

EUROPEAN POLICY BRIEF

Trafficking in Human Beings in Domestic Work in Belgium: Tackling Severe Exploitation in Hidden Spaces



Hardly any policy initiatives in Belgium specifically tackle demand-side aspects in labour exploitation and Trafficking in Human Beings (THB) in the domestic work sector. Although the service voucher policy and safeguard protection measures in domestic work for diplomatic households have positive effects, undocumented domestic workers in the shadow market and even regular temporary migrants are still largely unprotected. Vulnerability results mainly from precarious migration status: changing migration and employment policies in domestic work are therefore key to combatting this hidden and persistent form of labour exploitation.

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INTRODUCTION

Belgium is often cited as exemplary in the scope of its general anti-trafficking in human beings (THB) policy. It has adopted a broad definition of the crime of trafficking for labour exploitation as being the work or service conducted in conditions contrary to human dignity. The broad definition chosen and the fact that the coercion element is not compulsory but an aggravating circumstance allows for more convictions on grounds of THB and recommends Belgium as a good-practice example within the EU.

There are relatively few documented cases of trafficking in the context of domestic work. The Social Inspectorate in Brussels Region, which has recorded the largest number of cases in this sector out of the three Belgian regions, identifies about five cases in private domestic work out of 30 cases of potential THB for labour exploitation annually. A few other cases in the diplomatic environment are also possibly identified. Importantly, THB in domestic work, which is documented to be amongst the most severe and violent circumstances in labour exploitation, cannot be separated from a broader context of labour exploitation.

There are hardly any measures explicitly addressing demand-side aspects. Some actions for raising awareness are foreseen in the National Action Plan to combat THB (2015-2019), while measures taken in the domain of regular domestic work at diplomatic and private households

contribute to better employment conditions for domestic workers. Undocumented domestic workers working in the shadow market, however, are still largely unprotected.

The country study on Belgium suggests that workers' vulnerability is one of the main factors influencing demand in labour exploitation in the domestic work sector. Employers' preferences or recruitment agencies' practices comes second. Vulnerability is largely characterized by the lack of migrant status or by a precarious temporary status. Structural factors, such as the current migration and employment policies, keep these workers unprotected in practice.

Migration status is therefore a key issue. Building a regularisation path for undocumented domestic workers and/or guaranteeing access to labour and human rights to domestic workers independently of their migrant status is critical for avoiding cyclic labour exploitation in the domestic work sector.

Evidence from national law-cases equally demonstrates that vulnerability factors can arise from the kind of work relationship established in domestic work, in particular when workers are live-in (i.e. residing in the household of the employer). Raising the awareness of employers, workers, and general public can help reduce domestic workers' vulnerability as well as the risk of labour exploitation and THB.

Protection and prevention measures, moreover, are part of Belgium's obligations under the International Labour Organisation (ILO) Convention on domestic workers (C189), which Belgium ratified in June 2015. The Convention establishes basic rights for all domestic workers and encourages States to go further than minimum standards.

EVIDENCE AND ANALYSIS

Evidence from the Belgian case shows that among the main **obstacles** to preventing exploitative situations within the sector are the **migration and employment policies that apply to domestic work**. Indeed, undocumented workers comprise the majority of THB victims in domestic work and, as shown by research, their vulnerability emanates mainly from the lack of protection of their rights as workers and human beings. Additionally, the lack of pathways to regularisation and the impossibility of migrating as a domestic worker reinforce the shadow market and, simultaneously, the ability of undocumented domestic workers to access their rights. Ergo the context of vulnerability has structural roots in national migration and employment policies.

Additionally, the **behaviour of employers**, recurrent in general domestic work relationships but exacerbated in exploitative situations, prevents domestic work from being considered as work. This behaviour masks the employment situation and, consequently, the exploitation that comes with it.

1) Migration and employment policies applying to domestic work

Structural lack of protection of migrant domestic workers

According to Belgian law, undocumented workers enjoy the same protection as any other workers with regards to labour rights. Many situations, however, prevent workers from fully enjoying their rights.

For instance, claiming back wages is possible under law but hard to accomplish in practice: the procedure takes very long and the employment relationship is hard to prove. Chances of winning in the Courts are thus slim. In this context, mediation between domestic workers and employers/exploiters is a good practice, but this conflict-solving method is optional and not always accepted by employers/exploiters¹.

¹ The word "employer/exploiter" was chosen to name the category of perpetrators of labour exploitation or THB in domestic work.

Another problem arises from the constraints of the Social Inspectorate mandate under migration law. Inspectors are crucial actors in the protection of workers and in detecting THB cases in domestic work. However, they are simultaneously responsible for denouncing undocumented migrants irregularly working on Belgian soil (infraction of the social criminal law).

Thus, domestic workers found by social inspections in a situation of labour exploitation can be expelled from the country due to their migration status, unless these individuals are identified as victims of trafficking. In the event workers file a complaint at the Social Inspectorate Office (under these circumstances they do not risk an "order to leave the territory"), the situation will no longer be a *flagrante delicto* and they will lack the evidence that an inspection could bring, thus reducing the chances of redress.

Compared to other traditional migrant occupations, domestic workers lodge relatively few complaints. Migrant workers refrain from filing a complaint out of fear of losing their job, or of retaliation (in Belgium or in their country of origin), or of being arrested or expelled, etc. Additionally, as domestic workers find new jobs mainly through the employers' network, filing a complaint may prevent them from finding jobs through informal recommendation. Existing remedies in Belgium thus fail to provide effective access to justice.

A regular status, however, does not necessarily protect from labour exploitation. In addition, certain types of residence status may actually exacerbate vulnerability to exploitation. The S card (diplomatic domestic workers) and the work permit B (in the rare cases it is given to live-in domestic workers in private houses) link a work contract to the stay permit and may be annually renewed. Domestic workers are thus, in practice, bound to their employers. This dependency drastically limits their bargaining power, preventing them from leaving exploitative situations, filing a complaint against the employer, or even claiming their rights from their employers.

In the field of domestic work in diplomatic households, Belgium has launched a number of initiatives in recent years. The Service of the Protocol has for instance increased its attention to the risk of domestic workers' exploitation; in 2013, a Commission for Good Offices was created with the goal of mediating conflicts and addressing loopholes regarding workers' protection. These measures are nevertheless insufficient for protecting the rights of domestic workers in diplomatic households due to the structural factors enumerated above. To be able to maintain their job and stay permit, some domestic workers may undergo labour exploitation and possibly violence.

Voucher service policy as an anti-THB measure in the demand aspect?

Since the 2000s, Belgium has a service voucher system allowing households to purchase weekly cleaning services from authorised companies at the subsidised price of €9 per hour while benefiting from a tax deduction (2016).

Some anti-THB stakeholders, international organisations, as well as national and international trade unions, consider the service voucher policy as a good practice in the domestic worker sector. Further, some stakeholders see it as indirectly tackling demand in the context of potential situations of labour exploitation in domestic work.

It is broadly accepted that the system brings improvements to job quality compared to the informal sector, mainly due to the recognition of labour rights and a work status, as well as the introduction of an intermediary actor. The voucher system also opens the possibility of being unionised, and collective agreements are responsible for positive changes within this expanding sector. But it seems excessive to call it an indirect alternative measure for reducing THB in domestic work, for two main reasons:

Firstly, only nationals or migrants with a regular stay permit can join the system, while the main THB victims in the domestic work sector are mostly undocumented migrants.

Secondly, the profiles of service voucher clients and employers/exploiters in THB in domestic work are markedly different. It is possible, though, that "normal" arrangements of domestic work employment shift towards labour exploitation.

We therefore suggest that it is not the existence of the service voucher policy but, on the contrary, precisely the inexistence of formal employment arrangements for live-in domestic workers in private households that constitutes a main factor contributing to increase workers' vulnerability and the risk of labour exploitation and THB in domestic work.

Migration for domestic work: A demand not addressed, an unprotected migration

There seems to be a persistence of informal arrangements in domestic work, particularly when considering full-time and/or live-in workers. Indeed, employers—who in this case are a family—consider the existing domestic employee status as too bureaucratic and expensive in terms of tax and social charges. Moreover, this status is modelled on a 1970s' type of full-time domestic work and offers much poorer work conditions than those enjoyed by, say, service voucher employees.

In this vein, given the inadequacy and little use of the domestic employee status, one option for consideration could be to eliminate it. But demand for this kind of employment cannot be totally transferred to the current service voucher system: under the latter, live-in domestic work is not allowed and the number of purchased hours and tasks are limited (maximum of about 22 hours per week and no caring or outdoor chores are permitted). Moreover, expanding a heavily-subsidised system to wealthier families able to afford a full-time domestic worker seems questionable.

Thus, there is a share of demand for full-time and live-in domestic workers that is not met by the national regular market. Even when employers are willing to employ a worker under the domestic employee status, they have a hard time finding someone meeting their specifications. Many employers, who are private households, try to have the immigration status of their undocumented employee regularised. But currently there is almost no pathway for these workers' regularisation outside general regularisation campaigns.

The Belgian government does not consider domestic work as a labour shortage sector and officially there is no possibility for migrating to Belgium as domestic worker (except in case employers are diplomats and, rarely, under a work permit B for live-in workers). This decision is at odds with the reality of the domestic work market.

The current policy and legal framework may lead to employers turning to the informal market—whether workers are undocumented migrants or EU citizens (some employers may nevertheless inappropriately use the voucher system to employ a full-time domestic worker). Domestic work is therefore a “migrant job”, a situation that the financial crisis of recent years has not challenged.

Consequently, opening paths to, on the one hand, regular domestic workers' migration and, on the other hand, regularisation for undocumented domestic workers already working in the domestic work sector, would represent a gain in terms of tax earnings and labour market control. The service voucher experience demonstrates that a declared labour market is more easily controlled. Furthermore, these initiatives can result in greater protection of domestic workers' rights.

2) Employer/Exploiter's behaviour

Employers/exploiters are found among all nationalities and social classes. None of them, according to case-law analysis and frontline professionals, acknowledge or recognize their own responsibility regarding the criminal acts of exploitation of which they are accused. The family-like environment overshadows the work relationship, even in very exploitative situations. Consequently, employers/exploiters do not see themselves as such and do not assume that they are the ones responsible by providing adequate conditions of work and living.

According to frontline professionals, employers/exploiters' discourse is often premised on a humanitarian rhetoric, relying on the perception that the domestic worker is “needy” therefore giving work and board is an opportunity to take them out of poverty.

Furthermore, the worker is often of different nationality/ethnic background, has different migration status (or none), enjoys a lower status in the family (when they pertain to the same extended family), or comes from a less-privileged class background than the employer/exploiter. These factors limit the employer/exploiter's empathy towards the worker's living and working conditions.

The status difference, even if it is subtle, reinforces social distance and helps dehumanise workers in employers/exploiters' eyes: they do not identify with workers, who appear to them as the

“naturally” suitable persons for doing all the domestic work. Both case analysis and interviews with migrant domestic workers and migrant organisations show that the fact of being undocumented can make the workers appear less entitled to the same level of working and living conditions.

Moreover, the live-in situation blurs boundaries between work and free time. The worker then appears as permanently available, which is conducive to an increased volume of work delegated. Domestic work being invisible and employers/exploiters having assigned all tasks to workers, they do not “see” how much work is done and do not perceive the workers as overloaded with tasks. The specificity of the situation of live-in domestic work can also contribute to some employers’ seeking to widen their social distance from workers.

Simultaneously, the social behaviour of searching for the “best deal” is equally at the origin of situations of exploitation. Employers/exploiters, as any consumer, seek more-for-less arrangements, moving away from empathy with the worker. This does not apply solely to domestic work, but also to all sectors of labour exploitation.

Finally, the private aspect of the workplace allows the exploitative situation to be kept invisible from the public. It is thus less exposed to social inspection and, more broadly, to social control, favouring some situations of multiple and severe exploitation.

All these factors, combined with the structural reasons mentioned above, may contribute to fostering demand for domestic work services in a context of severe exploitation or trafficking.

POLICY IMPLICATIONS AND RECOMMENDATIONS

Raising awareness among employers and the general public, as well as empowering workers to better understand the rights to which they are entitled, has the potential to bring positive outcomes in preventing THB and labour exploitation in domestic work. However, only the removal of structural barriers exacerbating individuals’ vulnerability to exploitation built into migration and employment laws will be able to bring efficient prevention to exploitation. It is not sufficient for workers to know their rights if they are not able to experience them in practice.

1. *The role of social inspectors*

- **Sanction employers/exploiters, not migrant workers.** Employers/exploiters evade tax contributions and take advantage of workers’ situations. Undocumented workers are working without a work permit because it is impossible for them to do otherwise.
- Give domestic workers who file a complaint against an abusive employer a **temporary stay permit** (not linked to any employer) that allows them to work during the proceedings.
- **Work more closely with migrants’ rights organisations** to enlarge the Social Inspectorate’s scope in gathering information and preventing labour exploitation in domestic work.

2. *Fully adopting the exploitation continuum approach*

- **Extend the mandate of the THB Platform** to include all forms of severe labour exploitation aimed at narrowing the gap between THB and “not-so-exploited” victims of labour exploitation (see FRA 2015).
- **Develop access to justice and support:**
 - Improve reclamation of back wages by reducing the burden of proof on workers to establish the employment relationship.
 - Improve psychological support and increase available places in shelters for victims of violence at work.

3. *The need for a new migration and employment policy*

- **Review the work permit system** and shortage lists establishing clear criteria for employers seeking to engage workers from abroad while improving workers' protection by disconnecting the stay permit from the work permit: allowing workers to change employer as well as a grace period to find another job at the end of their contract. This initiative has the advantage of bringing into the declared market a series of labour arrangements that are currently in the shadow economy, thus allowing an increase in control over employment relationships and tax contributions.
- Consider **domestic work as a labour shortage sector**. The lack of legal admission categories for domestic workers contributes to undeclared arrangements and migrant domestic workers' irregularity.
- **Develop/Consider a unified policy** under a **third-party employer** (from the example of the voucher service system) for all types of domestic work statuses (service voucher employee, domestic employee, au pair, etc.).

4. *Empowering domestic workers*

- **Reinforce support to migrant associations** working with (all) migrants' empowerment at the grassroots level. Migrant workers' empowerment can prevent exploitative situations by developing workers' skills to negotiate with employers, identify (and quit) exploitative situations, find support, and file complaints against employers/exploiters.
- Enhanced **access to free language classes** for all migrants could strengthen their understanding of Belgian laws and their rights.

5. *Domestic work is work: Changing employers' behaviour*

- Work on **raising general public awareness** with the double goal of **reducing social acceptance of exploitation** against migrants and moving **away from the "more-for-less" ideology** steeped in occidental-capitalist people's mindset: TV/radio campaign spots, material for debate in the schools, etc.
- Distribute **brochures** on the **main rules to be respected** in case of domestic work employment in Belgium. Although this action is already planned in the 2015-2019 National Plan for foreign employers/diplomats, the targeted public of the brochures should be enlarged to include not only migrant families but also **families of all social classes and nationalities**.

6. *Improving knowledge of the domestic work sector*

- **Further knowledge**, mainly on the informal domestic work sector, is **needed to inform policymaking**. How many domestic workers are there in Belgian households? Under which migration and labour status do they work? What nationalities are they? What are their global living and working situations? Although these questions are hard to answer in a sector in which informal labour persists and might be significant, future research could provide an overview of the situation.

RESEARCH PARAMETERS

This national study is part of the DemandAT country studies on trafficking in human beings (THB) in the domestic work sector conducted in seven European countries: Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK.

The key objectives of research were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking, ii) examine the motivations and factors driving

and shaping the demand as well as iii) examine the gaps in legislations and policies.

The case study is mainly based on interviews with Belgian anti-THB policy stakeholders, trade union representatives, NGOs in the migration field and judicial professionals. A total of 14 semi-structured interviews were held with 16 interviewees between March and July 2015 in English and French (quotes translated by the author). The research is also drawn on the analysis of existing grey literature, case-law analysis and academic articles, mainly regarding migrant domestic work and THB for labour exploitation. Desk research on a selection of national cases-law complemented the national case study, as well as an interview with a recognised THB victim.

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