

Trafficking in domestic work: Looking at the demand-side

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About the project

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.

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Abstract

The aim of this working paper is to provide a research framework for the study of trafficking in human beings (THB) in domestic work, with particular attention to the demand-side (Work package 8). This paper seeks to provide a common ground and understanding of the definition of THB in domestic work, and a better understanding about how to address demand in this specific sector. Domestic work (DW) as a labour sector is particularly vulnerable to exploitation and abusive employment practices, as well as one of the most invisible forms of THB. Yet, the phenomenon of THB in DW is poorly defined. Different terms are used interchangeably: THB for labour exploitation or forced labour in DW, THB for domestic servitude or domestic slavery. With regard to demand, it is challenging to differentiate between the multiple factors driving the demand for employment of domestic workers from demand for exploitable workers. Some specificities of domestic work have to be considered when addressing demand: such as the fact that the employer may at time be the same person than the recipient of the care and service, as well as the intimate character of the employer and employee relationships. In addition, domestic work is, in most cases, a non-profit activity.

Introduction

Employment of migrant domestic workers by private households in Europe has increased steadily over the last three decades. It is a sector that has received increased attention in scholarship. In addition, there has been an important mobilization (from advocates, domestic workers and international organizations) in order to achieve a better recognition of domestic workers' rights. One key achievement is the adoption of the *ILO Convention concerning decent work for domestic workers* (no 189) in June 2011 (hereafter Domestic Workers Convention). However, as stated in the Preamble of this Convention, despite the growing socio-economic importance of domestic work, this sector remains undervalued and invisible.

Domestic work sector is recognised as being highly vulnerable to abuses and exploitation. It has been identified as one of the main sectors where forced labour occurs worldwide – along with construction, agriculture, and manufacturing (ILO 2012) - as well as among the key sectors where severe forms of labour exploitation occur in European Union Member States (FRA, 2015).

Yet, while there has been a gain in visibility, domestic work is considered to be one of the most invisible forms of trafficking in human beings (THB) (OSCE 2010). In addition, there is very limited research addressing the intersection of THB and domestic work (DW). On the one hand, empirical data assessing the scale of the issue is difficult. Estimates of THB vary considerably and these are not systematically disaggregated by labour sector, and consequently do not provide figures for DW specifically. On the other hand, there is also a lack of conceptual clarity: the phenomenon of THB in DW is poorly defined. Different terms are used to refer to extreme or severe cases of exploitation that occur within DW and private household realm: THB for labour exploitation or forced labour in DW, THB for domestic servitude or domestic slavery. As an example, in the 2014 and 2015 editions of the Eurostat on 'Trafficking in Human Beings', two different categories may apply in situation of THB in DW: forced labour in the 'care' sector, and 'domestic servitude' (while it is considered a form of forced labour, it is single out to get specific data). But no specific data for those categories are provided (Eurostat 2014, 2015).

The study, in which this working paper is part, precisely seeks to fill this gap of knowledge by examining the conditions of domestic work that involve severe forms of exploitation, including trafficking, with special emphasis on the factors driving and influencing the **demand** in this sector.

Objectives and context of this paper

The aim of this paper is to provide a research framework for the study of THB in DW, with particular attention to the demand for cheap and exploitable workers in this sector. This study is part of the wider DemandAT project, which addresses the demand-side of anti-trafficking efforts and policies. Based on case law review and interviews with key stakeholders in seven European countries (Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK), this study on THB in domestic work will investigate the types of situations in domestic work that may involve extreme forms of exploitation and trafficking and examine the motivations and

factors driving and shaping the demand as well as examining the gaps in legislations and policies.

The final goal of this paper is not to offer a normative nor a conceptual strict framework, but rather a common ground on which to conduct seven in-country case studies. Given the challenges in defining the parameters of the subject under study, it is hoped that the research' outcomes will contribute in advancing comprehensive understanding of the phenomenon.

The topic of THB in DW sector is timely. First, there is a shift in the current debate on trafficking toward greater attention for labour exploitation, whereas most efforts since the adoption of the Palermo Protocol¹ (2000) (but also before) have centred upon trafficking for sexual exploitation. Thus, the other forms of exploitation have remained until recently under-examined. Domestic work is one of the labour sectors that have gathered interest – both with regard to THB, slavery and labour exploitation of migrant workers. The *United Nations Special Rapporteur on contemporary forms of slavery* has made domestic servitude one of its priorities for 2014-2017. The issue has also been included in the agenda of international organizations, and has been the subject of recent research reports (Harroff-Tavel & Nasri 2013; HRW 2006; OSCE 2010, 2014; Special Rapporteur on Contemporary forms of Slavery 2010).

Outline

This paper examines the nexus of THB and domestic work. Given the scarcity of research on THB in domestic work specifically, this paper draws on research reports, grey and scholarly literature selected from the field of studies on domestic work (mostly within the European countries) as well as trafficking for labour exploitation or forced labour in general. Given the frame and scope of our study, emphasis will be given to the European context.

The first section of the paper focuses on domestic work, by presenting the definition and background knowledge about the increasing phenomenon of employment of domestic workers in Europe. This section also outlines key features of domestic work as a labour sector that may contribute to its vulnerability to abuse and exploitation.

Drawing on literature on domestic work, section 2 will address THB in domestic work. A necessary first step to do so will be to look at the definitions of THB as well as related notions such as labour exploitation, forced labour and slavery. Then, in order to bring further clarification, some elements of interpretations from the European Court of Human Rights (ECHtR) rulings will be presented. Finally, this section will address some key features and indicators of THB in domestic work.

¹ United Nations (2000) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Resolution A/RES/55/25, 15 November 2000, fifty-fifth session of the General Assembly of the United Nations. Hereafter the Palermo Protocol.

Given the legal component of our study – based on case law review – section 3 of the paper will briefly discuss the legal options for remedies in case of THB within domestic work and challenges in prosecuting cases of trafficking for labour exploitation. Section 4 will then turn to address the demand-side of THB in DW, by outlining key components and dimensions to consider when addressing demand in the context of domestic work. Finally, section 5 will provide, as concluding remarks, the working definition and framework of our study.

1. Domestic work: definition and background

A thorough review of the literature on domestic work – both scholarly and grey literature from NGOs and international organisations – would be beyond the scope of this paper. Rather, this section will highlight some of the key elements and dimensions that are relevant when addressing the phenomenon of THB.

1.1 Definition and terminology

Domestic work as a labour sector is still poorly defined and definitions may also vary across countries. The informality of the work environment, the wide range of tasks that may comprise domestic work, and the blurred line between paid and unpaid work are all factors that may contribute to the difficulty of establishing a common definition.

Until recently, there was no internationally agreed upon definition of domestic work. The newly adopted ILO Domestic Workers Convention, 2011 (no 189) establishes the following definition:

[...] work performed in or for a household or households: May include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children, or elderly or sick members of a family, gardening, guarding the house, driving for the family, even taking care of household pets.

A domestic worker is ‘any person engaged in domestic work within an employment relationship’. It includes only situation of employment, but excludes employment in institutions (e.g. hospital, old-age retirement homes). The common feature on which the definition relies is ‘work performed in or for a household or households’. Furthermore, the definition may encompass different categories or forms of arrangements in the domestic work sector: live-in (meaning living in the household's home) or live-out, working for one or multiple employers, working full or part-time, being nationals or non-nationals. One common arrangement that increases vulnerability for abuses and exploitation is the live-in situation.

It is worth noting that in the literature and research on domestic work, there is a differentiation between ‘domestic’ work – referring to household maintenance and cleaning - and ‘care’ work (e.g. taking care of children, or elderly or sick member of the family) (Anderson 2003; 2007). In cases of care work, it is common that cleaning and household maintenance tasks are also part the job. For this paper, we will use the term domestic work as a broad definition encompassing both caring and all the other tasks as listed in the ILO definition.

1.2 Increasing demand for domestic workers and pervasive 'deficit of decent working conditions'

As shown in the literature, there has been in Europe an increase in the employment of domestic workers. According to the ILO, there are 53 million domestic workers worldwide, among which 2, 5 million in Europe of which 43 million are women, and 7 million are children (ILO 2013b). However, those estimates might represent a skewed picture of the reality. Accurate data are difficult to collect given the preponderance of informal work arrangements in this sector and also given the absence of common definition across countries (differences between professional categories). Despite the weaknesses of available estimates, the ILO data confirms that the number of domestic workers have increased in the last 30 years (2013b). Based on the European Labour Force Survey, Abrantes (2012) also estimates an increase of the number of domestic workers across the EU-15 countries. Differentiating between the two occupational groups, domestic work (e.g. cleaning) grew by 36.7%, whereas number of care workers increased by 41.6%.

Those workers are in great majority women, namely 83% according to the ILO (ILO 2013b). Also, in regard to child domestic labour, the ILO estimates that 67% are girls (ILO 2013b). In addition to this highly feminized dimension of domestic work, existing data show the increased share of migrants as domestic workers in Europe (Gallotti & Mertens, 2013). Furthermore, there are high numbers of *irregular* migrants – domestic work occurring in informal or underground economy - which increases the invisibility (and vulnerability) of the workers (Ambrosini 2013; FRA, 2011; Roit & Weicht 2013; Triandafyllidou 2013).

Demand for domestic workers – and for outsourcing the performance of domestic tasks and chores – has been driven by multiple factors that are well documented in the literature: increased number of women engaging in work outside the home, an ageing population, and also a plentiful and flexible migrant labour force from Central and Eastern European as well as Asian and African countries (Ambrosini 2013; Lutz 2008; Parreñas 2001; Roit & Weicht 2013; Cox 2006). Furthermore, gaps and cuts in the public provision – especially with regard to care for elderly family members or childcare - have contributed to increasing the demand for domestic workers. It has given rise to what Ambrosini (2013) has aptly labelled an 'invisible welfare' in which domestic workers or care workers fill the gaps of a formal welfare regime.

Moreover, demand is highly gendered (domestic work is still perceived as a women's labour, and majority of workers are women) (Lutz 2008), and may have a racial component (preferences for certain national origins). Indeed, some scholars have argued that the increased demand is not only for 'any' worker, but for domestic workers who are *migrants*; an 'ethnic other' who may have particular characteristics or who may be perceived as more appropriate and better suited for this kind of work (Anderson 2000, 2007; Cox 2006).

This study, while drawing on the existing scholarship on demand for domestic workers, will focus on the demand for the employment of domestic worker in conditions of extreme exploitative and abusive practices – including situations amounting to trafficking -, which has been seldom studied (Anderson & O'Connell Davidson 2003).

State interventions through its **migration policies, labour laws and welfare regimes** will impact whether by facilitating or limiting legal channels for migrant workers in this sector, as well as in shaping the working arrangements through specific regulations. The role of policies and the interplay between care, labour and migration policies have been highlighted in different studies (Palenga-Möllenbeck 2013; van Hooren 2012; Murphy 2013b). While the State has disengaged from care provision, it still plays a regulatory role (Marchetti & Triandafyllidou 2015). Welfare policies play a role in fostering demand for outsourcing and employing workers for domestic work: such as caring for an elderly or disabled member of the family or for childcare. Weak, inexistent or too expensive services being provided by public institutions will impact on the need for employing domestic workers. A concrete example is the expansion of the use of monetarization system of care delivery, also called 'cash payments for care' (Anderson 2006). Within this system, the States provide the care users with cash allowances in order to employ and pay a worker. Cash allowances are used in many countries in Europe (such as in France, in the UK, in Italy, Netherlands, Belgium). The ways the cash allowances are used can be more or less controlled and monitored. Weak monitoring can give rise to informal markets with little regulation (Ungerson 2003).

Furthermore, there are different approaches and regulatory frameworks across Europe regarding the employment of **migrant** domestic workers. For example, in some countries there are specific working visa for domestic workers (called "tied-visa", such as the Overseas Domestic Worker visa in the UK), a voucher system to facilitate registration of domestic workers in social security (such as in Belgium) (van Hooren 2012; Murphy 2013b; Triandafyllidou 2013; Triandafyllidou & Marchetti 2015; Williams 2012)². Countries may also rely – more or less strongly - on the use of employment agencies, thus creating a triangular work arrangement in which the agency mediates and plays an intermediary role between the household and the domestic worker.

Working conditions will vary from one country to another, while generally - even when regulated - working conditions **remain sub-standard** in comparison to other labour sectors (Gallotti & Mertens, 2013). Indeed, domestic workers are among the lowest-paid workers and are often excluded from social protection provided to other workers (ILO 2013). Domestic workers face a deficit of decent working conditions and abusive practices such as: excessive long hours, low wages, no guaranteed day of rest, insufficient time for rest and leisure, lack of social protection, restriction or violation of private life and free movement, exposure to psychological or physical abuse, etc.

As mentioned in the introduction, there has been a significant mobilization by and for domestic workers over the last decades, in order to advance their living and working conditions, a better recognition, regulation and professionalization of their work. The newly adopted Domestic Workers Convention (no 189) - at the 100th session of the International Labour Conference in June 2011 - constitutes a landmark instrument. For the first time, a legal international framework recognizes the specific labour conditions of domestic work (Albin & Mantouvalou 2012; Mullally 2015). This Convention established a set of basic rights

² For a review of the different models and regimes regulating domestic work and care work, especially with regard to migrant domestic workers, see: Roit & Weicht 2013; van Hooren 2012; Williams 2012.

and principles in order to ensure and protect rights of domestic workers for decent working conditions. Binding for the countries that ratify it, the Domestic Workers Convention sets, among other, the obligation to ensure the respect of domestic workers' rights to 'freedom of association', the elimination of all forms of forced or compulsory labour, abolition of child labour and elimination of discrimination with respect to employment and occupation. It should be noted that some European countries have ratified the Convention so far: Italy, Germany (already in force), as well as Belgium, Finland, Ireland and Switzerland which have ratified but the convention has not entered in force yet.

1.3 A work sector unlike any other and its vulnerability to exploitation

Within scholarship, the argument is brought forward that domestic work is not like any other work sector. The type of the work, the working conditions and the composition of the labour force (highly feminized) make the DW sector very different compared to other labour market sectors. It is a type of work characterized by intimate relations (employer/employee), by being an invisible and isolated form of work (within households) (Ambrosini 2013; Lutz 2008, 2011; Triandafyllidou & Marchetti 2015). Also, the demarcated working hours are often unclear, especially when the worker is living-in. The boundaries between paid and unpaid tasks, as well as the distinction between free time, working time and time-on-call become often blurred. Also, as stated earlier, the labour sector in itself lacks regulation and is characterized by sub-standard working conditions. In addition, domestic workers may be exposed to different forms of discrimination: gender discrimination and racial or ethnic discrimination as migrants (FRA 2011).

Domestic work stands in a unique position: at the intersection of the public and private realms, the market and the family, two important domains and 'institutions' that are shaped by socio-cultural norms and legal frames (Triandafyllidou & Marchetti 2015; Kofman & Raghuram 2009; Marchetti & Scrinzi 2014). It is quite difficult or even impossible to disentangle domestic work from its social and cultural construction. Traditionally relying on unpaid assistance and care provided by female family members, domestic work is still in certain countries not fully considered as a formal paid labour sector. This dimension is part of the general environment and conditions under which exploitation occurs.

In sum, many of the distinctive features of domestic work as a labour sector may be attributable to its vulnerability to abuse and will be discussed in this section. The Domestic Workers Convention identifies three groups especially at risks of exploitation: child domestic workers, migrant domestic workers and live-in workers.

1.3.1 The relationships employer/employee

Within domestic work, the relationship is atypical in comparison with other work sector given its intimacy and proximity (Anderson 2007). It is a relationship at times emotional and personalized (Lutz 2008) and is characterized by power imbalance and dependency (dependence for income, immigration status, and in case of live-in workers, for accommodation). In addition, the labour relations are sometimes complicated further by the fact that the worker is considered as being part of the family (Parreñas 2001). These family-type relations can impact on power relations, for example by asking for unpaid and extra

chores given this intimate rapport. Yet, it has to be outlined that private households that act as direct employers do not form a homogeneous group, but come from different social and economic class (Marchetti & Triandafyllidou 2015; Lutz 2008). Also, the family members receiving the services may be themselves in a vulnerable position (disabled, elderly or children).

1.3.2 The private household as a workplace

A household is a very special type of workplace, in which the boundaries between the public and private domains are often re-negotiated between the employer, the family members and the domestic workers (Davidoff 2003). The home is an isolating work setting which increase the informality of employment relations: domestic workers often work alone, without other colleagues, with little or no contact with outside of the house and with little or no access to workers' association. In the case of live-in workers, working and living conditions are intertwined, living conditions relate not only to certain appropriate standards, but also the issue of respect of domestic workers' privacy. In sum, being performed in private household, domestic work remains invisible and hidden from public eye. Abuses may remain unreported. Finally, the home escapes labour inspections and hampers labour law enforcement. Indeed, while being a workplace, private household pertains to the private sphere and is a very difficult place to regulate through normal labour monitoring mechanisms (OSCE 2008, 2014).

1.3.3 State policies and regulations: the intersection of migration, labour and welfare regimes

Policies and regulatory regimes may create or perpetuate conditions increasing workers' vulnerability to abuses and position of power of employers (Anderson 2010; Murphy 2013; Herrera Vivar 2012). Thus, certain policies can create precarious status - both as migrant and as worker – precarious in regard to the temporary and tied legal status, the socio-economic conditions and the lack of protection (Anderson 2010).

On one hand, migration controls increase the irregular channels of migration, which in turn exacerbate migrant workers' vulnerability. It has been acknowledged and documented that domestic workers in irregular migration situation (as well as migrant workers in general) face heightened risk of abuse and exploitation (FRA 2011, 2015; Triandafyllidou 2013). Indeed, fear of being reported to authorities and deported may reinforce constraints to stay in an unacceptable and exploitative situation. Irregularity of migration status also implies that the work arrangements are mostly informal and remain undeclared. On the other hand, even under complete legality, migration and labour policies may increase the dependence and the disadvantages faced by domestic workers (Ambrosini, 2011, 2012; Anderson, 2010), as it will be illustrated with the following examples.

A core aspect concerns precarious migrant status and the **dependency of the worker** toward its employer to regularize or maintain its **legal status** (Anderson 2010). One illustrative example is the **program of 'tied-visa'**, which means that the work visa ties the worker to only one employer, often who originally sponsored the worker's entry into the country, without the possibility of changing employer (or within strict and limited rules). Having the right to change employer without losing the legal status in the country is an important protection and safeguard mechanism to escape abusive situations (HRW 2014;

Kalayaan 2013, 2014). For example, the UK has re-introduced such system in April 2012 (tied Overseas Domestic Worker (ODW) visa). After the ODW visa re-introduction in 2012, the charity London-based organisation Kalayaan has documented an increase in abuses – meaning worse conditions (living and working) and less freedom (Kalayaan, 2013, 2014) - for those working under this tied-visa. Yet, fewer workers are coming forward to authorities to denounce abuses (Kalayaan 2014). The newly adopted Modern Slavery Act 2015 in the UK, maintains this controversial visa system and has re-triggered debates regarding the shortcomings of this system (Roberts 2015; Sloan 2015; Kalayaan 2015). Tied-visa system reinforces vulnerability to abuses (Roberts 2015; Sloan 2015)³.

Another specific situation concerns **domestic workers employed by diplomatic corps** (diplomats, embassy and consular staff and high-level civil servants) which has gathered attention recently, whereas cases of abuses and exploitation have been reported (Kartusch 2011; Murphy 2013a; OSCE 2014). Domestic workers employed as private staffs by diplomats face additional barriers with regard to the protection of their rights: their legal status is tied to that of their employers⁴ and their employers have a diplomatic immunity under the 1961 Vienna Convention on Diplomatic Relations. This condition circumscribes significantly assistance to domestic workers in case of abuse, 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). The OSCE has recently published a Handbook on how to prevent human trafficking for domestic servitude in diplomatic households (2014).

The **au pair system** also illustrates how the regimes in place may create certain ‘markets’ of care work. Au pair was initiated as a cultural exchange program for young people from Europe providing part-time child-care while having the experience of living abroad and learning a new language. However, it progressively evolved into a more global phenomenon involving women from across the world (Cox 2014) and is considered at times a cheap form of childcare rather than a cultural exchange program (MRCI 2014). Indeed, it is a lower cost option for families to access childcare without having to pay the salary of a full-time worker as illustrated by Pelechova in her study in the UK (Pelechova 2015). While not considered formal workers with the appropriate rights and status, au pair sometimes end up becoming full-time live-in domestic workers with hardly any protection and vulnerable to abuse (Cox 2007, 2011, 2014). This creates a niche outside of the labour law, but still filling a gap in welfare regime. As an example, the Migrant Rights Centre of Ireland (MRCI) has documented a wide spectrum of exploitation experienced by au pair in Ireland – such as underpayment and mistreatment (MRCI 2014). The MRCI also highlights, in a report published in 2014, how the combination of stricter migration policies ceasing to issue work permits for migrant domestic workers and the increased costs for childcare in private crèche have affected the au pair, which became a cheap form of childcare (MRCI 2014).

³ Another example is the *kafala* system, existing in the Middle East and Gulf countries, which is a sponsorship system, the employer being also the sponsor of the domestic worker. Under the *kafala* system, the worker cannot change employer or leave the employment contract unless they leave the country, and employers have considerable power over the working conditions, such as keeping the passport given that they are responsible (Harroff-Tavel & Nasri, 2013).

⁴ Domestic workers in diplomat households may have a special ID or visa and their immigration status depends entirely on the performance of domestic work in the diplomatic household.

In conclusion, as stated earlier, labour and welfare policies, in interactions with immigration policies, shape differently the types of work arrangements (Herrera Vivar 2012; Roit & Weicht 2013; Triandafyllidou & Marchetti 2015; van Hooren 2010). In addition to the temporary migration status, domestic work as a sector may be excluded from certain social security and protection measures (no access to maternity leave, lower wages, longer numbers of hours, etc.). This exacerbates their precariousness and institutionalizes sub-standard working conditions. In certain countries the pattern of live-in care workers is predominant, and it is known that this work arrangement is more at risk of exploitation and abuse.

Furthermore, another key dimension to consider concerns safeguards measures and **effective access to remedy** in cases of labour rights violations. The precarious migration status (meaning temporary or tied to an employer), and of course irregular status, greatly hamper access to protection measures. As argued by Murphy (2013: 602):

[...] the short-term, precarious immigration status of many migrant domestic workers renders employment protections such as they exist in each jurisdiction, largely illusory in practice for this group of workers.

1.3.4 Vulnerabilities associated with labour migration

Other factors linked with labour migration – and which are not specific to domestic work – are also important dimensions to be considered, such as: migrant workers' lack of knowledge of the language and about their rights in the country of destination, as well as lack of social network and support. Furthermore, another common dimension is the debt-financed migration. Either through legal or irregular channels, migrants may be indebted in order to migrate. This, in turn, may tie the migrant in exploitative or abusive situation regardless of their migration status (O'Connell-Davidson 2013). Indebted migration reinforces or produces situation of dependency and control exercised by the person who have facilitated the migration process, whether it is the employer, the employment agency or other intermediaries and facilitators of migration.

1.3.5 Child labour, domestic work and child trafficking

Child trafficking has gained greater interest in the European Union, as illustrated by the recent publication of the Handbook on *Guardianship for children deprived of parental care – A Handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking* (FRA 2014). Yet, child trafficking in DW has received little attention within the European context, and there is no available data regarding the scope, even if limited, of the issue. Cases of child labour in domestic household have been identified in France and Netherlands (FRA 2015). In France, the Committee Against Slavery (CCE-*Comité Contre l'Esclavage*) published a report on cases involving children, mostly girls being exploited through fostering in France (CCE 2009; Deshusses 2004). This practice of fostering – also called 'confiage' (West Africa) - means sending and entrusting children with relatives or richer families for taking care of them, fostering them, often in hope of better access to education. Exploitation and trafficking constitute a misuse of these practices, based on deception and lies with regard to the conditions within which the child will live, and who may end up in servitude conditions (performing domestic chores, long hours of work and no or little access to education, physical, sexual or psychological abuses).

1.4 From vulnerability to trafficking

THB occurs in conditions and contexts of imbalance of power, poor regulation and lack of enforcement of workers' rights as well as discrimination (Skrivankova 2010: 9). These multi-layered factors of vulnerability puts people at greater risk of THB, but do not cause THB (EC 2014: 8). By looking at demand, this study will shift the attention beyond vulnerability factors and also include the motivations and factors driving the demand for cheap and exploitative workers. Furthermore, while domestic workers may face multiple abuses of their working conditions, these situations do not necessarily amount to trafficking. Thus, establishing the threshold where to draw the line as to know where and when exploitation becomes trafficking is a key challenge (OSCE 2010). The next section will look at how this is addressed in the literature, by first defining THB and discussing the challenges in the application of its definition in practice, and then turn to concrete conditions and realities of THB in DW that have been documented in literature.

2. Trafficking in human beings in domestic work

Domestic servitude, domestic slavery, trafficking for labour exploitation or forced labour in domestic work are terms often used interchangeably to refer to overlapping or similar situations. Those different notions will be presented in the following section.

This section will be divided in two main blocs. First, we will provide the legal definition of THB, on one hand, as well as related notions such as slavery, forced labour and labour exploitation, on the other hand. Then, the second bloc will be dedicated to present the state of knowledge about the types of situations in which THB occur in domestic work.

2.1 International definition of trafficking in human beings and its related notion

2.1.1 International agreed upon definition of THB

The main framework of reference – the milestone of international anti-trafficking action - is the *Protocol to prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime* (2000) (hereafter the Palermo Protocol), which provide the internationally agreed upon definition of THB. The Protocol's tripartite definition encompasses three components: 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: exploitation. The definition of the Palermo Protocol has been incorporated in the relevant EU instruments addressing trafficking, with the latest *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*⁵ (hereafter the EU Anti-Trafficking Directive) adding some additional elements.

According to the Palermo Protocol: 'Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services,

⁵ Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

slavery or practices similar to slavery, servitude or the removal of organs' (Art. 3a). The EU Anti-Trafficking Directive has broadened the definition by including other forms of exploitation: begging within forced labour or services as well as exploitation of criminal activities (Art.2.3).

At the core of the THB definition is 'the intent to exploit'. The three constitutive elements have to be present (means, acts and purpose); it is the combination of those components that sum up to trafficking (Gallagher 2010). Yet, the Protocol fails to clearly define what 'exploitation' means.

The means or elements used for the purpose of exploitation are central in the identification of the existence/presence of trafficking (UNOCD 2010). The set of means established in the Palermo Protocol and transposed in the EU Anti-Trafficking Directive are: 'means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person'. Consent is deemed irrelevant when any of the aforementioned means has been used (Palermo Protocol art. 3b, EU Anti-Trafficking Directive, art. 2.4). Yet, those notions need further clarification in order to be applied in practice in a constant manner across countries (ILO/EC 2009). Also, has pointed out by the UNODC in its Issue Paper on Abuse of a position of vulnerability: 'there has been little discussion to date about the requisite seriousness or extent of the coercion, deception or fraud that could constitute a 'means' for the purposes of the definition of trafficking' (UNODC 2013: 17).

This is particularly challenging for the notions of '**other forms of coercion**' and '**abuse of power or a position of vulnerability**'. Those notions may imply less visible and indirect means used with the intent of trafficking, in comparison to physical violence, abduction, etc. The Palermo Protocol Interpretative Note clarifies the meaning of the notion of abuse of a position of vulnerability 'as referring to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved' (UN, General Assembly, A/55/383/Add. 1 par. 63: 12). However the notion of abuse of power is not further defined. In addition, the notions of 'real' or 'acceptable' alternative are not further defined, and it remains unclear how it is applied in practice (UNODC 2013: 3).

The issue of abuse of position of vulnerability was included in the EU Anti-Trafficking Directive (Art. 2.2), and is based on the same definition with the exception that it refers to real '**or**' acceptable alternative, rather than '**and**' (meaning it does not require both elements). The EU Anti-Trafficking Directive (Art. 2.2) also outlines some factors of vulnerability when addressing the issue of the severity of penalties. Those factors are age (all children must be considered vulnerable), gender, pregnancy, state of health and disability.

In an attempt to bring further clarification to the different notions attached to the abovementioned set of means, a list of 'Operational Indicators of Trafficking in Human Beings' was developed by the International Organization of Labour (ILO), in collaboration with the European Commission (ILO/EC 2009). Six key dimensions of trafficking are proposed, and within each of those categories, some indicators are listed:

1. Deceptive recruitment
2. Coercive recruitment
3. Recruitment by abuse of vulnerability

4. Exploitative conditions of work
5. Coercion at destination
6. Abuse of vulnerability at destination

This document⁶ provides a very detailed list of indicators meant to facilitate the identification of cases, and is based on a system of degrees of severity of the indicators: weak, medium or strong indicators (a combination of more than one category of indicators must be present in order to qualify for THB). For the purpose of our study, this list of indicators provides a useful tool in order to operationalize the notions of coercion, exploitative conditions of work and abuse of vulnerability.

2.1.2 Forced labour, slavery and domestic servitude

As mentioned in the introduction, THB in the domestic work sector can fall under different forms of exploitation: whether for labour exploitation, forced labour, slavery or slavery-like practices (forms listed in the Palermo definition of trafficking) – as well as domestic servitude.

Forced labour and trafficking for labour exploitation

The ILO Convention No. 29 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. (ILC 2014).

Forced labour and THB for labour exploitation are not synonymous ; they are closely related but not identical phenomena (ILC 2014). Not all forced labour situations originate from trafficking situations and not all trafficking for labour exploitation amounts to forced labour (ICAT 2014; Skrivankova 2010). There may be ‘trafficked’ and ‘non-trafficked’ situations of forced labour. Adding to the confusion, forced labour is included in the Palermo definition of THB as one of the forms of exploitation and, inversely, the *ILO Forced Labour Convention 1930* (no. 29) definition of forced labour encompass THB (with the exception of exploitation non-related to employment, such as removal of organs). The newly adopted *Protocol of 2014 to the Forced Labour Convention, 1930 (No.29)* reaffirmed that the definition of the Convention applies to situations of THB for the purposes of forced or compulsory labour. Forced labour relates to ‘the freedom of the worker to leave the abusive employment’ (Skrivankova 2010: 6).

With regard to THB for labour exploitation, it ‘encompasses the broadest set of work-related forms of exploitation, and [a]ccordingly, it emphasises the many possible manifestations of the exploitative purpose of trafficking, beyond forced labour’ (ICAT 2014: 2).

⁶ The list is comprised of 67 indicators jointly developed by the ILO and the European Commission (Delphi indicators, (ILO/EC, 2009). The indicators can be assessed in terms of weak, medium or strong. One indicator may be considered strong in cases involving children and medium or weak in other situations. These indicators are meant to harmonize understanding and definition and also to guide both researchers, practitioners and labour inspectors in identifying cases when trafficking is occurring.

Slavery and slavery-like practices

With respect to slavery, the notion as defined in the *Slavery, Servitude, Forced Labour and Similar institutions and practices Convention of 1926* – refers to ownership, a condition in which any or all powers of ownership are exercised over a person. As pointed out by the *United Nations Special Rapporteur on contemporary forms of slavery* in a thematic report on domestic servitude (2010), in comparison to slavery situations of servitude and slavery-like practices do not refer to claims of ownership.

A distinction is made between situations of slavery, which occur on a continuing basis (while not necessarily permanent), and that of forced labour, which may be temporary or even occurring incidentally (White and Ovey 2010).

The *UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery* (1956) went a step further to cover a wider spectrum of practices or institutions that are not strictly limited to slavery based ‘ownership’. Relevant to highlight are the practices of debt-bondage, practices or institutions related to arranged and servile marriage and practice whereby a minor is delivered by his parents or guardians to another person with the intent of exploitation for his labour. Those slavery-like practices may be part of trafficking processes and be found in cases of THB in domestic work.

Domestic servitude

Servitude was not defined in the *Slavery convention of 1926*. The *UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery* (1956) refers to the notion of ‘servile status’ (Art. 7b), which means a person in the condition or status resulting from the slavery-like practices (Art. 1a to d).

Servitude – alongside slavery - was included as a violation of human rights in the Article 4 of the Universal Declaration of Human Rights (UDHR) of 1948 as well as in the Article 4 of the European Convention on Human rights (ECHR): ‘No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.’

Drawing on the distinction made earlier that servitude does not require ‘ownership’, White and Ovey stress out that the difference between slavery and servitude is one of degree (2010: 199). Servitude entails that the conditions of work or service are out of the control of the person, who loses autonomy, whereas slavery refers to ownership (Ibid).

The European Court of Human Rights (ECtHR) rulings provide further elements in the interpretation of the notions of servitude, slavery and forced labour enshrined in the Article 4 of the European Convention on Human rights (ECHR). Those elements will be addressed in the following section.

2.1.3 European Court of Human Rights’ rulings in the interpretation of servitude, slavery and trafficking

The European Convention on Human Rights (ECHR) does not mention THB. However, the European Court of Human Rights (ECtHR) has stated that THB falls within the scope of the Article 4 (COE/ECtHR, 2014: p.5; *Rantsev v. Cyprus and Russia*, 2010: §279, §282), which

prohibits 'slavery', 'servitude' (Art. 4§ 1) as well as 'forced labour or 'compulsory work' (Art. 4§ 2).

A recently published Guide on the interpretation of the Article 4 of the Convention (COE/ECtHR 2014), and based on some of the Court's rulings, clarifies that for the purposes of the Convention servitude is understood as 'an obligation to provide one's services that is imposed by the use of coercion' (p. 6), and entails 'particularly serious form of denial of freedom' (ibid). Furthermore, it states that '**servitude** is a **specific and aggravated form of forced/compulsory labour** (COE & ECHR, 2014, *C.N. v France*). 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/ECHR, 2014: p. 6). In addition, domestic servitude is associated with the **obligation to live in another person's home** (*Siliadin v France*, 2005: § 123)⁷.

With regard to servitude, a landmark ECtHR's decision in the *Siliadin v France* case (2005), ruled that this situation amounted to servitude, as well as forced and compulsory labour, but not slavery (COE & ECtHR, 2014; Cullen 2006). This case involved a young Togolese who went to France at 15 years old with the intention to study, but was rather made to work as a domestic servant with the promise of having her immigration status regularized. She had to work long hours without pay and without day of rest and her passport was confiscated (COE & ECHR 2012; COE & ECtHR 2014; Cullen 2006). The court ruled that there was no genuine claim of ownership over her, thus the situation did not correspond to slavery.

In addition, the *Siliadin v France* (§ 112) decision was the first to recognize positive obligation under the Article 4 of the ECHR, meaning obligation for the States to criminalize the practices referred in the Article 4 (Cullen, 2006). The ECtHR found that the French law provisions at the time were vague and poorly defined, thus too restrictive to protect rights under the Article 4 (ILO 2009b: 31). In addition to criminal law enabling to prosecute traffickers, adequate measures should be put in place, such as measures to regulate businesses used for trafficking, or training of law enforcement and immigration officials (CE/ECHR 2014: 12; White & Ovey 2010: 202).

In that perspective, ECtHR rulings have contributed to amendments into national legislations in order to adopt criminal-law provisions penalizing for labour exploitation and servitude – and thus to broaden THB provisions in certain cases. Another case regarding forced domestic servitude, the case *CN v United Kingdom* (2012), ruled that lacuna in the law in the UK (here the absence of provisions related to domestic servitude) was no reason to fail to provide protection. In this case, law enforcement had refused to pursue investigations in a case of alleged trafficking for domestic servitude, given the lack of evidence for the trafficking piece.

⁷ 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, Requête 7906/7, July 9 1980, par. 79).

However, as argued by Murphy (2013), the ECtHR rulings have had an impact in terms of advancing action and criminalization of forced labour and slavery-like practices, but not with regard to protection of labour law violations experienced by domestic workers ‘which do not reach the threshold of severity of slavery, servitude or forced labour’ (p. 602).

2.1.4 National laws

In Europe, despite the transposition of the EU Anti-Trafficking Directive into national legislations, there is still a diversity of approaches in addressing THB, labour exploitation and/or forced labour and domestic slavery. First, in most countries anti-trafficking legislations have tended to concentrate on sexual exploitation. Anti-trafficking laws were often initially limited to the criminalization of sexual exploitation and were only later amended and expanded to include other forms of exploitation, such as labour exploitation. In some countries, those amendments are recent; thus jurisprudence is still inexistent and the effectiveness of their implementation by national courts is still to be seen in the upcoming years (e.g. in France in 2013, in the UK in 2009 and in 2015). In sum, in practice, implementation of such legislation – despite broadening of the definition of THB – remains greatly focused on sexual exploitation.

Second, in some countries, anti-trafficking legislation has been the impetus to include criminal offences related to forced labour. In other countries, prior to recent amendments expanding the definition of THB, criminal offences addressed the issue of labour exploitation or forced labour through the notions of working conditions contrary to human dignity (Skrivankova 2010; ILO 2009), such as for example in Belgium and in France. In France, prior to its latest amendments in 2013 extending THB definition to include other forms of exploitation, national laws did not clearly define forced labour or servitude, but rather used the notion of ‘conditions contrary to human dignity’ (OSCE 2010): ‘subjecting someone to living and working conditions that are incompatible to human dignity and take advantage of vulnerability or state of dependence’ (art. 225-14 of French criminal code).

Belgium has adopted in its criminal code a broad definition of trafficking for labour trafficking, and which includes trafficking for the purpose of work or services ‘in conditions contrary to human dignity’ (art. 433 quinquies, cited in FRA 2015: 37). As outlined in the FRA report on severe forms of labour exploitation, Belgium is among the countries that counts the highest number of prosecutions for labour trafficking (FRA 2015: 37).

In sum, this section only presented a cursory overview of some national legislations in order to highlight that there is ‘no single straightforward system’ (Skrivankova 2010: 15), but there may be diverse ways in which the notions of THB, forced labour and servitude are defined and integrated in national law. In addition to ‘trafficking for labour exploitation’, other notions are used such as ‘domestic servitude’, ‘conditions incompatible to human dignity’, and ‘slavery’. Those national differences and distinct legal definitions will be considered in each of the in-country studies.

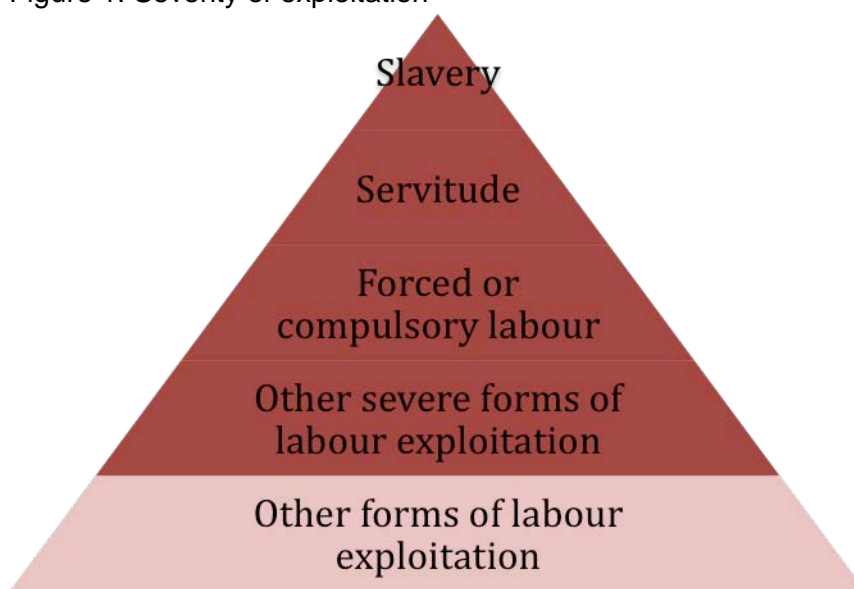
2.2 Beyond legal definitions: exploitation as a continuum

Ever since THB emerged as a public concern, there are definitional discussions - both on conceptual and legal grounds – among scholars and practitioners as to how to apply in

practice the THB definition. It would be beyond the scope of this working paper to delve into the background debates around the notion of ‘trafficking’. We want to draw attention to one element of discussion, which concerns the dichotomous conceptualisation in understanding trafficking: trafficked/not trafficked, illegal/legal, coercion/consent, free/unfree labour, etc. A restrictive approach in applying the THB definition, based on such binaries, may divert attention from the less extreme forms of exploitation. As argued by McGrath & Strauss (2015), focusing on extreme cases (that often fall within more specific/individual situations) precludes from addressing structural causes and thus leaves aside without questioning the overall labour frame and pitfalls of the labour and migration systems. Through this dichotomous lens, some forms of exploitation that do not fall within trafficking or forced labour definition may be perceived as being residual, and even tend to be normalized (Anderson, 2007) and may thus create a ‘hierarchy of suffering’ (Skrivankova 2010: 18).

Exploitation is best understood as a continuum of severity of abuses (Anderson 2007; McGrath & Strauss 2015; O’Connell-Davidson & Anderson 2006; Skrivankova 2010). Such a continuum reflects the wide spectrum of situations, from less severe forms of labour exploitation that may fall under civil/labour law (e.g. sub-standard working conditions) to more extreme forms of exploitation – which may amount to forced labour or trafficking, and which then fall under criminal law (Skrivankova 2010, FRA, 2015). In that regard the schema proposed by the FRA agency in its report on severe labour exploitation appears useful. The first four categories from the top fall within the scope of criminal law (violation of criminal law) – and certain situations may amount to trafficking – whereas the bottom category concerns matters of civil/labour law.

Figure 1: Severity of exploitation



(See FRA, 2015: 34)

2.3 Conditions and realities of THB in domestic work

'Domestic servitude does not emerge in a vacuum but is linked to wider patterns of social and economic exclusion, discrimination and, most importantly, a lack of State protection' (Special Rapporteur on Contemporary forms of Slavery, 2010: 13)

As stated in the introduction, despite wide acknowledgement of the vulnerability of the domestic work sector to exploitation and trafficking, there is surprisingly little research addressing comprehensively this issue and little knowledge about documented cases of THB in domestic work. This section will look at elements of recruitment, as well as living and working conditions. Given the higher vulnerability of migrant domestic workers to exploitation – and trafficking – this section will focus on **migrant** domestic workers.

Quite interestingly and referring to the definitional challenges, two different terminologies are used in two key reports on the issue, one published by the OSCE uses the term 'trafficking for domestic servitude' (2010), while the ILO report uses THB for forced labour in domestic work (Harroff-Tavel & Nasri, 2013)⁸.

2.3.1 Recruitment and trafficking process

Different scenarios of deceptive recruitment of domestic workers have been documented: deception regarding the nature of the work and/or the working conditions. Some of the modes are the fraudulent job offers, false promises and fraudulent placement agencies (OSCE 2010; Harroff-Tavel & Nasri 2013). A person may be misled about the type of work to be performed in the employer's house. For example, while expecting to carry out cleaning tasks, the person might end up caring for children or/and having to work in multiple houses. Deception implies that there has been a breach of the initial arrangement, whether formal or informal arrangement, with or without a contract.

Recruitment processes in countries of origin may sometimes involve a multiplicity of actors (from family members, to friends, acquaintances, and third-party facilitators or intermediaries like a placement agency). The process may be more or less formal. It can start through relatives, through advertisement in newspaper, or through a placement agency. Recruitment may also be done directly by the family who is hiring the domestic worker (OSCE 2010; Harroff-Tavel & Nasri 2013). This is the case in situation of diplomatic households. Workers may also be accompanying their employers for whom they worked in the country of origin, or in another third country.

The OSCE report (2010) distinguishes between two main processes of trafficking. First, the household – or individual members of the family – is the direct employer of the domestic worker. The direct beneficiary of the service may be the employer, or other family members (such as in the case of caring for disabled or an elderly). Thus the employer, the exploiter and the receiver of the service pertain to the same family or household, but may not be the

⁸ While the ILO report focuses on the Middle East region, it is nevertheless relevant for our study given that it provides an example of operationalisation of THB for forced labour in DW, on the basis of the list of indicators developed jointly by the ILO and the European Commission (ILO/EC, 2009).

same person. It is a specific feature of domestic work that the employers are private individuals or private households. The second scenario entails an intermediary (e.g. placement agency) that is the first beneficiary of the exploitation. The exploiter sells the services and receives the earning (individuals or agencies), or the exploited person is lent as servant to another household (OSCE 2010: 21)

Placement and recruitment agencies – either in source and/or destination countries - can play a role in order to facilitate the migration employment process, and at times a fraudulent or exploitative role. It may involve *legal* agencies (OSCE 2010). Agencies can ask high fees for the process of migration and for obtaining the working visa and put the worker in a position of indebtedness, thus limiting its liberty to leave an exploitative situation because of the obligation to reimburse the debt (OSCE 2010; Anderson 2007; Andrees 2008)⁹.

In cases involving children, then the foster household requiring from them to perform domestic tasks becomes the exploiter.

2.3.2 Working and living conditions and violation of human dignity

Working conditions encompass all forms of violations of labour rights, as well as economic exploitation and abusive employment relationships: low or no wage, excessive working hours, lack of time of rest (no rest), and lack of sleeping hours. It relates to conditions that are beyond what is accepted in employment law, in addition to means of coercion being used. THB in domestic work might occur both for unpaid and paid labour. In other words, trafficking is not to be equated solely with unpaid labour scenario (OSCE 2010). In situation of low wage, the amount received does not correspond to the worked hour and may not enable the subsistence of the worker. Living conditions will entail both the low standard of accommodation and access to inadequate food, and conditions limiting personal freedom or privacy. Living conditions can reach situations that are degrading (e.g. sleeping on the floor, no privacy).

In addition to these two key dimensions, the violation of human dignity and autonomy is also a criteria identified in the OSCE report in order to qualify a situation of exploitation in DW as THB. This dimension will encompass both degrading living conditions, with some forms of punishment, and the use of coercion and control, such as verbal, psychological or even physical and sexual violence. It may also involve depriving, limiting or strongly controlling the domestic worker's private life (such as controlling communication and contacts with their family abroad, or with people outside the household). While confinement is rare (Harroff-Tavel & Nasri 2013; OSCE 2010), other means are used in order to foster a climate of fear and prevent the worker from leaving an exploitative working situation: such as threat of being reported to authorities and deported (in case of irregular migration status), false promises that the employer will regularize their immigration status while confiscating the ID documents of the worker, etc. False promises are also used in situation of non-payment or withholding of payments (e.g. promising that the money will be given at the end of the contract) (OSCE, 2010). Sexual violence among women and girls domestic workers has also been documented (OSCE 2010; FRA 2011; HRW 2014; OHCHR 2010).

⁹ For a presentation of typology of recruitment mechanisms – from public or private agencies, to fraudulent agencies, to small opportunity networks or individuals, to acquaintances and traffickers or smugglers, see Andrees 2008.

The means of coercion used in THB in DW are similar to those used for other forms of exploitation: confiscation of the identification document, physical violence, threat to the victim or her/his family, etc. The distinctive features of domestic work sector relates to the isolated and intimate work setting, as discussed earlier. In addition, psychological and verbal abuses, harassment, discriminatory or racist comments, on a frequent basis have been documented in the domestic work sector (HRW 2014; FRA 2011; Chang 2000). Abuse of vulnerability is an important dimension in cases of THB in domestic work, given the precarious status of the worker, the isolation of the worker given the workplace and the dependence toward the employer (which contributes to the control over the worker). Indeed, it is acknowledged that isolation is a risk factor for labour exploitation (FRA 2015)

3. Case law regarding THB for labour exploitation

Reliable data on prosecution for THB for labour exploitation at national level is scarce and difficult to obtain. As stated in the latest UNODC Global report on THB (2014), there has been little improvement with respect to the criminal justice response to THB. The numbers of prosecutions and convictions based on THB charges remains low, which illustrate the weak implementation of the anti-trafficking legislations. The UNODC report shows that there has been an increase in detection of cases of trafficking for labour exploitation worldwide. Yet, in Europe the highest proportion remains THB for sexual exploitation (UNODC 2014).

Many reasons may explain the weak implementation of anti-trafficking provisions: from difficulties in identification and detection of cases of THB to implementation of existing legal provisions. As it has been documented in various studies, THB offence is quite new and there is still scarce case law to build upon. THB cases are often not identified or qualified as such. Also, even if identified as THB prosecutions are often based on other related charges rather than THB provisions, and sometimes the trafficking charges are dropped in the course of the prosecution. Thus, those cases will not be '*count in*' the statistics, even if THB is involved.

There is still reluctance from law enforcement and 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, ii) the lack of definitional clarity and consequently practical challenges in implementing it and iii) the scarcity of existing case law to build on.

Consequently, there are other legal options in regard to remedies for victims that can be used.

3.1 Legal options

Different legal provisions can be used for a single case. THB in domestic work may be addressed through different laws: human rights, criminal law, labour law and immigration law (Clark 2013). Within criminal law alone, numerous criminal offences could be charged even if those offences taken separately may not amount to trafficking (such as forced confinement, assaults – physical or sexual, etc.)

Given the different judicial avenues that may be used, one dilemma is to determine the best option, for example criminal or labour law or a mixture of both. The most effective way to access justice for the victims, and to access a remedy, may differ according to each case and also according to national legislation and existing case law. In sum, this is a reminder that criminal courts – and as such THB charges - are 'only one route to accessing justice' (ILO 2009: 4).

Using different bodies of laws thus entails different set of procedures, and has different implications for victims of THB, such as in terms of protection. When assessing the best judicial options, different aspects have to be considered: the best way to secure sanctions and punishment toward the trafficker and exploiter, support, remedy and protection for the person who has experienced trafficking, as well as acting as a deterrent (Clark 2013: 21). In this regard, Skrivankova (2010) outlines that: 'if more employers were obliged by employment tribunals to pay penalties and unpaid wages, they would be deterred from involvement in exploitative practices in the first place' (p. 29).

Under labour law, some of the tools to sanction employers are imposition of fines to the employers, compensation for victims for violation of working conditions (e.g. withholding wages, excessive work hours). While conviction for THB may be more difficult to achieve, sanctions for THB are often among the most severe, and may result in long-term imprisonment.

Furthermore, an important consideration concerns, of course, the migrant status, since employment law remedies are not always accessible to irregular migrants.

3.2 Challenges in prosecuting cases of THB in domestic work

Some of the challenges faced in the implementation of THB legal provisions have been documented in the literature on trafficking (ILO 2009; Clawson et al. 2008; UNODC 2008). Law enforcement, prosecutors and judges must deal with relatively new offences – or new provisions for related and pre-existent offences – with few or no case law. The forms of alleged abuses – coercion, exploitation or abuse of authority/vulnerability – may be subtle rather than overt crimes such as physical violence. They have to deal with different degrees and gradation in severity of abuse and exploitation. There is no clear-cut line or threshold regarding what constitutes trafficking or not, and proving the 'purpose' and intention to exploit may be complex. In that regard, indicators may be used to identify cases of THB. The list of indicators developed by the ILO and EC is a useful tool in order to 'operationalize' the legal and often imprecise definition.

In addition, the core crosscutting notions such as abuse of vulnerability, exploitation and coercion are often imprecise in the legislation and subject to different interpretations – which raises some questions and challenges in regard to prosecutions and application of the law. In a *Casebook of courts decisions on forced labour and human trafficking*, key concerns of national courts are outlined (ILO 2009), which are relevant in terms of challenges that may be encountered in our study.

First, in regard to **coercion**, the indirect, subtle and psychological forms of coercion are subjective and difficult to prove. Second, in terms of **economic ‘coercion’ or debt-bondage**, **it may be difficult to determine** when economic constraints exercised by advance payments become debt-bondage. Furthermore, the responsibility of the employer, or of the household, in the economic coercion is not always clear when the employer is not directly involved in the creation of debt-bondage. Finally, in regard to factors of **vulnerability or dependence**, some factors have been identified and are provided for by law such as age and gender, but also migrant status and physical or psychological incapacity. Yet, some of the challenges that arise concern the impact of acknowledged vulnerabilities (age, gender, migrant status) on the analysis of coercion. In other words: ‘Should coercion still need to be proved when vulnerabilities are apparent, bearing in mind that vulnerabilities render coercion unnecessary’ (ILO 2009: 6).

4. Demand-side of THB in domestic work

Addressing demand in anti-trafficking responses has gained increased attention in recent years in Europe.¹⁰ Most of the efforts since the adoption of the Palermo Protocol have centred upon prevention by targeting the supply, meaning the vulnerable population (mainly migrants and actions in country of origin). The other end of the spectrum of contributing factors, meaning on the demand-side (employers/consumers and profit-driven actors), have been poorly or not addressed (ICAT, 2014). In addition, demand is often subsumed to prevention programs, and thus not directly tackled. More focus on the demand-side of anti-trafficking efforts would mean a shift of attention beyond the vulnerabilities of the population more at risk of exploitation and address the motivation factors underlying the crime (ICAT, 2014).

4.1 Definition: demand from whom and for what?

In addition to the definitional challenges in regard to the concept of trafficking, the notion of demand is also poorly defined in the literature on trafficking (Cyrus & Vogel 2015). The notion of demand – as it was introduced in the anti-trafficking debate – stems from prostitution debates wherein demand is conflated with clients’ demand and desires for sexual services. Within the economic framework, **demand refers to the willingness and ability to buy a particular commodity – namely goods and services** (Cyrus & Vogel 2015). In that perspective, it is important to identify and clarify *who wants to buy what* (Cyrus & Vogel 2015); or in other words the market that is being examined. Within the specific sector of DW,

¹⁰ For a review of historical and economic research on demand arguments in the debates on THB, see Cyrus and Vogel 2015.

the 'services' relate to care and domestic services as a form of labour and as defined in the *ILO Domestic Workers Convention*.

The price or profit (meaning cheap price/salary) is of course an important motivation factor, but many other factors may also affect the demand for certain goods and services: the legality of the good or service and the perception of risk of being caught (in other words impunity), as well as perceived **social acceptability** (ICAT, 2014). The factors stemming from the general environment may play an important role, such as the economic, policy and legal factors (e.g. migration policies or labour and social policies affecting domestic workers), as well as cultural and social factors (ICAT 2004; Anderson and O'Connell-Davidson 2003). Consequently, demand-side efforts should not be restricted to addressing employers or buyers, but also the more structural and environmental factors. As pointed out by the authors of one of the scarce study on the demand-side of trafficking, Anderson and O'Connell-Davidson (2003), three main factors play a role in exploitation faced by domestic workers: 1) lack of regulation of labour market, 2) the presence of exploitable workers, and 3) **social norms shaping the employers' behaviours** (p.46).

Furthermore, it is important to note that for this study, demand is not conceptualized as 'demand for trafficking', but rather demand for services that are provided in exploitative conditions. Indeed, 'expressions like [...] 'demand for trafficking' or 'demand for forced labour' should be avoided. Neither trafficking, nor forced labour or exploitation can be bought and sold' (Cyrus & Vogel 2015). This study is not about demand for domestic workers in general, but on **demand for cheap and exploitable workers in this sector**.

Yet, it might be challenging to differentiate the factors influencing demand for domestic workers in general (a labour sector characterized by sub-standard working conditions) and demand for cheap and exploitable workers that may lead to severe forms of exploitation and trafficking. This study will attempt to bring light on this difficult task.

4.2 Specificities of domestic work when addressing demand

In the case of domestic work, there are specific considerations related to the type of labour involved, as well as regarding the processes and the actors involved that need to be considered when addressing demand. Indeed, some specific features of domestic work will influence the motivations and demand for domestic workers in abusive conditions that may lead to trafficking.

The employer is often the service receiver

First, in the case of domestic work, the employer and the receiver (or buyer) of the service are often the same – meaning that they are often from the same household – with the exception of situations in which employment agencies are the direct employer. Thus as opposed to a consumer who buys a given good resulting from trafficking for labour exploitation, the receiver of the service has a direct contact with the person being exploited. Yet, it is important to clarify further that, within a given household directly employing a domestic worker, the family member who acts as the employer might not be the same as the person receiving the care. Also, there might be a person within the household who will act as

the care manager (for instance the son/daughter of the elderly person), without necessarily being the employer (Triandafyllidou & Marchetti 2015).

Non-profit dimension of domestic work

As opposed to other forms of labour exploitation that lead directly to profits and for which incentive to make more profits is a clear-cut motive for exploitation, domestic work is a 'non-generating profit' activity. This is of course with the exception of the agencies or intermediaries who charge a fee to the domestic worker or when the exploiter sells the services to another person and receives the earnings.

While it is difficult to consider the direct 'economic profit' resulting from the performance of domestic or care tasks, this is not to say that there is no economic dimension to this service. There is an economic and social value to domestic work. The household (family) saves money when paying low wages or no wages at all and the domestic workers' labour enables households to pursue professional and family lives and maintain standards of living (Anderson 2006). Thus, the incentive to enter into exploitative relationship with the workers is not to make direct financial profit. The incentive of paying less may be present, as well as social acceptability of certain behaviour and practices and values attached to domestic work.

Values, cultural and social norms underlying domestic work

As mentioned before in this paper, within domestic work, demand is gendered (e.g. mostly seeking female workers) and sometimes racialised and ethnicised (looking for certain ethnic groups) (Anderson, 2000, 2007; Cox, 2006). Domestic work is heavily entrenched within cultural and social values, and is still undervalued or not considered a formal type of work. It is also influenced by gendered division of labour and by the perception of domestic chores as being outside of marketisation and commodification (Ungerson, 2003). Also, the intimate dimension of employer/employee relationships may sometimes blur the line between an employment and more 'familial' type of relations.

Thus, in turn, the values, cultural and social norms underlying the way paid domestic and care work is perceived and constructed may influence social acceptability of certain behaviour. Indeed, beyond considerations of costs (low salary) and benefits (being able to rely on a constant presence and help), the motivations behind maltreatment and exploitation may stem in part from these reminiscent misperceptions about DW as being the servant (Special Rapporteur on Contemporary forms of Slavery, 2010). In line with this notion of social acceptability comes into play the question of impunity – given the scarcity or absence of criminal legal cases involving exploitation in domestic work sector. This creates a perception of little risk to be accounted criminally responsible for situations of exploitation, or even accountable with regard to violation of labour laws.

5. Working definition and framework

5.1 Working definition of THB in domestic work

The biggest challenge in defining the topic of this study is to provide guidance in identifying (extreme) forms of exploitation that constitute trafficking, the threshold beyond which a situation constitutes trafficking. This paper does not pretend to overcome those challenges, but to present some of the key dimensions that should be considered in our study.

For this study, we will use the term THB in domestic work. We propose to use a 'broad' perspective, which includes the different notions: THB for the purpose of labour exploitation or forced labour in domestic work, as well as THB for *domestic servitude*, *slavery* or *slavery-like practices*, according to each national context, legislations and existing case law.

Furthermore, we propose not to limit the analysis to relations of employment, given the unique position of DW, being at the intersection of both employment/labour sector and the family/private household sector. Consequently, THB can occur either within employment arrangement or non-employment relationships (domestic chores performed within private/family relations, such as in the case of spouses in arranged/forced/servile marriage or a situation in which a child is being placed in a foster family). Thus THB in DW may not concern only exploitative labour and employment relationships.

In that perspective, and in light of all that have been discussed so far, this paper proposes to use a definitional lens based on continuum of exploitation in which there is no fixed and non-flexible threshold to determine when starts trafficking.

A first step in providing a working framework is to propose a provisional list of types of situations in which THB occurs, identify the key actors and 'modus operandi' of trafficking (referring to recruitment, working and living conditions), and finally the core dimensions related to 'exploitation'.

Typology of situations

On the basis of the OSCE report on THB for domestic servitude (2010), we propose the following typology of situations in which trafficking may occur in domestic work:

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

This is a provisional list of categories. As a result of our study, this typology might be widened to include other situations. For example, if situations similar or related to arranged and servile marriage are identified, they will be included in the research. This type of situation has been identified as an area of concern that deserves more attention by the OSCE (2010). Also, while being restricted to situations involving migrants, if situations concerning nationals are identified, they will also be included.

Second, we will use the definition of THB as established in the EU Anti-Trafficking Directive. For each country case study, this definition will be complemented by national legal definitions regarding trafficking (if different) or related offences (e.g. domestic servitude, forced labour as 'conditions contrary to 'human dignity', etc.) when it exists.

Furthermore, in regard to domestic servitude, the clarification provided by the rulings of the ECtHR will be of guidance. Thus, domestic servitude is a specific and aggravated form of forced/compulsory labour (COE & ECHR, 2012). It includes the obligation to live in another person's home, and the victims' feeling that their conditions could not change and would involve more subtle forms of coercion to force compliance (Ibid).

THB in domestic work definition relies greatly on the assessment or the identification of means of coercion/exploitation, and in particular in relation with:

- the means of recruitment used: deception, coercion or abuse of vulnerability
- the working and living conditions

With respect to the working and living conditions, we propose to follow the three core dimensions that are present in the list of Operational Indicators developed by the ILO:

- Elements of exploitation
- Means of coercion
- Abuse of vulnerability

As mentioned before, the EU Anti-Trafficking Directive provides the following definition: 'position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.' (Art. 2.2)

The category of working and living conditions includes both labour abuses (e.g. unpaid wages, overtime, long and heavy working hours, etc.) and criminal abuses (violence, threat, etc.), and also elements of violation of human dignity (degrading living conditions, humiliation and violence, degrading working conditions, etc.) - according to national legislations.

We propose to build on the list of indicators developed by the ILO, and to complete it with specific abuses documented in domestic work. This list of indicators is meant to provide guidance and common ground in terms of types of means of exploitation and coercion that may be used.

Elements of exploitation

- Excessive working days and hours
- Bad living conditions
- Low or no wages
- Manipulation of pay
- Inadequacy of, or no rest days
- Hazardous work
- No respect of labour laws or contracts signed
- Lack of social protection (e.g. no access to health care and maternity leave)
- Very bad working conditions
- No access to education

Elements of coercion:

- Confiscation of documents, withholding of ID

- Debt bondage
- Isolation, confinement or surveillance,
 - Deprivation of private life, control over or denial or limited communication
 - Deprivation of personal freedom and limited or restricted freedom of movement
- Psychological and physical abuse, sexual violence, and sexual harassment and assault
- Food deprivation, sleep deprivation
- Withholding of wages and lack of overtime pay
- Threat of violence, threat of denunciation to authorities, threat to impose worse working conditions (ILO/EC 2009)

Elements of abuse of vulnerability:

- Dependency on exploiter
- Abuse of illegal status
- Difficulty to live in an unknown area
- Economic reasons
- Level of education
- Family situation
- Personal situation (difficulties in the past, personal characteristics)

5.2 Case law review: key dimensions

Given the lack of case law regarding THB in domestic work, we propose for this study to adopt a broad approach in selecting the cases under study.

1. Trafficking for labour exploitation/ or more specific in domestic work
2. Forced labour (if in the law there are provisions for ' non-trafficked' forced labour) in domestic work
3. Domestic servitude / slavery-like practices or conditions contrary to human dignity (when such offences exist)

Also, if cases of child trafficking in domestic work, as well as servile marriage involving domestic servitude exist in the country, those will be included in the analysis.

In the analysis of the case law, we propose to pay special attention to how the notions of exploitation, coercion and abuse of vulnerability are being interpreted in the court decisions, as well as the gradation of severity of exploitation.

5.3 Demand-side of THB in domestic work

Our focus on demand aims at understanding the factors and dynamics that drive or impact conditions conducive to trafficking in the domestic work area. The concept of demand is understood as demand for cheap and exploitable domestic workers and their services. Demand *refers to the willingness and ability to buy a particular commodity* – namely goods and services (Cyrus & Vogel 2015)

Given the nature of domestic work, we propose for this study to include in the analysis of demand factors the following core dimensions:

1. The factors and motivations that are attributable to the employers and/or other intermediaries involved in the trafficking process who are benefiting from the exploitation of the domestic workers, including considerations of all forms of benefits (non-material) or profit,
2. Factors stemming from socio-cultural contexts (social acceptability of certain practices),

3. Gaps in the legal and policy frames regarding migration, labour and welfare regimes – that may be influencing the demand

In terms of the types of demand-side measures, policies or efforts, we propose to draw on the series of strategies to address demand in the context of trafficking for labour exploitation proposed in the ICAT report (2014):

- Legal justice response (criminal, labour, civil law), by considering both the criminalization of traffickers and access to remedy for the workers
- Strengthening labour standards and improving implementation and enforcement (ex. labour inspectors)
- Campaigns aiming at changing practices with regard to abusive employment practices
- Means to empower the workers and facilitate access to knowledge about their rights
- Addressing social norms as a contributing factor to exploitative practices

In sum, transversal to those types of actions are the strategies or policies to discourage non-compliance with labour rights and conditions. As discussed earlier in this paper, the intersection of different policies may impact on working conditions and increase or maintain rather than lessen domestic workers' dependence toward their employer. Consequently, welfare policies regulating specifically domestic work as well as migration policies will be reviewed in each country in order to identify and address the potential gaps.

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

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