false promises also concern access to education.

With regard to the involvement of recruitment and employment agencies, the countries in the study can be divided into three main groups. In Greece and Cyprus, the involvement of recruitment and employment agencies appeared almost systematic or prevalent in most situations of THB—and is a key area of concern in Cyprus. Actually, the study on Cyprus suggests that the main (if not the only) channel or route in which cases of trafficking are reported is within the legal visa regime for migrant domestic workers using agencies whose conduct and practices may be fraudulent and abusive. The recruitment is mainly through private employment agencies in the country of origin (with collaboration with agencies in Cyprus) (Angeli, 2016a).

In the UK and Italy, cases involving agencies in situations of THB have been reported, but this is not the only channel observed: word of mouth and use of informal intermediaries are more present (when looking at the trafficking process). In the other countries—France, Belgium, and the Netherlands—agencies are mentioned, but did not emerge as an area of key concern when looking at THB in domestic work.<sup>21</sup> This does not mean that no employment agency was used in the recruitment and hiring process. It means that the agency was not identified as being part of the trafficking process itself or the perpetrator of the trafficking offence (even if the fact of charging the migrant worker high fees places him or her in a more precarious and vulnerable position). Even when agencies are involved, case law including charges of THB against agencies appears non-existent. Only in the UK such case law was reported. While employment agencies and agents have been implicated in some lawsuits (e.g. CN vs UK), these resulted in the prosecution of an agent in only one case (*R vs Dawid Siwak*, cited in Maroukis 2016).

The main recruitment pattern used by agencies is to deceive the worker by promising a higher salary and better working conditions and require the migrant to pay high fees in order to facilitate the migration process for obtaining the necessary visa and to find work in the place of destination, as well as for accommodation. Agencies may be legal in the sense of being licenced—even if acting fraudulently—or may be operating unlawfully, that is, without a permit. Migrants may become indebted to the agency and other intermediaries who have helped them to pay those fees, which makes the migrants more vulnerable to exploitation and further constrains their capacity to escape the exploitative situation.

Except for Greece and Cyprus, what emerged is the prevalence of informality and private process of recruitment in situations of THB. The informality of the recruitment may further confuse the employer's responsibility and obligations and at times blurs the presence of an employment relationship, even more so when a situation involves family arrangements. Also, in certain situations there is no recruitment *per se*, as the person may have been working in the family for many years.

Compared with other forms of exploitation or other sectors in which labour exploitation occurs, there are fewer cases involving organised criminal networks. Involvement of organised crime was reported in Greece, Italy, and Cyprus (and one case law in the UK).

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<sup>21</sup> Also, the involvement of an agency may differ according to the countries of origin and may be more common for certain countries of origin. For example, agencies are strongly present in the Philippines and the Belgium country study suggests that the use of placement agencies is more frequent for workers from the Philippines and Indonesia (CEOOR 2011, cited in Camargo 2016).



Private households committing the criminal offence of trafficking are very diverse and not limited to a particular social group. Across countries, employers and private households appear to come from all classes and economic backgrounds, but more often the household is of foreign nationality. The issue of the nationalities of the traffickers raises a delicate question discussed in the country report on France (Levy 2016). The France country study suggests there is a tendency to perceive trafficking in domestic work as occurring mostly within families of foreign nationalities, as if these private households would maintain abusive practices taking place in the country of origin. The question is whether this perception stems from cultural bias, which in turn, would influence the identification of cases and minimize the detection of cases in middle-class households of national citizens (in other words, if exploitation taking place in a national household would be less readily identified as trafficking than if the household is from another country).

#### **4.3.3 Beyond recruitment: key features of the exploitation and the relationship with the trafficker**

Beyond the initial recruitment process, some factors and means of coercion contribute to maintaining the persons in the exploitative situation, creating conditions that would prevent them from leaving.<sup>22</sup> This also raises the question of abuse of position of vulnerability, defined as a situation in which the person has ‘no real or acceptable alternative but to submit to the abuse involved.’ (EU anti-trafficking directive, art. 2.2).

Despite the diversity of situations and settings in which human trafficking occurs, common to all national contexts is that domestic workers face a wide range of violations of labour and human rights, abusive practices and maltreatment. In THB cases, multiple means of coercion are identified. While most cases involve psychological means of coercion, some cases of physical violence are reported. The most common means of coercion are:

- No payment or very low payment (manipulation based on giving or not giving the salary, of promising to send money to the family abroad)
- Excessively long work hours, often without a weekly day off
- Physical and verbal abuse and threats of dismissal
- Withholding of identity and/or travel documents
- Confinement in the house
- Restrictions on freedom of movement as the domestic worker is at the constant disposal of the employer
- Restrictions on contact their family
- Sexual abuse
- Humiliating treatment
- Inadequate accommodation (e.g. sleeping on the floor in the basement, no privacy)

There are also situations of unattended health problems or injuries. In few rare cases, not only physical violence is reported, but also situations similar to torture. Other types

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<sup>22</sup> In the ILO report on trafficking in domestic work in the Middle East (Harroff-Tavel & Nasri, 2013), three sets of factors and indicators of trafficking were identified: unfree recruitment (precisely referring to the absence of coercion), coercion and exploitative conditions (both living and working conditions), and factors related to the inability to leave the abusive situation.

of abusive practices that are frequently reported are: uninsured work, dismissal without prior notice and without compensation, absence of contract or contracts in which the number of work hours is less than effectively performed.

Another theme that emerged as important to understanding situations of THB concerns the relationship with the trafficker and the evolution of this relationship. A common element is a process of deterioration of working and living conditions, of degradation of the relationship between the household (one or multiple members) and the domestic worker. This point will be discussed further in Section 6.<sup>23</sup>

## **5 Regulations, political/legal framework: interlocking sets of policies**

Different sets of policies will interact and influence conditions under which domestic work is performed (Murphy, 2013b; Palenga-Möllenbeck, 2013; van Hooren, 2012), as well as conditions that do not prevent THB or may even be conducive to THB.

In this section we will look at two key sets of laws and policies that are relevant when examining THB in domestic work: i) first, domestic work regulations and immigration laws/policies regarding domestic work (either labour migration or specific policies for migrant domestic workers); second the policy and legal framework combatting trafficking, including tackling demand. We will then review key gaps and shortcomings regarding these frameworks.

The countries selected for this study present multifaceted diversity both in terms of national contexts and with regard to their legal and policy frameworks. These countries cover southern, central and northern European countries, with different approaches to regulating domestic work. They are different in how the outsourcing of domestic work and employment of domestic workers has been dealt with historically in the society. In that regard, the Netherlands stands out; the employment of domestic workers is more recent and less prominent, given that the country historically relied on part-time work from women who still took charge of domestic chores (de Volder, 2016). In the other countries, employment of domestic workers has been very present in recent history, despite differences in the welfare regime, and responses to regulate this labour sector have developed differently. As noted in the country reports, Italy, Greece and Cyprus have among highest share of migrant labour force in the domestic work sector.<sup>24</sup>

### **5.1 Regulations on domestic work**

There is no single model for regulating domestic work. Yet, two distinctive features of domestic work, as a labour sector, need to be considered. First, there is a long-standing

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<sup>23</sup> One exception needs to be highlighted. In Cyprus, given the prominent role of placement agencies in the recruitment process, much emphasis is placed on their role in the trafficking process. As pointed out by Angeli (2016a), the fact that trafficking situations are closely associated with the involvement of agencies often implies a neglect of the role and responsibility of the private households in creating and maintaining conditions defined as trafficking

<sup>24</sup> According to the OECD (2014), Italy has the highest share of migrant labour force in the domestic work sector (cited in Palumbo p.1) ; in Greece, data provided for 2008 also suggest that 20.5% of the migrant labour force is in the domestic work sector, (see Lyberaki 2008 cited in Angeli 2016b, p.1).

differentiated treatment toward domestic work; the sector is not like any other labour sector. It is at times regulated with specific regulations or through the general labour law while being excluded from certain domains (ILO, 2016). Second, domestic workers are in great majority migrants, thus migration laws and policies that regulate the flows of domestic workers are important to include in the analysis. The question of interest in this section is what types of regulations have been put in place, given the strong demand for outsourcing domestic work for employing domestic worker.

### 5.1.1 Regulation of domestic work

It would be beyond the scope of this report to analyse the different regimes in place, including the influence of the welfare regime approaches in each of the countries in detail. Some relevant elements of analysis for this study are, however, highlighted below.

In regard to the models of domestic work regulations, the seven countries in this study can be divided into three groups. In some countries, there is no specific regulation for domestic work and domestic work is dealt under general labour law. This is the case in Cyprus, Greece, and the UK. In the other four countries studied, there are regulations specific to the domestic work sector.

**Table 1: Type of domestic work regulation**

Domestic work regulation framework	Countries
Domestic work regulated under specific regulations	Belgium France Italy
Mixed system: specific regulations only for part-time and no collective agreement	The Netherlands
No specific regulation, general labour law	Cyprus Greece UK

While differing in terms of welfare regimes, the first group of countries (Belgium, France, and Italy) have put in place specific regulations for domestic work. In these countries, a collective agreement has also been established. Collective agreements constitute an important achievement; it has contributed to setting the salary, work hours, and the social protection coverage for domestic workers. Only Belgium and Italy have ratified the ILO domestic workers convention. In the Netherlands, there are some specific regulations regarding part-time domestic work, but the regulations in place are more limited in scope.

In addition, France and Belgium provide good examples of measures that contribute to **decreasing undeclared work in this sector**. Indeed, the voucher system in **Belgium** and the *chèque à l'emploi* in **France** set positive incentives for employers to register the employment of a domestic worker. Such incentives include social and tax advantages for employers (deductions and tax credits) and simplification of administrative measures for hiring the worker (and registering with social security)—in other words, an easy-to-use hiring/registration process. As discussed in the country reports (Camargo, 2016;

Levy, 2016), these systems have had an impact on the informal market. However, those specific regulations and incentives, when existent, apply for services other than intensive care work (e.g. cleaning, transporting children to school, preparing meals, gardening, etc.)<sup>25</sup> and do not concern live-in arrangements.

Yet, as seen in the national studies, THB in domestic work mainly occurs in live-in arrangements and, more importantly, within the informal market. The demand for care work—for the elderly, a disabled child, or childcare—is not included in these voucher schemes. In Italy, live-in and full-time care work is foreseen in the collective agreement (max. of 54 hours), but as seen in the country report, the maximum work hours set in the collective agreement is often not respected.

In Cyprus, Greece and the UK, domestic work is regulated through general labour laws, but still receives a differentiated treatment; some aspects are excluded from standard labour law, such as regulations related to work hours, as well as health and safety.

For example, in Greece, there is flexibility with regards to the contract and work conditions (meaning that they can be negotiated according to a principle of ‘contractual freedom’). A live-in arrangement will benefit from more flexibility, given the special conditions (living in the home and the type work and relationship with the employer). As noted by Angeli (2016a), this system lacks protective safeguards for the domestic workers. Furthermore, some elements of the work conditions in live-in situations are excluded from labour law regulations, such as regulations regarding rest days and work time during public holidays, Sundays, or at night, as well as regarding overtime work and upper work time limits. In sum, the current law puts the domestic worker in a disadvantageous position in negotiating the work contract.

### 5.1.2 Immigration laws and domestic work

Domestic workers employed in Europe are in their vast majority migrants, and many among them are undocumented. Despite a high demand for carers and domestic workers, which is often met by migrants, migration policies for migrant workers (especially low-skilled) are restrictive. As argued in the country studies (except UK and Cyprus), it is difficult for a private household to hire a migrant domestic worker legally, if they do not already have a residence and work permit. There are three main legal channels to migrate for purposes of employment in the domestic work sector. First, the regime for visa and/or work permit (when existent for migrant domestic worker); second, the private domestic workers employed by a diplomatic household; and, third, au pair programmes (which are not intended as legal channels for domestic workers).

Regarding the first legal channel, two main models are present in this study: countries (UK and Cyprus) in which a specific work visa scheme exists for domestic migrant

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<sup>25</sup> In the Netherlands, there is a specific regulation that only applies for live-out and part time domestic services, the Regulation on Domestic Services [Regulerend Dienstverlening aan Huis]. In Belgium, there is the voucher system, and France has a cheque system (Cheque Emploi Service Universel or Pajemploi systems)—both also concern live-out domestic work but are used mostly for cleaning services rather than care work. In Italy, a voucher system can also be implemented when domestic work is performed occasionally. With regard to live-in domestic workers, there is no specific regulation for this type of working arrangement in the Netherlands. In Belgium, there is still the ‘domestic servant’ status established in 1970 (and amended in 1986), but this hiring process is little used. In Italy, the collective agreement also covers situations of live-in domestic workers, setting the maximum working time to 54 hours. In Cyprus and Greece, live-in arrangements are dealt within the general labour law.

workers and countries where no such regime exists thus general immigration laws for migrant workers apply. In the latter group, there is no special category for legal admission of migrant domestic workers. In the case of Italy, there were until recently specific mechanisms for admission of migrant domestic workers (e.g. specific quotas for domestic workers as well as regularization campaigns).<sup>26</sup>

**Table 2: Migration policies: hiring of non-EU citizens as domestic workers**

Migration for domestic work regulation	Countries
General work permit system	Belgium France (market test barrier) Greece Italy <i>(Special quotas for domestic workers no longer apply, since 2012)</i>
Special working visa for domestic workers	UK Cyprus
No legal entry channel	Netherlands

The procedure for obtaining a work permit is not only complex, but is the responsibility of the future employer. Considering that in the case of domestic work, the employer is an individual (or private household) and not an enterprise, the administrative and bureaucratic process constitutes an impediment and disincentive for families who want to hire a migrant domestic worker legally.<sup>27</sup> In situations of urgent needs, the private household may prefer to turn to the informal market (Palumbo, 2016).

In the UK and Cyprus, there is a migrant domestic worker visa scheme that applies for live-in arrangements, and the regulations are strict. The live-in arrangement is not a requirement but is common practice in Cyprus and a requirement in the UK. While these visa schemes differ in many regards, both are temporary (not giving access to permanent residency) and tied to a single employer. In both countries, this type of visa scheme has been criticized and has proven to increase the worker's dependence; the work permit (and right of stay in the country) relies on the employer's needs and decisions.

In the UK, the overseas domestic workers (ODW) visa scheme does not allow the domestic worker to change employer (except under constrained circumstances). The visa can be extended based on the employer's needs (Home Office Guidance 2014). Furthermore, under this visa regime, migrant domestic workers are excluded from various social protections and benefits (e.g. no access to housing support or assistance for low income). In Cyprus, a standard contract, established by the government (Migration Department)<sup>28</sup> set the terms and conditions of employment for migrant domestic workers. The visa, which is also tied to one employer, may have a maximum duration of six years (four years and renewable for an additional two years) (Angeli 2016a).

<sup>26</sup> Between 2005 and 2012, a share of the annual quota was specifically given to domestic workers. See Palumbo 2016.

<sup>27</sup> See the country reports on Belgium, France and Italy regarding this aspect.

<sup>28</sup> It must be noted that based on the national study conducted, it appears that there is a lack of clarity and understanding among stakeholders about whether or not this contract is binding and obligatory. Nevertheless, it sets the common practices. (Angeli 2016a)

Another legal channel exists for domestic workers, but it is limited to a very specific context: **private domestic workers employed by diplomatic personnel**. A special visa or ID card is delivered to these workers, whose right to stay and work in the country is strictly linked to the employment contract, thus to the employer's status. The right to change employer differs in the countries. Domestic workers employed as private staffs by diplomats face additional barriers with regards to the protection of their rights: their employers have a diplomatic immunity under the 1961 Vienna Convention on Diplomatic Relations, meaning that they cannot be arrested, detained, or prosecuted unless there is a waiver of immunity. This condition significantly circumscribes assistance to domestic workers in case of abuse; it also further restricts the monitoring of the working conditions within the households and reinforces the power imbalance in employment relations (Kartusch, 2011; Murphy, 2013a; OSCE 2014).

Cases of abuse, exploitation, and THB of **domestic workers employed by members of the diplomatic corps** (diplomats, embassy, and consular staff and high-level civil servants) has garnered attention recently (Kartusch, 2011; Murphy, 2013a; OSCE 2014). It has prompted international organizations such as the OSCE and national governments to step up action and develop specific measures in order to address some of the vulnerabilities aimed at preventing abuses from occurring. In that regard, good examples of national practices have been identified in Belgium and Netherlands according to the OSCE Handbook "How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers" published in 2014. It includes prevention, monitoring and mediation measures (see p. 36 of this report).

Then, a third scenario within which THB may occur concerns the **au pair programme**. The au pair programme is not intended as an employment programme for migrant domestic workers and thus does not officially constitute another channel for labour migration. It is the misuse of the programme that makes it an option, both for employers to pay less for full-time care work and for persons looking for a way to migrate and work in private homes.<sup>29</sup> The au pair programme exists in all seven countries studies, but is not an official programme in Greece.

The misuse of the au pair programme for hiring cheap full time workers has been documented in the Netherlands, France, Belgium and the UK, leading to situations of exploitation, and even trafficking. Despite the existence of differences across these countries—number of work hours, the amount of money given to the au pair, the exact age group, and the inclusion of EU and/or non-EU — the common characteristic is that it was originally designed to be a cultural exchange programme for living abroad and learning a new language. There is a fixed maximum number of hours that the au pair should dedicate to domestic chores for the host family in exchange for accommodation, food and a certain amount of money (which is not considered a salary but pocket money). Yet, in the four countries cited above, the au pair programme is in fact used as a live-in domestic worker arrangement, with the au pair providing work for equivalent of a full time job, without being paid a proper salary and without being considered a

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<sup>29</sup> There is another specific exclusion in France with the status of *stagiaires aides familiaux étrangers* which allows foreigners aged 17 to 30 who would like to study in France to apply for a student visa. They must sign a placement agreement with a family and commit to five hours (maximum) per day of baby-sitting or minor chores in exchange for room and board as well as pocket money ranging in amount from €264 to €316 (See Levy 2016: 3)

worker. These situations escape labour law and deprive the au pair of appropriate rights and status (Cox 2007, 2011, 2014; Pelechova, 2015).

### 5.1.3 Key gaps

Having in place regulations specifying and setting fair labour rights for domestic workers is a crucial element for ensuring equal labour rights for domestic workers. Furthermore, specific regulations that serve as an incentive for employers to declare the employment and contribute to the formalisation of labour work sector may help reduce the use of the informal sector. Regulations of domestic work contribute to framing employers' and clients' obligations in terms of employment conditions. Yet, despite those advancements, there are still some loopholes and shortcomings.

First, some policies and laws may actually foster or create what has been framed as a legislative precariousness (Albin & Mantouvalou, 2012). An example is the dependency created by the tied work permit/visa. In the case of the UK, the overseas domestic workers (ODW) visa only allows for live-in working arrangements, which are known to increase the worker's vulnerability to exploitation. Precariousness also relates to the fact that domestic workers are excluded from the full social protection of other workers (such as health coverage, maternity leave, etc.), and often face lower salaries (see the country report on Cyprus, Angeli 2016a).

Despite better regulation, informal and unregistered forms of labour arrangements are strongly present. Employers may choose to avoid registering the employment of a domestic worker, pay lower salaries, or have more flexible working arrangements. Even when registered, employers and private households may find multiple ways to navigate the system in order to pay less at the end.

In sum, informal arrangements persist in domestic work (either with regard to the migrant status and the (un)registration of the work), and it is known that exploitation and trafficking are more likely to occur in informal market. Undocumented and/or unregistered domestic workers in the shadow market remain largely unprotected despite increased regulation of domestic work. This suggests that while stronger regulations are crucial, it is only one component of a policy response aimed at preventing exploitation. It must be complemented by other measures aiming wider changes in mentalities and tackling the discrimination and on-going perception of domestic work as a less deserving form of labour.

Second, there is an inadequacy between the current immigration policies and the high demand from private households for hiring domestic workers—demand that is met mostly by migrants. Domestic work is not considered a labour shortage sector, and there are few legal migration channels facilitating labour migration in this sector. Thus, it has been argued that the highly restrictive and limited legal channels for domestic workers foster informal markets or the misuse of existing regulations. Current restrictive policies are not in line with and do not respond to the demand and family needs for hiring domestic workers.

In conclusion, what came out from the country studies is that the multiple factors amplifying or creating the vulnerabilities of the domestic workers are inseparable from

the demand-side. Many of these vulnerabilities are maintained by the policies in place, or policies in place do not counteract those vulnerabilities. In that regard, the **three main domains** from which the risk factors stem for workers, as identified in the Fundamental Rights Agency (FRA 2015) report on severe labour exploitation of workers in the EU, are useful.

### **1. Legal and institutional framework**

- No legal channel for migrant domestic workers
- Diplomatic household immunity
- Tied-visa / sponsor system

### **2. Situation of the worker**

- Dependence on employer (irregular migration status)
- Children in position of great dependency and vulnerability

### **3. Workplace and employment relations**

- Private household / isolated work settings
- Difficult enforcement of regulations
- Informal work arrangements
- Live-in and being at constant disposal of employer
- Intimate relationships employer/employee/receiver of care

While the first main domain (legal and institutional framework) is clearly set by the policies and laws in place, the regulatory framework can also impact on the worker's dependence on the employer, as well as on the monitoring and enforcement of regulations – taking into considerations the atypical setting of the workplace in domestic work.

## **5.2 Addressing the demand-side of THB in domestic work**

### **5.2.1 Anti-trafficking response and domestic work**

In general, attention towards trafficking has focused on sexual exploitation in all countries. It is only recently that there is more concern for severe labour exploitation, and this concern is still unequally present among the countries. Furthermore, domestic work does not appear as a priority. Yet, we can notice more attention toward this issue in the UK, Belgium, and the Netherlands (which is reflected in a higher number of identified trafficking cases and prosecutions in this sector) – countries in which there is also greater concern for trafficking for labour exploitation in general. In this section we will look at how the demand-side of THB in domestic work is addressed by looking both at the current anti-trafficking policies as well as the general framework described above.

THB in domestic work is generally dealt within the general framework of human trafficking for labour exploitation and/or forced labour. All countries in this study, with the transposition of the EU anti-trafficking directive in their national legislation, have expanded the penal offence to include trafficking for labour exploitation and/or forced labour when it was inexistent before (such as in Cyprus in 2007, in Greece in 2009, and in the UK in 2009). Yet, there are still differences in the way trafficking is defined,



notably in relation to labour exploitation and forced labour<sup>30</sup>. Both in France and in Belgium, the definition derives from the notion of conditions contrary to human dignity. In Belgium's legislation, the definition of THB for labour exploitation is 'work or service carried out in conditions contrary to human dignity'. The coercion element is not compulsory, but an aggravating circumstance, providing for a wider scope. In France, the definition of the forms of exploitation includes: 'submission to forced labour or services, servitude, and working or living in conditions contrary to human dignity'. Forced labour, as well as servitude, is defined in a separate offence (see Annexe 2).

There is still a great variation in the interpretation and scope of the offence (Psaila *et al.*, 2015). Also, in some countries other related offences will be used instead of THB for labour exploitation/forced labour, such as the provisions regarding slavery in Italy<sup>31</sup>.

Given that there are many recent changes in national legislations in order to align national laws with international legislation, first the UN Palermo Protocol, later the Council of Europe Convention (Warsaw Convention) and the EU anti-trafficking directive, and/or in response to the European Court of Human Rights (ECtHR) decisions, it is still difficult or impossible to assess their implementation and the implications of those changes in responding to challenges in previous case law. Thus, some issues discussed in subsequent sections have been recently addressed through recent amendments and might foster changes in the near future.<sup>32</sup>

National studies have also shown that often in cases of THB for labour exploitation, other offences are used: notably, the offences of facilitation of irregular migration or illegal employment of irregular migrant workers. This illustrates that **cases of labour exploitation are still addressed as an issue of irregular migration, and that THB is still considered a cross-border issue**.<sup>33</sup> This limits the scope of intervention and hampers the identification of cases. Other specific pieces of legislation to address THB for labour exploitation have been adopted by some countries. For example, in Italy, there has been the inclusion in the criminal code of the offence of 'unlawful gang mastering and labour exploitation' which relates to organized activities linked to brokering and recruiting workers with the intention of exploiting them (Article 603-bis, criminal code). It provides a series of labour exploitation indicators.

However, one common line of argument in the country studies is that there is a disjuncture in the current framework between states' commitment to fight trafficking and its failure in protecting **all workers' rights** (regardless of their migration status, on one hand, and of their labour sector, on the other hand). There are tensions between measures tackling irregular migration, and employment of irregular migrants, on one hand, and the prevention of abuses (and protection of migrant workers being exploited), on the other. Undocumented migrant workers are at the crossroads of those conflicting policies: as a victim of trafficking they are considered in need of protection, but if not

<sup>30</sup> Yet, not all national legislations provide a specific definition of forced labour. In Italy, Netherlands, Cyprus and Greece, there is no definition of forced labour in the national legislation.

<sup>31</sup> In the Italian law, in addition to the disposition of the criminal code on THB (art. 601), another criminal offence can be used, that of slavery (art. 600) (as well as the art. 602 'Purchase and sale of slaves'). The latter, the 'slavery' offence has proven a key legal provision used in cases of THB. The offence related to slavery also exists in other EU national legislation, such as in Greece, but in this country the provision has not been used.

<sup>32</sup> For example, in France, following to ECtHR court decision condemning France.

<sup>33</sup> A report published by the European Commission (Psaila *et al.*, 2015) on case law related to THB for labour exploitation and/or forced labour (2015) also comes to the same conclusion.

recognized as such, they are viewed as ‘illegal’. This prevents disclosure of the exploitation for fear of being reported to the authorities and deported.

There are important gaps in protection for migrant workers, and particularly undocumented migrant workers. Undocumented migrants face more constraints; moreover they are often unable to access remedies for labour rights violations. Thus, enhancing safeguards of all migrant workers is part of prevention of exploitation and trafficking.

## **5.2.2 Analysis of current legal and political frames in addressing demand**

There are very few measures and initiatives *explicitly* addressing demand in the context of THB in domestic work in the countries studied. By explicit, it is meant that the measure had an objective to act on preventing THB or directly addressing the demand in the context of THB, or both. When looking at demand-side measures or action (whether a policy, an initiative, a program, a law), one needs to broaden the scope and include the measures that were not meant to target demand, but can still have an impact on the parameters and conditions under which demand is exercised. Indeed, a lot of possible policy interventions are not about demand, but may include supply-side measures (e.g. informing domestic workers about their rights) or actions that tackle the factors conducive to exploitation (e.g. migration policies creating opportunities for the exploitation of the vulnerability of migrant workers).

The main axes of actions identified in this study are: sanction and punitive legislation, awareness-raising, and empowerment of workers. Some market-based measures targeting the regulation of the domestic work sector in general can also be considered as influencing the demand are also identified. In this section, we will use the typology of measures for steering behaviour proposed by Boswell and Kyambi (2016), which they suggest to be useful approach to analyse demand-side policies: command and control approaches, market-based measures, and peer-pressure.

It is important to note that attention to the demand-side of THB is quite recent and are reflected mostly in National Plans of Action that most of the countries studied have adopted. Moreover some measures—notably awareness-raising initiatives—that have only been included in the last action plans are still to be implemented and have not been yet designed. Of course, this has to be put in the context of the obligation for the EU member-state to transpose the EU anti-trafficking directive, including its Article 18 concerning measures addressing the demand-side.

### **5.2.2.1 Command and control approach**

Command and control approaches include not only the enforcement of the penal legislation, but also labour law, regulations and standards, including sanctions imposed on employers who violate the rules.

### **a. The THB offence and the challenges in its application**

Sanctions imposed on and prosecutions of employers and traffickers can be seen as a means to address the demand-side. Indeed, implementing criminal law, as well as other laws (e.g. labour law) may contribute in having a deterrent effect (Rogoz *et al.*, 2016: 18). A deterrent effect can act in different ways: the sanctions increase the cost of unwanted behaviour and also send a message that certain behaviours are not wanted. In the particular case of domestic work, sanctions can also be regarded as a tool for fostering greater accountability and thus responsibility on the part of private households hiring domestic workers. A common element raised in the country studies is the absence of acknowledgement on the part of the employers of their responsibility, at times even a denial of the employment relationship. Thus, a lack of sanction (in this case criminal sanction) does not help overcome this vacuum of accountability on the part of private homes as a worksite with legal obligations. It can be further argued that the low risk of sanctions creates an environment conducive or favourable to the exploitation of the vulnerability of domestic workers.

Country studies show that the offence of THB is little used (other offences are often applied instead). There have been successful convictions for THB in domestic work in the Netherlands, the UK, Belgium, and France. Yet, at the time of writing, there are no known convictions in Italy, Cyprus and Greece (while some cases are on-going).

The case law analysis conducted in this study illuminates key challenges that impede the application of the criminal code offence related to THB for labour exploitation and or domestic servitude. The challenges mirror greatly issues faced at all stages of implementing a comprehensive response to THB in the domestic work sector.

This study re-asserts the main challenges in prosecuting cases of THB that have already been discussed in previous studies, mostly for sexual exploitation and to a lesser extent for labour exploitation (Psaila *et al.* 2015). There is still reluctance from law enforcement and the judicial system to initiate THB investigations and prosecutions, because it is still difficult to secure successful prosecutions: i) given their complexity and the difficulty in building the proofs of such crime;<sup>34</sup> ii) the lack of definitional clarity and consequently practical challenges in implementing it; and, iii) the scarcity of existing case law to build upon. In addition to these challenges, there are some specific challenges related to THB in domestic work. The distinctive feature of domestic work—being performed in a private house and characterised by close ties between the worker and the employer (or household)—add a supplemental layer of difficulties that will be discussed below.

A first gap that was raised in national research is that **priority is still** given—within law enforcement and, in particular, concerning trafficking—to **fight organized crime**

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<sup>34</sup> One key challenge in prosecuting cases of THB is the lack of evidence to establish the constitutive elements of the offence. Lack of evidence constitutes the main reason for dismissing cases (Psaila *et al.*, 2015). The evidentiary threshold will be met with different difficulties depending on national definition or legislation. For example, in Belgium and France, the key goal in judicial proceedings is to demonstrate that the domestic worker's living and working conditions do not comply with core standards of human dignity. In Italy, where the criminal offence of 'slavery' is often used, in order to prove that slavery took place, there is requirement 'of condition of continuing subjection' (Art. 600). A state of subjection relates to a situation that limits and undermines greatly the capacity of self-determination from the victim (ability to leave the situation). A case example of the impact of lack of evidence on court ruling is the case *M and Others v. Italy and Bulgaria* brought to the ECtHR. With regard to Article 4 of the ECHR, the Court ruled that the circumstances may have amounted to THB (servitude), but that the evidence submitted had not enabled it to determine whether the applicants' allegations were truthful.

**networks.** This may lead to situations of THB perpetrated by individuals or small groups of people being overlooked, as is the case with domestic work. There is an overall under-detection of situations of THB in domestic work. Most of the cases are brought to the authorities through NGOs or domestic workers themselves. Despite some advancements made by some countries in fighting THB for labour exploitation, the specifics of the domestic work sector remain largely unaddressed. Concerning the judicial system, the increased specialization of law enforcement and justice system actors with regard to THB in general, and THB for labour exploitation in particular, is welcomed. This is important in order to ensure that the law enforcement actors have the knowledge and expertise to conduct such investigations.<sup>35</sup>

Another challenge concerns the variations in the understanding of the offence of THB. Indeed, the case law analysis shows different interpretations of key concepts and constituent elements of THB for labour exploitation/forced. These concepts, used in EU member states law, include the “requirement of intent, direct involvement, consent, withholding of wages or excessive wage reductions that violate previously made agreements, restriction of movement and confinement to the workplace or to a limited area.” (Psaila *et al.*, 2015). There is the interpretation of the scope of the offence<sup>36</sup> and persistent misconception around the definition of THB in general.

There are differences in the national definitions of THB for labour exploitation, and the varied interpretations regarding the offence of THB may also fluctuate according to the national specifics. For example, in Belgium, despite the positive effect of having a broad definition that covers a wide range of situations of exploitation, it may lead to less consistency in practice in the case law. It may “allow for rather broad discretion for judges to decide what conditions are considered to be contrary to human dignity.” (Psaila *et al.*, 2015: 79). Indeed, some regional differences were noted. The Belgium case study (Camargo, 2016) as well as the EC report (Psaila *et al.*, 2015: 79) suggest that in the region of Antwerp the threshold applied by the court regarding ‘conditions contrary to human dignity’ is higher —so more difficult to bring charges—than in other. The point raised here is not to single out the Belgian experience as if there were greater variations in interpretations, but that Belgium provides an illuminating example.

Another element common to all national case studies concern the **interpretation by the court of the elements of vulnerability.** Indeed, one important element in the crime of trafficking, present in cases in DW, is the ‘abuse of a position of vulnerability’ (see Section 2 for definition). Assessment of the abuse of vulnerability is difficult and the presence of means of coercion remains important to prove trafficking. As discussed in the case study of the Netherlands, there was a lack of clarity with regard to the abuse of a position of authority or of vulnerability, until a Supreme Court decision in a case of THB for labour exploitation brought guidance: when a perpetrator recognises the vulnerability and takes advantage of it, even if the victim may have voluntarily entered into the employment relationship. De Volder argues that this court decision may help in obtaining successful convictions even when less ‘severe’ means of coercion are used (such as physical violence) (de Volder 2016: p. 24)

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<sup>35</sup> For example, in Cyprus, until recently regional police offices were responsible for carrying the investigations related to trafficking. Yet, the lack of expertise was an impediment and could be an obstacle in pursuing successful prosecution (Angeli 2016a: 32).

<sup>36</sup> The scope of the offence for example in terms of where the infractions of employment laws *end* and the crime of trafficking *begins* (Government of the Netherlands, 2016; Sikka, 2013)

The following key factors of vulnerability have been used in case law related to trafficking for labour exploitation in the EU MS (Psaila *et al.* 2015), as well as in the case law analysis conducted in this study:

- Poverty
- Low level of education
- Disabilities
- Poor health
- Alcohol addiction,
- Advanced age or minority
- Irregular migration status
- Lack of knowledge of the local language
- Confiscation of personal documents
- Isolation of the victims

The three reported cases involving nationals, one in the UK and two in the Netherlands, evolved around the abuse of the mental health issues from the victim.

The *Diallo Case* is a clear illustration of difficulties in interpreting abuse of a position of vulnerability. This case involves a young Guinean woman who came to Belgium to work for a couple and who had initially signed a contract. The Court of Appeal reviewed a decision that had upheld charges of THB against the couple that employed her, and the conditions of vulnerability were put into question. Three conditions of vulnerability had first been recognized in the court decision: being undocumented, having the passport confiscated, and lack of social protection against work accidents and illness. One element that was questioned is the fact that, while the passport had been confiscated, nothing proved that the victim would not have been able to retrieve it. Another argument made was that the victim may have exaggerated the severity of the situation in order to obtain a residence permit. The Court's decision has influenced and led to changes in the legal definition of THB in Belgian law. As stated by Camargo (2016), the fact that there was variation in the interpretation of what constitutes the conditions of vulnerability has contributed to the changes brought to the definition by removing the means of coercion as a requirement to determine the trafficking offence.

With regards to the variations in determining the scope of THB offence, another key element that emerged concerns the **linkages of THB with related crimes: irregular migration and employment of irregular migrants**. In other words, as shown in the UK, Greece, Cyprus, France, and Italy, cases of trafficking for labour exploitation are often prosecuted under offences other than trafficking, such as i) facilitation in irregular migration and/or ii) employing irregular migrants.

The use of the disposition regarding irregular migration is inadequate for a variety of reasons. First, it recognizes the criminality and responsibility of the acts of the perpetrators only in regard to the violation of migration laws and not for the violation of labour and human rights law. Additionally, there is the risk of criminalising the victims of THB. As rightly outlined by Palumbo in the Italy case study (2016), THB for labour exploitation does not always concern irregular migrants, but also EU citizens and migrants with a regular status (such as recognised refugees or migrants with a residence permit).

In some countries, there still is a **focus on the movement and cross-border element** of THB, which legally speaking is not a requirement nor a constituent element of THB *per se*. For example, the analysis of past cases in Italy, show that there was a misconception of trafficking as being an overall process involving coercion from the outset of the transnational movement and involving the same criminal group or the same person along this journey. The focus on the cross-border movement is also linked to the consent of the victim (presuming that if the victim has consented to engage in irregular crossing and work arrangement, they also consented to THB).

Also, the issue of consent may be subject to different interpretations. For example, if the victim consented and agreed to migrate and work for the exploiter, or consented to being married to the exploiter, then the element of coercion or abuse of a position of vulnerability may be harder to prove.

In relation to the two latter elements, another issue raised is the criminalisation of victims, which in turn denies them protection and access to remedies and justice. In the UK, cases of victims being criminalised, often on immigration offences, are reported. In turn, the legal proceedings revolve around the legality of the migrant's stay rather than the criminal offences to which the victim was submitted.

In the UK, the case of **Hounga v Allen** and another [2014] UKSC 47 has brought a precedent on that matter. This case involved child servitude of a girl brought to the UK to live with members of the extended family under false promises of going to school in exchange for being a domestic servant. The case was first brought to the UK Employment Tribunal, which granted compensation to the victim (breach of s. 4(2)(c) of the Race Relations Act 1976). However, the defendant appealed and succeeded in overturning the decision of paying compensation on the ground that the person was irregularly in the UK, and thus that the employment relation was deemed illegal. However, the case was appealed by the plaintiff and brought to the Supreme Court, and the Supreme Court Decision restored the Employment Tribunal' decision to compensate the victim.<sup>37</sup>

Another challenge, linked to the atypical setting of domestic work concerns the blurred lines between an employment relationship and a family or quasi-family relationship. In some court cases the defendants denied the existence of an employment relation itself, arguing that the relation was based on helping the victim and on an arrangement of offering accommodation and food in exchange for performing domestic chores. Few cases discussed in this study illustrate that, in this matter, court decisions have been benevolent with regards to the intent to exploit, retaining this 'help' rhetoric (a point raised in the UK, Belgium, and France case studies). It is difficult to bring evidence of exploitation within employment relations when there are family-based ties between the victim and the exploiter.

Finally, another challenge identified in the country reports relates to the fact that prosecutions rely greatly on the **testimony of the victim**. This **implies that there is an essential and great need of support, protection, and assistance for the victim**

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<sup>37</sup> See Maroukis 2016 (p. 23) for a more detailed analysis. Maroukis notes that the Supreme Court decision was based on a concern that such withdrawing employers' responsibility in this case would contradict the anti-trafficking national policies.

**during the entire process of investigation and prosecution.** Knowing that many victims of trafficking have an irregular migration status, securing a temporary residence permit for them is essential.

### **b. Enforcement of labour law**

In all countries researched, the role of the labour inspectors has been emphasised as being key to ensuring labour laws are monitored and potential situations of THB are detected. Labour inspections are crucial in overseeing compliance with labour laws (ILO 2016). Yet, domestic work as a labour sector poses specific challenges for labour inspection: first and foremost by the fact that the workplace is a private home, which is protected by the principle of the respect of private and family life. This precludes labour inspectors from performing inspections, or considerably constrains their power and competence. Contrary to firms, in which case labour inspectors may visit working places, in the situation of private homes, labour inspectors must obtain court approval prior to any visit in most countries (ILO 2016). Labour inspectors' visits are not only a means for monitoring labour and living conditions, but also may be used as a means for sharing information on rights and responsibilities (ILO 2016). In the EU, the inclusion of labour inspectors in the fight against trafficking is uneven across the countries studied, and of particular relevance for this study, uneven with regard to the labour sector concerned. While advancements have been noted in Belgium, France and the Netherlands toward greater competence of labour inspectors with regard to labour exploitation, domestic work remained outside their scope and mandate. On-site visits in private homes are restricted in all countries. One model that stands out is the Belgian model (described below).

In countries such as Belgium, France, and the Netherlands, labour inspectorates have specific powers in identifying both situations of labour law violations and criminal law violations. In the Netherlands, the inspectorate for Social Affairs and Employment plays a role in investigating trafficking for labour exploitation/forced labour. It detects fraud, exploitation, and organized crime related to work and income. Yet, their competences are more restricted in cases of domestic work. In France, labour inspectors' competences include detection of offences related to undeclared work and also offences included in the Labour Code, which concern irregular employment of foreign workers and human trafficking.

In Belgium, there is a unique model. Under the Social Criminal Code, social inspectors have a competence for conducting investigations regarding breaches of labour law as well as cases of human trafficking. The Social Criminal Code<sup>38</sup> regulates infractions regarding the social security system such as undeclared work, employment of migrants without a work permit, non-existence of employment contracts, poor labour conditions, unpaid or underpaid wages, etc. There are two types of investigations: a criminal investigation for which a warrant to conduct a house visit is required, and an investigation under the Social Criminal Code, conducted by the Labour Prosecutor's Office, that can be quicker as it employs less intrusive means and can be executed without previous authorisation. This type of investigation —while not entailing criminal investigations—is nevertheless a more accessible option for conducting house visits (Camargo, 2016).

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<sup>38</sup> Social Criminal Code (French): [www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2010060607](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2010060607).

In other countries, such as in Italy, other actors are involved, such as the Carabinieri Command for the protection of labour rights whose mandate includes tackling irregular employment and labour exploitation in all sectors. In the UK, there is Gangmasters Licensing Authority (GLA) (which has changed name for Gangmasters and Labour Abuse Authority (GLAA), from the 1<sup>st</sup> of October 2016). This agency regulates the activities of labour providers (such as gangmasters and employment agencies), through licensing of the latter (renewable each year) and conduct inspections of the license holders (on the basis of information received). The Immigration Act 2016 has brought changes to the GLA (now GLAA) that foresee the extension of the agency's role to all labour market, including domestic work (it was previously limited to the farming, food processing and shellfish gathering sectors across England, Scotland, Wales and Northern Ireland).<sup>39</sup> These changes have still to be implemented.

Beyond the challenges found in all countries with regards to conducting house visits, labour inspectorates can also act on complaints received from the worker regarding breaches of labour agreements and contracts.

Other measures for monitoring living and working conditions and oversight of compliance with the law exist with regards to the au pair programme and also to the employment of domestic workers by diplomatic personnel. For example, in the Netherlands, application to the programme can only be done through a recognized official agency, which is also responsible for the au pair's care, e.g. maintaining regular contact and mediating or finding an alternative in case problems arise. While important, the measures of monitoring work and living situations of au pairs appear as insufficient (UK and the Netherlands).

Another line of measures and policies regarding enforcement of labour law concerns the access to remedies (e.g. through an Employment Tribunal) for migrant workers whose labour rights are being violated. However, according to national reports, it appears that employment and labour law remedies (e.g. reclaiming of unpaid salaries or other forms of compensation) is rarely used and is seen as largely ineffective: the procedures are long and migrants may have had to return to their country before a settlement is achieved. The situation for undocumented migrants—while they are entitled in most countries to claim remedies—is even more precarious.

In the UK, according to the law, in situation of irregularity the labour arrangement/contract is considered null or void (if contracted in contradiction to legal requirements). It jeopardizes greatly the entitlement of undocumented migrations to resort to general law provisions and claim remedies. However, as discussed by Maroukis, court decisions have brought more nuances into the application of the law and to evaluating the seriousness of the claim (Maroukis, 2016: 22)

At the European level, the Employer Sanctions Directive,<sup>40</sup> adopted in 2009, and transposed in national legislations (except the UK) in subsequent years, aims at tackling the illegal employment of non-nationals. Some of the provisions seek to ensure the

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<sup>39</sup> See the new extended powers of the GLAA: <http://www.gla.gov.uk/who-we-are/our-aims-and-objectives/the-gangmasters-and-labour-abuse-authority/>

<sup>40</sup> Directive 2009/52/EC of the European Parliament and of the Council of the 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.



protection of labour rights of undocumented migrants. The fact that it recognizes the rights of workers regardless of their migration status to wage compensation is already a great advancement. However, the primary goal of this directive is to criminalize the employment of undocumented migrants (Rolland & Soova 2015). Furthermore, while it foresees the possibility of regaining unpaid wages even for undocumented workers, there is no process for filing complaints established in the directive. In addition, it is centred on wage compensation and does not address all of the other rights of migrant workers.

It points to the fact that the focus is on the control of employers regarding the employment of irregular migrants —thus not preventing abuses from occurring nor protecting migrant workers— and undocumented migrants still face the risk of not being protected. Curbing irregular migration may be seen as being part of measures tackling human trafficking (e.g. in France, see Rogoz 2014), but their impact on the demand for a specific type of labour may be detrimental by pushing migrants deeper into the informal economy.

The use of the human rights approach appears relevant in this matter. If command and control approaches do not guarantee the human rights protection of all victims, they may have a reverse effect: victims may be criminalised for their illegality instead of their employer/trafficker being penalized for rights violations.

A final set of measures needs to be outlined, even if it is specific to one category of employer (diplomatic personnel) and thus may not be strictly replicable for other work settings. It concerns national policies and regulations related to the employment of domestic workers in diplomatic households. As mentioned previously (Section 5.1), new regulations or policies have been adopted by some countries (e.g. Belgium and the Netherlands) in order to prevent abuses, and discourage non-compliance of the diplomatic household with regard to labour laws. The measures address prevention, monitoring and dispute settlement<sup>41</sup>.

In the Netherlands a specific policy on ‘private servants’ was adopted in 2009, while since 2001 Belgium has strengthened the regulations and taken specific measures for prevention. There are two main objectives behind the different measures. First, in terms of prevention, these measures include providing information to employers about labour law and the worker’s rights and information to the domestic worker about their rights. Thus, it may contribute in raising employers’ awareness about their accountability.

In Belgium for example, there are pre-arrival and upon arrival procedures, alongside monitoring measures. On one side, the employer is informed about the worker’s rights and the labour law in the country. On the other side, the worker is informed about his/her rights and obligations through an interview at the Belgian embassy.

The Service of the Protocol at the Federal Public Department of Foreign Affairs then monitors compliance with the contract and detects any labour rights violations. Every year the domestic worker is required to go personally to the Service of Protocol in order

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<sup>41</sup> The Protocol Departments of Ministries of Foreign Affairs (and relevant ministries dealing with this issue) play an important role, given that they are the institutions with the responsibility to regulate and oversee the employment of private domestic workers hired by diplomatic personnel’ (OSCE, 2014: 9

to renew their permission to stay. In the Netherlands, there is a requirement to register the domestic worker with the Protocol Department of the Ministry of Foreign Affairs within eight days of his/her arrival in the country. The domestic worker will have to personally go to the Ministry to receive their special identity card or visa and information booklet about the labour rights<sup>42</sup> (as well as information about who to contact in case of breach of the contract). As in Belgium, the procedure for the renewal of the permit (one year at first) implies a personal interview with the worker at the Protocol Department in order to ensure a certain form of monitoring.

Second, in addition to those preventive measures, another axis of action is dispute settlement. Some mediation procedures are foreseen and the Protocol Department plays a central role. Also worth noting is the creation in May 2013 in Belgium of a Commission for Good Offices which is responsible for ensuring mediation. In both countries, support is provided in cases where it is decided to conduct a criminal investigation.

Similarly, in France, information about French labour law and diplomats' responsibility to respect it is provided through pamphlets published by the Ministry of Foreign Affairs. In case of complaints, the Ministry must seek clarification from the relevant embassy (OSCE 2014; Levy 2016).

Yet, despite those important advances, a core impediment to an effective protection of domestic workers in diplomatic households remains unresolved: the possibility of lifting diplomatic immunity.

### 5.2.2.2 Market-based measures

As briefly mentioned in the previous section, there are some incentives put in place by governments in order to encourage the registration and declaration of domestic work. The most illustrative examples are the voucher system in Belgium and the cheque system in France (*Cheque Emploi Service Universel* or *Pajemploi* systems)

These measures aim at deterring undeclared work, with more or less success in each country. Incentives to register and declare the work range from: facilitating the hiring process, and registering to social security and providing social and tax advantages for employers. Both the voucher system in Belgium and the cheque system in France have been argued to have a positive impact in reducing undeclared work and contributing to better work conditions.<sup>43</sup> In the Belgium case, which is often cited as an example of good practice for enhancing domestic workers' rights, State subsidies (deductions and tax credits) lower the salary to be paid by the employer from €9/hour paid to the domestic worker to €6.30/hour after the tax deduction is taken (see Camargo, 2016).

Measures that serve as an incentive to regularize the domestic sector can be seen as indirectly addressing demand in the context of THB for labour exploitation (Rogoz *et al.*, 2016). While it was not initially designed to address demand in the context of THB, it

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<sup>42</sup> The employment contract includes the statutory minimum wage, holiday entitlements, rights to leave sick, as well as employer's obligation to transfer salary payments to a bank account

<sup>43</sup> However, success and positive impacts depend on the general economic situation and also the constant subsidies from government. In France a new increase of informal employment was documented since 2005, due in part to decrease in government subsidies and the economic crisis (Levy 2016).

may have an impact by enabling migrant domestic workers to regularize their position and also to maintain their legal status. This type of measure may also contribute in changing employers' mentalities as well as the general perceptions of domestic work that should be considered a form of labour deserving to be formalised.

However, there are limitations to the potential impact of such measures, as argued by Camargo in the case of Belgium (2016). Indeed, such measures concern only workers who have a regular stay permit in the country, while most of THB victims in domestic work are still undocumented migrants. Furthermore, these types of measures respond only to one type of demand and not to all, for example, the part-time live out worker providing cleaning services. Thus the situations that are most likely to lead to trafficking are left unaddressed, namely full time live-in arrangements. Also, as argued by a stakeholder interviewed at the European level (Trade Union, Interview EU, 1, June 2015), the impact on changes of mentalities has to be assessed carefully. With government subsidies, salaries paid by employers remain low (€6.30/hour) and this does not challenge the perception that domestic work is a low cost, under-valued form of work.

Other measures aiming at greater regularity in the labour sector—and by thus preventing irregular working arrangements may be seen as preventing abusive practices—concern the requirement that the employer pay the salary into a bank account rather than in cash. Yet, it is difficult to assess the impact of such measures on the demand in the context of addressing human trafficking.

### **5.2.2.3 Peer pressure measures**

The country reports show that the notion of tackling demand in the context of THB in domestic work is mostly envisioned (by governments in their agenda, but also by the stakeholders interviewed) within the framework of raising awareness and professional training for stakeholders. While we can note an increased government concern for tackling demand through awareness-raising campaigns, notably for THB for labour exploitation, there is less effort tailored to domestic work. Only few campaigns specifically target THB in domestic work and are thus a labour-specific campaign tailored at domestic work sector.

It must be noted that in many countries in the study—Greece, Cyprus, France, Italy, and Belgium—the National Plan of Actions appears to constitute a key means by which the government formulates and later implements its commitment to addressing the demand-side of THB. Similarly, domestic work is included in these plans as an area of concern.

However, there are also local initiatives or initiatives stemming from civil society and NGOs. In this regard, it is worth mentioning awareness-raising initiatives conducted by civil society or NGOs. In the Netherlands, for example, the non-governmental organisation Fairwork conducted “Cheap Workers” campaign. They used a false online advertisement for hiring domestic workers for a low salary such as €2.50/hour and after a viewer clicked on the link for more information, they were provided instead with information aimed at raising awareness of how such poor working conditions could be similar to slavery (see de Volder 2016). Clearly, this campaign addressed the demand for

cheap labour and was a means for informing the general public, including potential employers of domestic workers and domestic workers.

In Italy, one of the initiatives cited in the report (Palumbo, 2016), was a traveling anti-mafia caravan organised by different trade unions to draw focus on the exploitation of domestic workers. Different regions of Italy have also undertaken initiatives.

Peer pressure measures also include better provision and access to information for workers about their rights and about the mechanisms to access their rights. Examples of such initiatives are numerous and stem from government, civil society, and trade unions. Indeed, the role of domestic workers' associations and trade unions have to be outlined as being critical to ensuring a greater visibility of the phenomenon of abuses of domestic workers (including but not limited to THB), informing workers and, not least, supporting domestic workers in the legal proceedings in cases of exploitation or THB or both. More dissemination of information about workers' rights through diverse outreach activities (distributing information, the use of cultural mediators in the Netherlands, awareness-raising campaigns, etc.) in the long run may facilitate a change in mentality about what is acceptable and unacceptable in the treatment of workers.

## **6 What drives the demand for cheap and exploitable workers?**

Drawing on the data collected in the countries, there are three key categories of factors that influence and shape the demand: economic and material factors, relational dimension (influenced by cultural and social factors), and the political and legal framework. These different factors overlap considerably and play at different levels simultaneously. For example, the economic aspects (capacity to pay and price/salary) will be influenced by welfare policies and labour regulations in place (whether or not there are good public services), personal and societal norms and valuation for this form of work as well as by discriminatory attitudes considering domestic work as a less valuable form of labour (being highly gendered and performed by migrants).

### **6.1 Economic and material factors**

The most common factor that emerged as playing a central role in influencing demand concerns the economic and material factor. This is despite the fact that THB in domestic work differentiates itself from other sectors and forms of THB (when considering domestic servitude) because it is a non-profit activity. In most cases, there is no direct profit made from the exploitation of domestic workers on the part of the households (excluding here the cases of placement/employment agencies). Yet, households and employers seek to purchase cheap labour, and profit from the savings made as well as from the exploitation. Further, while this is the general feature of cases of THB in domestic work, it has been reported in the UK that cases of THB in domestic work also involved profit making, in that the exploiters also used some fraud to earn benefits, e.g. claiming family or unemployment benefits or work tax credits on behalf of the victim (Maroukis, 2016).

As discussed by Camargo in the country report on Belgium, the logic of *more-for-less* may become a modus operandi leading to exploitation, and thus situations of trafficking. While it is important to remain cautious that not all situations of low-standard working conditions leads to trafficking, this 'logic' or reasoning is nevertheless the backdrop against which exploitative practices take root.

The economic dimension not only includes paying a low salary, or no salary at all, but also not paying social benefits or social protection for the workers, not paying taxes, and underpaying the work performed (not paying the extra hours, expecting the domestic worker to be constantly available, etc.). It also relates to the provision of poor and inadequate material living conditions for the live-in domestic workers (access to food, private and adequate sleeping space, etc.).

The fact of saving money—of paying less for more—is amply illustrated in situations in which a private household needs to employ a domestic worker to care for a dependent family member, such as someone who is elderly or disabled. Indeed, in those situations, the private household's needs would require care on a 24/7 basis. Oftentimes, families cannot afford paying for the necessary personnel essential to provide such labour. It is estimated that three employees would be required to perform this amount of work (see Palumbo, 2016). Instead, in the absence of state support and assistance for families with such needs, the latter employ one domestic worker to provide all the work needed. The initial setting (important needs, little capacity to pay, poor welfare policies or inadequate ones) is favourable to exploitation, or at least set the context for low working conditions. Another tangible illustration of potential economic gain is the misuse of the au pair programme as a way of paying little and benefitting from a full-time care worker without having to pay the full salary. When the work is performed in the informal market, without proper contract or without being registered, the employer does not pay any taxes or for any social benefits. But even under regulated arrangements, there are other means sought to pay less.

The issue of paying less relates directly to the price/salary for the work/service and to the capacity of the private household to afford care and domestic work. This issue emerged more acutely in Italy and Greece, where some interviewees also noted that the economic recession has worsened the situation. As stated by one stakeholder in Italy: *the cost of legally employing a (live-in) domestic worker [around €1,100] is impossible for many families today. Therefore, a cheap labour force has become more desirable* (interview excerpt cited in Palumbo 2016: Interview 12, Senate, March 2015). This example shows the intersection of both private households' needs and public policies in place. Indeed, it is not dissociable from the inadequacy or absence of State provision of public services for care work and childcare. Low capacity to pay lead to the informal market, or in the case of Cyprus, to the more affordable market of migrant domestic workers regulated through the visa scheme (Angeli 2016a).

Yet, the logic of more-for-less does not explain alone exploitation and trafficking. Thus, looking at demand does not illuminate a better understanding of what will push an individual to submit another person to severe abuse. Economic considerations are only one part of the puzzle.

Thus, enters into play another arena of factors, linked to cultural perceptions, societal norms and beliefs, and discriminatory views. The logic of *more for less* is shaped by undervaluation of domestic work as a form of labour—which is further discussed below.

## 6.2 How to address the relational dimension

Economic motivations do not suffice to understand trafficking. Material and analysis from country reports shed light on the factors stemming from this ‘relational dimension’.

As stated by Maroukis in its report on the UK, ‘the very features of the domestic work arrangement may mask the exploitation occurring’ (Maroukis 2016: 23). Indeed, the type of relationship involved in domestic work—especially in situations of live-in working arrangements: intimate, personal and at times emotional such as attachment for the cared ones, whether children or elderly—emerged as being crucial in the situations involving THB in domestic work. What is being initially asked of the domestic worker as a favour (such as doing extra tasks or being constantly available) may transform into an expectation that can be reprimanded if not fulfilled. All situations involving family-based arrangements enter into play here.

In addition, there is often a sense of indebtedness on the part of the domestic worker, meaning a feeling of owing gratitude for a favour or for the ‘help’ received to facilitate their employment or also sometimes their migration process. If we exclude situations in which there is a financial indebtedness that ties the worker in exploitative situations – given the obligation of repaying the debt – there are more subtle forms of indebtedness. On the part of the employer and private household, a temporary ‘expecting more’ from the worker for its help may be justified by the promise of later benefits, such as facilitating the process of obtaining a regular migration status (work permit, residence status). This may serve as a justification to use exploitative practices. The same applies in situations of child fostering where access to schooling is promised.

Situations of trafficking in domestic work are not necessarily initiated, on the part of the exploiter, with the intent of submitting the person to extreme forms of exploitation. In many cases reported in this study, there was a process of deterioration of the working and living conditions turning into severe forms of exploitation. This observation gives rise to the following issue: beyond the interpersonal relations, there are factors stemming from the socio-economic environment that do not prevent the deterioration and that may also normalize certain abusive practices, which further sustain a sense of impunity.

Discriminatory attitudes, as well as social norms that maintain a devalued perception on domestic work, also play a role, and influence the demand (Gallagher & Skrivankova, 2015: 48). This sets the ground on which the relationship between the private household and the domestic worker will be initiated and also how it will evolve. Within domestic work, demand is gendered (e.g. families mostly seek female workers) and sometimes racialised and ethnicised (looking for certain ethnic groups) (Anderson, 2000, 2007; Cox, 2006).

On that matter, there is an important distinction, or line to draw, between demand and preferences. The demand for cheap labour is mostly driven by economic motivation:

paying less. This is also influenced by a pervasive undervaluation of domestic work as a form of labour. Preferences, then, in terms of whom to hire for performing the domestic and care work, as well as preferences with regard to the types of employment relationships, resonate with factors that are not necessarily economic, and thus more complex and sensitive to analyse.

Preferences relate, as already documented in domestic work literature, to certain nationalities being perceived as more suitable or more docile. Another element that should not escape our attention is preference for a person in a vulnerable position who will have no alternative than accepting abusive conditions. This constitutes the root of the abuse of a position of vulnerability. As illustrated in different cases in the country reports, vulnerable persons are targeted and recruited by exploiters for their vulnerability.

Based on the social and cultural construction of domestic work, there are also some expectations or assumptions, for example that the worker will be available on a continual basis in case of live-in, where work hours are not clearly set. Specific features of domestic work already complicate the distinction between work and free time, favour and required task. Furthermore, some assumptions legitimize certain households' expectations that domestic workers will accept low working and living conditions, and this also forms part of the factors influencing the demand for cheap and exploitable workers.

In line with the discriminatory attitudes and preferences that were just described, there is also a common theme that emerged from the analysis of the cases reported in this study. There is a process of 'othering' the domestic worker, attached to the undervaluation of this form of labour but also of depreciation of the person. Bott (2005) explored the cohabitation of the opposed dimensions of 'intimacy' and proximity (living in the same house, caring for a loved one) and 'distancing'. This scholar has shed light on how employers negotiate tensions related to unequal power, and oscillate between those two dimensions. The process of distancing from the worker is achieved through a process of 'othering' and differentiation and depreciation. This depreciation may be negative perceptions based on gender, class, or ethnic background and even from the fact of being migrant (regardless of the country of origin).

As previously noted, there is also sometimes the 'helping' rhetoric that operates in the justification from the private households/employers. This can occur in all situations outlined in Section 4: within family, within employment contract, within diplomatic household and au pair. The **rhetoric of help** is not specific to certain work arrangement, but appears as a crucial knot bridging many if not all situations and reinforces the unequal power of the private household. Deception and making false promises can contribute initiating and maintaining a situation of exploitation and of abuse of vulnerability (Camargo, 2016). Helping to migrate, helping in the sense that it constitutes a work opportunity that is difficult to find for migrants, helping a national (example of persons with mental illness) offering accommodation and food in exchange of performing tasks.

Another element outlined in some of the country studies relates to the mutual 'benefits' of certain situations that would qualify as exploitative. This recalls that the 'possibilities'

for certain type demand is closely entangled with the vulnerabilities of the worker that makes them accept harsh conditions they otherwise would not accept if they could access better options. Yet, discussion on the evolution of the relationship should not overshadow the fact that at the time of initiating the work or family arrangement, the vulnerabilities are targeted and even 'preferred'.

Discriminatory attitudes and practices are also fuelled by peer influence (norms that stem from similar behaviours accepted or tolerated within a given social group/society), among households employing domestic workers. The way norms are understood and maintained is influenced by peer behaviour (Anderson & O'Connell Davidson 2003: 42). Peer influence may reinforce self-justification and normalisation of certain practices.

### **6.3 The role of policies, laws and regulations: by its absence or its incongruence**

Economic considerations, discriminatory attitudes, and pervasive undervaluation of domestic work have also to be considered within the wider context of the policies, laws and regulations in place.

As discussed in Section 5, **States interventions** shape the conditions and factors influencing demand. Regulations may contribute to preventing exploitation from occurring and foster the protection of the workers. However, policies, regulations, and laws may also create or maintain conditions that may allow exploitation to occur (such as the tied-visa system in the UK and Cyprus), alongside States' inaction or lack of implementation of labour and criminal law. The failure to ensure effective access to protection and remedies for all migrant workers is also part of the policy/legal/social environment within which exploitation occurs. One of the few research pieces conducted on THB in domestic work in Europe includes the recently published book by the Mediterranean Institute for Gender Studies (MIGS 2015) which shows that the State, through its policies and laws, creates conditions allowing exploitation of domestic workers. Yet, outlining its influence should not overshadow that the employers/private households remain responsible and accountable for their actions.

Thus, it could be argued that 'more regulation' is not the only way to prevent THB. Regulations may also, at times, have unintended negative impacts on certain groups of workers. More regulation might not alone act as a deterrent to exploitation, as some regulations may maintain the unequal power relationships at the root of abuse of position of vulnerability in context of THB. This is not an argument for less regulation, but rather to critically assess the policies in place. In that regard, domestic work is a special case.

The study showed the prevalence of the informal market; domestic work is frequently performed on an unregistered basis. As exposed in the case study in Italy, and already discussed in previous studies (Castagnone *et al* 2013: 20), is that the fact that remaining in an irregular employment situation also has some attractiveness for the migrant workers. There is a **double reciprocal convenience** for both employers and workers (Castagnone *et al* 2013: 20). There may be beneficial aspects of being unregistered given



some requirements in laws or the very difficult and limited possibility to migrate and work as a domestic worker.

Poor sanctioning and perceived impunity in turn sustain a perception of social acceptability of certain practices. This issue stands out in all country studies as fuelling a demand for cheap and vulnerable domestic workers. Linked to that question of absence of enforcement and sanctioning, is the fact that domestic workers are prevented from disclosing situations of abuses for various reasons. Those elements have already been documented in the literature on migrant workers, especially in irregular situation (FRA 2015): the fear of being reported to authorities and deported, and the false hope created by employers' false promises that their status will be regularized. Workers' lack of knowledge about their rights—and more importantly about who to turn to in cases of exploitation—is another important factor.

## **7 Tackling demand in the context of THB in domestic work: challenges and 'take away' lessons**

This section will further advance the discussion initiated in Section 5 regarding the political and legal regulatory framework, and discuss ways to tackle the issue of THB in domestic work while addressing the demand-side.

Based on the results and analysis conducted in the seven national studies, this paper supports the argument that in order to address demand in the context of THB, a holistic approach must be adopted. This enables tackling the multiple facets that influence and shape demand: the policies and regulatory framework in place and the discriminatory attitudes. What the country reports suggest is that it is in fact very difficult, if not impossible, to disentangle 'demand' from 'supply'. It is challenging to separate the one end of the spectrum concerning the vulnerabilities of potential victims of trafficking, from the other end that touches the demand for the final good or service produced or performed as a result of trafficking. They mutually fuel each other: '[...] the availability of a cheap and exploitable domestic labour force [...] can itself contribute to generating demand for exploitative domestic labour at a level that may not otherwise have existed' (Gallagher, 2010). Consequently, measures that are not meant to address demand directly, nevertheless, may have an impact on the demand-side, such as measures tackling the supply side (e.g. informing domestic workers about their rights).

In this section, the following areas of actions will be explored: i) detection ii) knowledge, information and raising awareness, and iii) regulation and enforcement of regulation.

However, one key challenge to this exercise should be outlined. THB in domestic work concerns a great heterogeneity of situations: whether it occurs within an employment contract, in a situation of irregularity, within the au pair programme, within a diplomatic household, or within situations of child fostering or arranged marriages. These situations are regulated by different frameworks. Prevention of THB in all these different situations implies different measures and mechanisms. Thus addressing demand also requires taking into consideration this diversity even though the demand for live-in and full time domestic workers is common to all of these different scenarios.

## 7.1 The unavoidable issues of detection and definition: breaking the cycle of invisibility

It goes without saying that any anti-trafficking effective response starts with effective early detection. In the case of domestic work, this study suggests that invisibility and under-identification persist, and special attention should be given in order to enhance the detection of cases. The fact that exploitation in this labour sector is greatly hidden constitutes a crucial impediment to anti-trafficking efforts.

As argued by a key stakeholder in the Netherlands (de Volder 2016), law enforcement investigative activities and priorities must be based on flexibility, in order to be more pro-active and identify less known areas where THB occurs. This argument has also been discussed in the context of the UK. Maroukis (2016) stresses that law enforcement priorities depend on political choices: which form of crime will be given priority – and thus more resources are allocated for one crime over others.

This issue also relates to the question perception and (mis)conception of THB. The chain of actions leading to prosecution start with identification of a case of THB, and relies on the practitioners in contact with the potential victim, including labour inspectors, police officers and the different actors in the judiciary system. All of those actors' perception will influence the end result in terms of implementing the law.

Many aspects will come into play in influencing the interpretation, from certain prejudices or ill-conception of what is severe forms of exploitation and human trafficking to perceptions regarding 'who', that is, the profile of the potential perpetrator (a criminal network vs the mother of a disabled child in a private household exploiting a domestic worker, a foreign household exploiting a domestic worker coming from their country of origin vs a national exploiting a domestic worker, etc). In France, this issue was raised, and stakeholders discussed the fact that human trafficking was still perceived as a 'foreign' crime, involving non-nationals, both as victims and traffickers (Levy, 2016). Similarly, in the UK, a stakeholder stated that law enforcement officers sometimes misunderstand situations, perceiving them as a situation of exchange of domestic chores for accommodation —which fall outside of the THB offence—when those cases would fit the definition of THB. At the core of the (mis)perception is the atypical form of relationships that often characterise domestic work, the 'familial link' (either considered like 'a family member' or actual family members) may obscure the exploitative nature of the conditions.

In order to act on **prevailing and persistent perceptions**, more training and awareness raising initiatives are needed. This relates to the lack of knowledge and expertise from the law enforcement and judicial sector with regards to labour exploitation/forced. While police investigation teams may have built experience and expertise in dealing with organized crimes and/or prostitution rings, the experience in dealing with labour exploitation, including exploitation taking place in private houses, is not yet an acquired expertise.

Better detection does not only concern law enforcement and judicial systems, but also different actors and sectors that are in contact with domestic workers. A good practice to mention is the use of **cultural mediators** by the NGO Comensha in the Netherlands,

which has proven to facilitate the detection of cases (most cases reported to labour inspectors for examples are brought to their attention by victim themselves, NGOs mostly through cultural mediators). Under the care of the NGO Fairwork (with government funding), cultural mediators ‘act as ears and eyes in the community’ (de Volder, 2016), and considerably enhance the outreach potential. They are in contact with domestic workers and are in a better position, with regard to trust relationship, to identify situations of abuse. They also act to inform domestic workers about their rights. This type of practice recalls the important role of the civil society and NGOs in the identification of trafficked persons or exploitative situations.

The role of **labour inspectorates** in detecting cases of THB in domestic work has been stressed in all the countries. Yet, currently, their competences are still limited. The main issue at stake is the possibility to effectuate home visits. The Belgium case was already discussed in the Section 5. Another example worth outlining is that of Ireland. In Ireland, a mechanism has been put in place to facilitate meetings between labour inspectors and private homes. The National Employment Rights Authority will first request a visit to the private household via email. In case of refusal, the employers are asked to propose another location for the meeting, which is the occasion to inform and verify documents (ILO 2016). This type of practice is seen positively, and could be used as a model in other countries. In other words, while acknowledging the specifics of the private home, more proactive measures should be undertaken by the States to ensure that families employing domestic workers are responsible and accountable as an employer. The role of labour inspectorates includes detection as well as monitoring of the law.

Alongside the issue of detection is that of **disclosure**. Given the inherent limitations and constraints in pro-actively investigating or monitoring the working and living conditions of live-in domestic workers, within private households, the anti-trafficking response in this domain relies on domestic workers themselves—or NGOs and associations working with domestic workers—coming forward to disclose abusive conditions. This issue raises the question of appropriate assistance for victims of trafficking.

Indeed, assistance to victims of trafficking and victims’ access to justice emerged as central in the country studies. Without adequate support, a person victim of exploitation may be unwilling to disclose. In turn, few cases will be reported to the authorities. Assistance to victims is part of the chain of actions related to addressing demand. The legislative framework in place will not be implemented properly without workers coming forward, and taking action against their employer and agreeing to initiate an investigation and to testify against their former employers or agencies in cases involving intermediaries. Prosecutions rely on their testimonies. The study shows that the implementation of the trafficking offences requires an effective victims’ access to protection and assistance, including a stay permit. Under the current systems of protection – whereas the assistance is conditional to the victim’s collaboration to criminal investigations/prosecutions (except in Italy), the temporary permit is short and the assistance is insufficient - victims of trafficking will most likely opt not to disclose and not collaborate. The same could be said for civil procedures and the reluctance to initiate a compensation claim for back-payments. There is little incentive to initiate legal procedures. An appropriate support and protection net is necessary, including to provide other employment options.

The invisibility that surrounds abuses in the domestic work sector intensifies the sense of impunity. Also, impunity is not only fuelled by the lack of detection and prosecution, but also by peer influence. What is considered acceptable, and normal, is also influenced by practices and attitudes prevalent in a given social environment.

**In order to reduce social acceptability and tolerance** of sub-standard working conditions and exploitation, both employers (private households) and the general public (FRA 2015) must be targeted.

## **7.2 Empowerment of the workers and change in mentalities: two sides of the same coin of raising awareness.**

Empowerment of workers have many dimensions, and may relate to various policy tools and means: ensure the right of association of domestic workers, representation by a trade union, setting fair working conditions, support the work of associations working with domestic workers and who might be in a better position to reach them despite their isolating work setting, etc. Importantly, looking at workers' empowerment – regardless of their migration status – brings back in the discussion that preventing exploitation goes far beyond the strict and narrow anti-trafficking efforts. As rightly pointed out by Rogoz *et al.* (2016), regarding policy tools addressing demand, anti-trafficking response touch one fraction of all situations of THB for labour exploitation that may occur at larger scale (p.10). Preventing exploitation shall not be limited to acting on situations of trafficking, but the wider context of decent work conditions for all (and access to justice).

One important factor of vulnerability identified is workers' lack of knowledge about their rights. Providing information to workers thus contributes to their empowerment and, in turn, may contribute to reinforcing their position in negotiating work conditions.

In addition to foster the empowerment of workers, changes in mentalities may be fostered by raising awareness. Awareness-raising activities are multi-level and multi-sectoral: at the local, regional, national, and international levels. The international campaign for the ratification of the ILO Convention on Domestic Workers is an example. As outlined by a European trade union representative (Interview EU 1, June 2015), the campaign has given visibility and put the issue of equal treatment and decent work conditions for domestic workers on the political agenda. It has served as a tool for negotiation and discussion with national governments. Beyond increased visibility, the campaign and Convention are seen as contributing towards changing mentalities and, long term, towards wider acceptance and recognition of domestic work as formal labour.

## **7.3 More or less regulation? The importance of protecting all workers**

Many gaps identified in the policies and national legislations interact with and impact on the environment structuring the work and living conditions of domestic workers, and more importantly, impede prevention of abuse. Yet the direct link between 'more' regulation in the domestic work sector and prevention of abuses is not always so easy to establish. This is not to diminish the importance of acknowledging that a regulated labour sector contributes to preventing abuses and thus trafficking to occur. But, the nuance to bring is that those regulations act in a given environment, and interact with

other factors. Regulations in different sectors, and not limited strictly to anti-trafficking efforts, can become key points of intervention: health and safety controls, strict monitoring of employment agencies' practices, compulsory mediation meeting between the employer and the worker, maintaining contact with the au pair during their stay, etc.

The demand for live-in and full time domestic workers—in a general contexts of poor, privatized welfare regimes and lack of service provision by state institution—is not adequately met under the current regimes. Regulations for such work arrangements must be addressed and the current regime in place in the UK and Cyprus is not the way to go. Those tied-visa regimes maintain and perpetuate the relationship of subordination that often characterises domestic work by keeping the worker dependent on their employer. Lifting the requirement to live-in as well as facilitating the change of employer under the same work permit are important means for fostering workers' protection from abuses.

In Cyprus, the establishment by the government of a standard contract for hiring migrant domestic workers constitutes in itself a good step in setting the minimum labour standards and employers' obligations. Yet, the contract is singled out by many stakeholders (Angeli 2016a; MIGS 2015) as maintaining in place vulnerabilities and precariousness. Beyond the different models of regulations, it is crucial to ensure protection for all workers, and address the vulnerable position of undocumented migrants. This is also linked with changes in mentalities.

Another issue to be addressed concerns the fact that tackling irregular migration remains a priority over protection of victims. To redress and address this issue of the double-edged effect of current regulations (migration controls versus protection of victims of trafficking), there must be a clear separation and distinction between labour rights and related institutions, and the justice and immigration system; what the UN Rapporteur on the human rights of migrants refers to as the 'firewall' (OHCHR, 2014). Law enforcement has the duty to report to immigration officers when immigration issues are present in a case. This limits the scope of actions. This constitutes in itself a safeguard and protection measure, and it could potentially enhance the disclosing of situations on the part of the victim, by (re)building trust toward authorities. This trust not only lies with the workers themselves, but also the organisations working with them, which may not support or encourage victims to file a complaint or lay criminal charges out of fear that the person they assist will be deported. Without clear protection from risk of deportation, irregular migrants or migrants with a precarious status might not disclose labour rights violations.

While expanding labour inspectors' mandate is crucial, this should be done in a way that does not further weaken migrants in different precarious situations. A mandate to detect cases of THB in order to protect victims is not compatible with the mandate of enforcing immigration laws when detection interventions lead to reporting undocumented migrants – such as labour inspectors' duty of reporting undocumented migrants to immigration authorities.

An area that would also need further regulation concerns recruitment and employment agencies, as well as monitoring and enforcement when regulations exist. In Cyprus, the fraudulent and abusive practices of employment agencies were seen as a key element in

the situations of trafficking in domestic work. As stated by a recent report on THB in domestic work in Cyprus (MIGS 2015), there has been a rapid increase of employment agencies, without strong regulations. Thus, there is a need for clear and strict requirements as well as penalties for non-compliance (p.65). There are some international tools and reports that provide guidance in terms of good practices for government in regulating 'third-for profit parties' – the recruitment and employment agencies (ILO, 2007; UNODC, 2015). Employment agencies are now part of the labour migration process worldwide, and States' obligations in regulating these agencies is part of the process of combatting trafficking. Furthermore, given the close links between agencies and employers, they themselves fuel and influence the parameters of supply and demand for the latter.

## 8 Conclusions

Beyond the specifics of the domestic work sector and its unique vulnerabilities to exploitation, this report also illustrates that while the domestic work sector is a special case, it also constitutes a learning ground for other areas where human trafficking may occur.

Indeed, THB in domestic work touches issues related to labour law and regulation, as well as migrant workers' rights. It also challenges issues associated with the private realm. With regards to labour law and regulation, this study shows that while it is crucial to enhance through legislation the formalization of domestic work as a labour sector— while meantime ensuring equal treatment and access to full social protection coverage as any other worker— this line of action alone is not sufficient to address the demand-side of THB in domestic work. A combination of different strategies will provide a stronger response to THB, especially in regard to prevention and tackling demand. A change in mentalities is required that will make it socially unacceptable to maintain behaviours that are abusive and conducive to maltreatment of domestic workers. The persisting under-valuation of domestic work can be addressed through strong awareness-raising campaigns and, as mentioned in the previous section, campaigns that target different segments of the public. Another area of action that was identified in this study concerns the protection of migrant workers' rights. This leads back to the recommendations of the UN Rapporteur for the migrants' rights that there shall be a firewall between labour institutions and immigration law enforcement agencies (OHCHR, 2014).

Notwithstanding the diversity of regimes in place at the national level in the seven countries studied, we have seen that some commonalities across the countries stand out and some gaps in current regulatory frames persist despite some advances. There is still some incongruence in the policies in place. On one side, some policies regulating employment for domestic workers perpetuate or maintain sub-standard labour conditions in the sector, while, on the other, there is acknowledgement that this group is more vulnerable to exploitation and should be protected from severe forms of exploitation and human trafficking.

Indeed, while some of the countries in this study, are known for having a strong and comprehensive anti-trafficking response or some aspects of their anti-trafficking response is identified as a good model,<sup>44</sup> THB in domestic work still slips through the cracks or is one of the loopholes. One element put forward in the country studies, at the policy level, is the discrepancy between anti-trafficking efforts and labour/migration policies.

Trafficking in the domestic work sector cannot be detached from the wider issue of decent work conditions for domestic workers. In this matter, the European Parliament's recent adoption on 28 April 2016 of the Resolution on women domestic workers and carers in the EU (2015/2094 (INI)) will constitute a stepping stone within the EU to foster States' obligations regarding the respect and protection of domestic workers' rights.

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<sup>44</sup> In Belgium, the broad definition and close collaboration of the actors in field provide a strong response to trafficking. In the Netherlands, the National Rapporteur is really active since it was established and its assessment report on the country anti-trafficking response is seen a model example, but also the model developed. In the UK, there have been repeated government commitments to fight trafficking, most recently with the adoption of the Anti-Slavery Act. A National Referral Mechanism was also put in place in 2009 to receive and refer cases of trafficking. The Italian anti-trafficking framework is considered a good model with regard to its assistance programmes for victims of crime, which is known to be victim-centered and not conditional on the victim's collaboration into criminal proceedings—as opposed to other countries (and to the EU Victim Directive). Also, Greece recently established a National Rapporteur. Yet, despite all those advancements in strengthening the anti-trafficking response, core issues such as trafficking occurring in the mainstream economy remains untouched.

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## 10 ANNEXES

### 10.1 Annex 1: List of Country Reports and Policy Briefs

#### List of country studies:

Angeli, D. (2016a) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Cyprus*, DemandAT Country Study No. 2, Vienna: ICMPD

Angeli, D. (2016b) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Greece*, DemandAT Country Study No. 4, Vienna: ICMPD

Camargo, B. (2016) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Belgium*, DemandAT Country Study No. 1, Vienna: ICMPD

De Volder, E. (2016) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in the Netherlands*, DemandAT Country Study No. 6, Vienna: ICMPD

Levy, F. (2016) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in France*, DemandAT Country Study No. 3, Vienna: ICMPD

Maroukis, T. (2016) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in the United Kingdom*, DemandAT Country Study No. 7, Vienna: ICMPD

Palumbo, L. (2016) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Italy*, DemandAT Country Study No. 5, Vienna: ICMPD

#### List of National Policy Briefs

Angeli, D. (2016a) *Policy Brief: Trafficking and exploitation in domestic work in Cyprus*. DemandAT Policy Brief, Vienna: ICMPD.

Angeli, D. (2016b) *Policy Brief: Trafficking in domestic work in Greece: a demand-side approach*. DemandAT Policy Brief, Vienna: ICMPD.

Camargo, B. (2016) *Policy Brief: Trafficking in Human Beings in Domestic Work in Belgium: Tackling Severe Exploitation in Hidden Spaces*. DemandAT Policy Brief, Vienna: ICMPD.

De Volder, E. (2016) *Policy Brief: Trafficking in human beings in the domestic work sector in the Netherlands: a hidden phenomenon*. DemandAT Policy Brief, Vienna: ICMPD.

Levy, F. (2016) *Policy Brief: La traite des êtres humains dans le travail domestique en France, un phénomène sous-estimé*. DemandAT Policy Brief, Vienna: ICMPD.

Maroukis, T. (2016) *Policy Brief: The gap between law and reality: addressing human trafficking in the British domestic work industry*. DemandAT Policy Brief, Vienna: ICMPD.

Palumbo, L. (2016) *Policy Brief: Exploited for Care: Abuse and Trafficking in Domestic Work in Italy*. DemandAT Policy Brief, Vienna: ICMPD.

## 10.2 Annex 2: Table with the national definitions of trafficking in human beings as established in the national criminal law

Country	Definition of trafficking in human beings for labour exploitation and/or forced labour	Disposition
<b>Belgium</b>	<p>“Constituting the offense of human trafficking are the recruitment, transport, transfer, housing, harbouring of a person, taking control or transferring of the control over that person for the purposes of:</p> <p>1° the exploitation of prostitution or other forms of sexual exploitation;</p> <p>2° the exploitation of begging;</p> <p><b>3° carrying out work or providing services in conditions contrary to human dignity;</b></p> <p>4° removal of organs in violation of the law of 13 June 1986 on the removal and transplantation of organs, or human tissue in violation of the law of 19 December 2008 on the acquisition and use of human tissue for the purposes of medical applications in humans or scientific research;</p> <p>5° or having this person commits a crime or an offence against his will.”</p> <p>(Cited in Camargo 2016: pp.3-4)</p>	<p>Article 433quinquies of the Criminal Code, <i>Law of 29 April 2013 to modify article 433quinquies of the Criminal Code</i></p>
<b>Cyprus</b>	<p>Law 87(I)/2007: “Trading a person for the purposes of labour exploitation and submitting that person to forced labour or services, or any form of slavery or practices similar or servitude, or for the account of another person and the work is done in apparently different working conditions due to the use of:</p> <p>a) threats, and/or sexual exploitation of adult persons, or</p> <p>b) the use of force or other forms of coercion, and/or</p> <p>c) kidnapping, and/or</p> <p>d) wilful misconduct or fraud or deception, and/or</p> <p>e) abuse of power or capacity to exploit the vulnerability, and/or</p> <p>f) giving or receiving of payments or benefits to achieve the consent of a person having control over another person, and/or</p> <p>g) virtual debt.”</p>	<p>Law 87(I)/2007  ‘The Law Combating the Trafficking and Exploitation of Human Beings and Victim Protection of 2007’ (Articles 2, 8 and 22) Law 87(I)/2007 was repealed by Law 60(I)/2014  ‘The Law providing for the Prevention and Combating of Trafficking and Exploitation of Persons and the Protection of Victims’</p>

	<p>Law 60(I)/2014: "Taking advantage of the work or services of a person, or submitting that person to labour exploitation or exploitation of their services, or any form of slavery or similar practices or servitude through:</p> <ul style="list-style-type: none"> <li>a) threats</li> <li>b) the use of force or other forms of coercion</li> <li>c) kidnapping</li> <li>d) fraud or deception</li> <li>e) abuse of power or capacity to exploit the vulnerability so that the person does not have any other acceptable possibility rather than to submit to the abuse</li> <li>f) giving or receiving of payments or benefits to achieve the consent"</li> </ul> <p>(Cited in Psaila <i>et al.</i> 2015: p. 105)</p>	
<p><b>France</b></p>	<p>"The act of recruiting a person, [and/or of] transporting, transferring, harbouring or hosting him or her for the purposes of exploitation". It specifies the circumstances:</p> <ul style="list-style-type: none"> <li>1. through the use of threats, coercion, violence or fraud against the victim, his or her family, or a person who is in regular contact with the victim;</li> <li>2. by a legitimate, natural or adopted ancestor of that person or a person with authority over the victim, or who abuses their official or professional authority;</li> <li>3. <b>by abusing a situation of vulnerability due to age, illness, infirmity, physical or mental disability, or pregnancy, that is apparent or known to the perpetrator;</b></li> <li>4. by exchange or granting compensation or any other benefit or promise of remuneration or benefit.</li> </ul> <p>Exploitation is defined as:</p> <p>"the act of putting the victim at one's disposal or at the disposal of a third party, whether or not the third party is identified, for the purposes of procurement of sexual services, assault or sexual abuse, <b>enslavement, submission to forced labour or services, servitude</b>, removal of organs, begging, <b>or working or living in conditions contrary to human dignity</b> or to force the victim to commit any crime or wrongdoing</p> <p><b>Forced labour, servitude and enslavement are defined in separate articles according to the degree of seriousness that characterizes each.</b> Forced labour is "the act of compelling a person by violence or threat to perform work without payment or in exchange for payment clearly disconnected from the work performed" (Art. 225-14- 1).</p>	<p>Article 225-4-1 of the Penal Code</p>



	<p>Servitude is "the fact of regularly subjecting a person whose vulnerability or state of dependence is apparent or known to the perpetrator, to the offense [of forced labour]" (Art. 225-14-2).  <i>(Cited in Levy 2016 : p. 4)</i></p>	
<b>Greece</b>	<p>1. Whoever, by means of the use of force or threat of the use of force or other forms of coercion, abuse or abduction recruits, transports or transfers within or outside the territory, restrains, harbours, surrenders to a third party with or without expecting in return, or receives from a third party a person with the purpose of removing that person's cells, human tissues or organs or of <b>take advantage or allowing a third party to take advantage of that person's labour</b> or begging, is served with a sentence of up to ten years imprisonment and a fine between €10,000 and 50,000. (Article 323A Penal Code)</p> <p>2. The same sentence is applicable where the offender, in order to achieve the same purpose, extracts the victim's consent by means of deception or lures the victim with promises, gifts, payments or the provision of other benefits abusing the victim's position of vulnerability." (Article 323A par 1 Penal Code)</p>	Article 323A of the Penal Code
<b>Italy</b>	<p>"A term of imprisonment of from eight to twenty years shall be applied to whoever recruits, introduces into the territory of the State, transfers even outside said territory, transports, yields authority over a person to another person, offers lodging to one or more persons who are in the conditions specified in Article 600, or performs the said conducts against one or more persons by deceit, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, or of a weaker physical or psychic condition or a condition of need, or by promising or giving money or of any other advantage to the person having control over that person, for the purpose of inducing or forcing him/her to perform work, sex or to beg or, in any case, to perform unlawful activities entailing his/her exploitation or removal of organs"  <i>(Cited in Palumbo 2016 : p. 6)</i></p>	Article 601 of the Criminal Code

<b>Netherlands</b>	<p>Any person who by force, violence or other act or threat of violence or other act, by extortion, fraud, or the misuse of authority arising from the actual state of affairs, by misuse of a vulnerable position or by giving or receiving of remuneration or benefits to obtain the consent of a person, recruits, transports, moves, accommodates or shelters, including the exchange or transfer of consent of that person, with the intention of exploiting that person or the removal of his organs;</p> <p>The person that, by the means referred to under 1° (above), forces or moves another person to be available to perform labour or services or make his organs available or in the circumstances referred to under 1° undertake any act which he knows or reasonably must suspect that the other person thus makes available to perform labour or services or organs available wilfully profits from the exploitation of another person. (Article 273f of the Criminal Code)</p> <p><i>(Cited in Psaila et al. 2015: p. 119)</i></p>	Article 273f of the Criminal Code
<b>UK</b>	<p>The Modern Slavery Act 2015</p> <p>“Part 1 Offences, Clause 2 (Human trafficking) Subsection (1) makes it a criminal offence to arrange or facilitate the travel of another person with a view to their being exploited. Travel is defined in subsection (5) as arriving in, entering, departing, or travelling within any country. Subsection (2) sets out that exploitation includes slavery, servitude and forced or compulsory labour by reference to the offence under section 1.”</p> <p><i>(Cited in Psaila et al. 2015: p. 123)</i></p> <p><b>11</b></p> <p><b>12 Coroners and Justice Act 2009, c. 25, Part 2, Chapter 3, Section 71:</b></p> <p><b>12.1.1.1 “Slavery, servitude and forced or compulsory labour</b></p> <p>(1) A person (D) commits an offence if—</p> <p>(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or</p> <p>(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.</p> <p>(2) In subsection (1) the references to holding a person in slavery or</p>	<p>Offences - Clause 2 The Modern Slavery Act 2015 (for England and Wales)</p> <p>The Modern Slavery Act has replaced the Coroners and Justice Act 2009</p>

	<p>servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).” <i>For an analysis of the anti-trafficking legislation, see Maroukis 2016</i></p>	
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**About the author**

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## **Addressing demand in anti-trafficking efforts and policies (DemandAT)**

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## FURTHER READINGS:

Angeli, D (2016a) Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Cyprus, DemandAT Country Study No. 2, Vienna: ICMPD.

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