

EUROPEAN POLICY BRIEF



Addressing the demand-side of trafficking in the domestic work sector: main findings at European level

In Europe, the employment of domestic workers is a widespread phenomenon. Despite different national policies and regulations, domestic workers, in majority migrant women, still face vulnerability to exploitation – including cases of human trafficking. Trafficking in this sector is an area neglected by policy makers and law enforcement and this situation is exacerbated by the challenges of monitoring activities occurring within private households. This policy brief examines the demand-side of trafficking in the domestic work sector in Europe based on seven country studies. It calls for a comprehensive approach in addressing demand in anti-trafficking efforts—at the intersection of trafficking, labour, and migration frameworks.

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INTRODUCTION

In recent years, EU countries have adopted important common policies to combat trafficking in all its forms, and more efforts are being mobilised to tackle trafficking for labour exploitation specifically. Domestic work is identified as one of the labour sectors more vulnerable to exploitation and trafficking (FRA 2011). This Policy Brief is based on seven country studies examining the demand-side of trafficking in domestic work in Belgium, Cyprus, France, Greece, Italy, the Netherlands and the UK.

Trafficking in human beings (THB) in domestic work takes place within a broader context of widespread ‘employment’ of domestic workers in Europe. Private household’s growing demand for outsourcing domestic and care work is driven by multiple factors including: increased female labour market participation, changing demographics, limited availability of public care services, changing care needs, matched by the availability of a large and flexible migrant labour force. The majority of domestic workers are women and migrants from central and eastern Europe as well as Asia, Latin America, and Africa. Despite its economic and social importance, domestic work remains undervalued and is at times not regarded a formal labour sector. Many domestic workers face sub-standard working conditions: they are underpaid, overworked, and face protection gaps compared with other labour sectors.

The studies' findings suggest that addressing demand can hardly be separated from simultaneously tackling the supply side, notably the vulnerabilities faced by domestic workers. Policy interventions seen as potentially impacting on the inappropriate demand for cheap and flexible workers cover a wide spectrum of actions. It includes changing mentalities and discriminatory attitudes that shape behaviour towards domestic workers (mostly migrants), and addressing loopholes in policies and regulations such as policies that create conditions for exploiting migrant workers' vulnerabilities or the lack of accountability on the part of employers (sanctions).

EVIDENCE AND ANALYSIS

1. Trafficking in domestic work: definition and scope

The EU Anti-Trafficking Directive 2011/36/EU establishes a tripartite definition of human trafficking that encompasses: the act (e.g. recruitment, transport, 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) (Article 2, 1). Despite a common EU definition, national legislative approaches differ, particularly in regard to trafficking for forced labour or labour exploitation. Trafficking in domestic work may fall under the following forms of exploitation: forced labour, slavery or slavery-like practice or servitude.

Trafficking in domestic work might include either employment-based arrangements or family-based arrangements (including child fostering and arranged marriage).

Lack of empirical data

The available official data do not provide a comparative baseline to assess the scope of THB in domestic work across the countries researched. The countries rely on different data collection systems, which reflects how countries engage with the problem. This leads to disparities in the official data that may not accurately reflect differences on the ground. For example, in the UK, where a National Referral Mechanism exists, there were referrals for 305 cases of domestic servitude in 2014 alone; in Greece, only a single case has been reported since 2002.

Furthermore, disaggregated data by labour sector (e.g. domestic work) or form of trafficking (forced labour, servitude, sexual exploitation) is not available in all countries. Where there is data for THB in domestic work, its share with regards to cases of THB for labour exploitation ranges between 10 and 14 per cent (10-13 per cent in the UK for 2012-14, 11 per cent in Italy for 2013-2014, 14.3 per cent in 2014 in the Netherlands). Also, country studies show discrepancies between official data and data compiled by non-governmental organisations, which suggest underreporting.

2. Key features of trafficking in domestic work

Trafficking in domestic work occurs in diverse settings and arrangements: private household, diplomatic personnel, au pair programme, as well as family-based arrangements such as child fostering and 'forced/arranged' marriages.

Domestic work takes place mostly within informal and undeclared arrangements and often involves migrants without work or residence permit/permission to stay. Yet, situations of trafficking in domestic work are

not limited to circumstances of irregular migration. Trafficking can also occur within legal frames of migration, such as the tied-visa regimes for migrant domestic workers in the UK and Cyprus. Furthermore, there is a growing number of EU citizens, mostly from central and eastern Europe

Situations in which trafficking has been reported

- 1) Domestic worker employed directly or indirectly, under declared or undeclared contract by private households
- 2) Domestic worker hired by diplomatic personnel
- 3) Misuse of the au pair programme (using this programme for a full-time care 'worker')
- 4) Family-based arrangements, without employment contract of any form including arranged/forced marriage, child fostering

(e.g. Romania), among domestic workers. **Also, case law involving nationals** was reported in two countries, one in the UK and two in the Netherlands. In these cases, other factors of vulnerability such as mental illness, or homelessness and drug addiction were exploited by the trafficker.

Nearly all cases of trafficking in domestic work concern **situations of live-in domestic workers** that is, situations in which the worker lives in the employer’s home. Workers in live-in situations face higher vulnerability to exploitation than live-out workers. The work may involve childcare, care for elderly or disabled family members, as well as different cleaning and domestic chores.

Three main processes of recruitment were reported in the study. Domestic workers may be:

- Hired directly by the family (no intermediaries). This scenario also includes:
 - o A situation where the worker already worked for the household and migrates with them to the new country
 - o A situation of family arrangement, child fostering, arranged marriage
- Recruited with the help of intermediaries who may include family members or family acquaintances
- Recruited through intermediaries such as employment agencies

The victim and the traffickers may know each other already.

The findings suggest that recruitment is largely **based on deception** rather than coercion. This includes deception regarding working conditions, salary or false promises to access regularised immigration status or education.

Abusive practices by **placement and employment agencies** are reported. High agency fees (for visa/travel arrangement, accommodation) further push migrant workers into accepting exploitative work and living conditions. Frequent involvement of recruitment agencies in trafficking cases was reported in Cyprus and Greece. In Cyprus, trafficking cases that implicate agencies occur mostly under the legal visa regime for migrant domestic workers.

The study identifies common features and means of coercion that contribute to keeping the persons in exploitative situations (See Box). Psychological means of coercion are more frequently reported. A recurrent element is the abuse of a position of authority or vulnerability, defined by the EU Directive as ‘a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.’ (*Art. 2.2*).

Common features of exploitation and means of coercion

- No payment of wage or payment of very low wage (manipulation based on giving or not giving the salary or promising to send money to the family abroad)
- Excessively long work hours, often without a weekly day off (being at the employer’s constant disposal)
- Physical and verbal abuse and threats of dismissal
- Withholding identity and/or travel documents
- Confinement in the house
- Restricting freedom of movement
- Restriction to contact their family
- Sexual harassment and/or abuse
- Humiliating treatment
- Inadequate accommodation and access to food (e.g. sleeping on the floor in the basement, no privacy)
- Situations of unattended health problems or injuries

Furthermore, the study suggests that the exploitation process relates primarily to the complex **relationship between the employer and the domestic worker**. Domestic work—especially in live-in situations—involves intimate relationships and at times family ties. This can impede the recognition of exploitation, including trafficking, hampered by a sense of gratitude toward the exploiter for having facilitated migration, provided shelter, or promised access to education.

3. Legal, political, and regulatory frameworks: some loopholes

The countries included in this study are drawn from southern, central and northern Europe and have very different schemes for regulating the domestic work sector and visa

Domestic work regulation framework

Specific regulations (and collective agreements)	Belgium France Italy
Restricted specific regulations (only for part-time)	Netherlands
General labour law	Cyprus Greece UK

procedures for the migration of workers in this sector.

Three key models in regulating domestic work are represented: general labour law (Greece, Cyprus, and the UK); specific regulation for domestic work (Belgium, France, and Italy); and specific regulations limited to part-time domestic work (the Netherlands). Thus, this study includes models with more or less regulation, as well as models with more or less flexibility.

Also, there are two distinct approaches for regulating the **migration** of domestic workers. The UK and Cyprus have a specific work-visa scheme for migrant domestic workers, while general immigration laws for migrant workers apply in the other five countries included in the study.

Despite the different policy approaches, the study found common loopholes that leave many domestic workers unprotected.

First, current restrictive migration policies limit legal channels for migrant workers and foster irregular migration as well as informal labour markets. Irregular migrants mostly find work within the undeclared labour market where they are more at risk of exploitation. **Second**, irregular migrants are left unprotected by domestic work regulations. The regulations in place concern workers who have a regular stay permit and many situations of trafficking still involve undocumented migrants. Trafficking may also occur outside of an employment framework.

The voucher system in **Belgium** and the *chèque à l'emploi* in **France** are seen as contributing to **decrease undeclared work in the domestic work sector**. Both systems set positive incentives for employers to register the employment of a domestic worker: an easy-to-use hiring/registration process, tax deductions, and government contributions. However the impact of these on preventing trafficking has to be considered against the backdrop that most of trafficking cases continue to occur outside formal arrangements. Furthermore, most situations of trafficking take place in live-in arrangements, while these measures are confined to part-time live-out services.

Despite differences across countries, in general, live-in arrangements are unregulated or inadequately regulated (meaning that the regulations are incomplete and insufficient and/or do not properly set fair work conditions).

Third, some **policies maintain the dependency** and precariousness of the worker that are at the root of exploitation, including trafficking. One example is the visa scheme for migrant domestic workers that exist in the UK and Cyprus. The two visa systems differ in many regards, but both are temporary, apply to live-in arrangements, and are tied to one specific employer. While providing a legal channel for live-in care workers—who respond to a demand—this type of visa scheme perpetuates the domestic worker's dependence on a specific employer. The work permit (and right of stay in the country) is contingent on the employer's needs and will. Domestic workers employed by diplomatic personnel offer another example where the domestic worker's visa is strictly bound to their employer's status and stay in the country. In addition, the employer's diplomatic immunity significantly restricts the worker's access to protection and remedies.

4. Addressing demand in the context of trafficking in domestic work

4.1 Vulnerabilities and demand-side factors: two sides of the same coin

Domestic workers face vulnerabilities exposing them to the risk of exploitation—some of which are specific to domestic work. Tackling the demand-side can hardly be separated from addressing these vulnerabilities. The employers' demand for cheap and flexible labour is rendered possible or maintained over time by the presence of large groups of migrant workers in disadvantaged positions which may accept low-standard work conditions and exploitative arrangements (supply).

Vulnerabilities that emanate from the **worker's situation include:**

- Dependence on employer (irregular migration status, limited options for employment)
- Scant knowledge of the language in the country of destination
- Social isolation given the particular workplace (private home)
- Lack of knowledge about their rights or the mechanisms to access them
- Children in position of great dependence and vulnerability

It also stems from the **particular workplace and employment relations**:

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

(see *FRA 2015*)

The seven country studies identified **three categories of factors influencing demand** in the context of trafficking in domestic work: economic and material factors; social norms and discrimination (linked to the relational dimension); and, the **political and legal framework**.

Compared to other sectors where trafficking occurs, domestic work is not an activity meant to generate profits. Thus, profit-making is not the main demand-driver (except for agencies profiting from high fees charged to migrant workers). However, savings from paying less (low salary) or nothing and the material benefits derived from domestic work are a clear motivator. The economic aspects (salary and social benefits/capacity to pay) are influenced by welfare policies and labour regulations in place. However, economic considerations are only one piece of the puzzle.

Another set of factors relates to discriminatory attitudes and social norms that maintain a devalued perception of domestic work. This influences the relationship and power imbalances and creates the ground that allows for abusive practices. Furthermore, demand is often gendered (women's work) and racialised (preference for certain ethnic groups perceived as best-suited for this type of work). This creates a triple discrimination based on work value, gender, and migrant or ethnic status.

Finally, through intervention or inaction, **policies and regulations** play a role in setting the conditions of demand. Policies can generate or exacerbate precariousness, as illustrated above (e.g. tied-visa, criminalisation of irregular status). The lack or failure to implement relevant criminal and labour law including adequate sanctions may fuel the sense of impunity on the part of employers. Another key gap concerns the contradictory aims of policies tackling trafficking (including the protection of victims) and those combatting irregular migration. **Undocumented migrant workers** are at the crossroads of these conflicting policies: as victims of trafficking they are considered in need of protection, but unless recognised as such, they are viewed as irregular workers/citizens. This prevents disclosure of the exploitation by those in fear of being reported to the authorities and at risk of being deported.

4.2 Measures and tools to tackle the demand: opportunities and loopholes

The **notion of demand** in the context of trafficking is still **poorly understood** and little used by the stakeholder participants in this study. Demand-side measures in this sector are still limited. Policy interventions seen as potentially impacting demand cover a wide spectrum of measures. Three key lines of action are identified in the country studies: raising awareness, strengthening the protection of workers' rights and sanctioning employers by enforcing labour and criminal laws.

Raising awareness and improving detection

Awareness-raising campaigns or activities targeting exploitation in domestic work are scarce. Activities related to awareness-raising are included in the latest anti-trafficking national action plans in some countries, with domestic work highlighted as an area of concern. It is important to raise awareness among the general public regarding domestic workers' rights and the value of their labour (and thus the same right to fair work conditions as any other labour) and to inform employers of their obligations and responsibilities. It is also crucial to tackle, more broadly, social tolerance of the labour exploitation of migrant workers perceived as voluntarily accepting exploitative conditions (FRA 2015).

Another facet of awareness-raising concerns the under-detection of THB in domestic work. All country studies emphasise law enforcement actors' insufficient knowledge of this specific form of trafficking. The fact that domestic work is performed in private settings and that trafficking mostly takes place within informal and, at times, familial arrangements further conceals the presence of exploitation. Targeted training for police officers and prosecutors is identified as important to

increase knowledge of trafficking for labour exploitation in general, but also of the specifics of domestic servitude. Improved detection does not concern law enforcement solely, but all other actors in contact with potential victims. A good practice worth mentioning is the use of **cultural mediators** by the NGO FairWork in the Netherlands as an outreach tool providing workers with information and support, and which also facilitate the detection of trafficking cases.

Protection of domestic workers' rights: better regulations and empowerment of workers

Promoting labour rights for **all** workers, migrants and nationals, and ensuring that regulations set fair working conditions is seen as a first step towards enhancing the position of domestic workers. However, the study suggests that establishing specific and stronger regulations is not sufficient without simultaneously seeking ways of empowering domestic workers and **fostering change in social norms** and employers behaviour, beliefs, and attitudes that tend to undervalue domestic work.

Enhancing workers' empowerment includes providing them with information about their rights and the ways to access them. Outreach to domestic workers is important and can involve government actions (providing information, conducting awareness campaigns) as well as partnerships with organisations working with migrant workers' communities. Empowerment involves enhancing the **worker's position in negotiating** work conditions and eliminating policies and regulations that maintain dependence (e.g. tied visa) on employers.

Diplomatic households employing domestic workers are a special case, but recently adopted measures to address the risk of exploitation and trafficking are important to highlight. Measures aimed at prevention—and thus in a sense at tackling demand—adopted in Belgium and the Netherlands (as well as France, although less comprehensively), include means to inform both worker and employer about their rights and obligations, mechanisms to enhance monitoring (compulsory visit by the worker to the Department of the Protocol for visa renewal), and, finally, mechanisms of mediation in case of conflict or abuse. However, a core impediment to an effective protection system in respect of diplomatic households remains unresolved—that of waiving the immunity protection of the diplomatic personnel.

An area requiring further regulatory adjustment and better monitoring is the au pair programme, which is currently being misused as a channel for full-time domestic workers at little pay.

Implementing the law: from monitoring to sanctions

It can be argued that implementing the law—criminal and labour—and imposing sanctions on traffickers and employers has a deterrent effect. In the particular case of domestic work, penalties can also be seen as a tool for fostering greater **accountability**, and thus **responsibility**, on the part of private households hiring domestic workers.

The country studies show that the criminal **offence of trafficking is little used** and the number of prosecutions relating to trafficking in domestic work is low. There are no convictions on this ground in Cyprus, Greece, and Italy. As for other forms of trafficking, situations of exploitation can also be prosecuted under other criminal offences. The study's case law analysis suggests that the private nature of the work environment and the intimate nature of the relationship between employer and employee bring specific challenges to applying the offence of trafficking.

Importantly, the study shows that implementation of anti-trafficking legislation requires an **effective access to protection and assistance** for victims, including access to residence permits. Under the current systems of protection, in most countries, assistance is conditional on the victim's cooperation in criminal investigations or prosecutions, temporary permits are short and assistance insufficient. Thus, victims of trafficking will most likely opt not to disclose information or collaborate with the authorities.

Another set of measures concerns **access to remedies for migrant workers** whose labour rights are violated (e.g. through an Employment Tribunal). According to the country studies, employment and labour law remedies (e.g. claiming unpaid salaries or other forms of compensation) are rarely used and thus seen as ineffective: the procedures are lengthy and migrants may have had to return to their country before settlement is reached. Furthermore, while undocumented migrants are entitled—according to the law in most countries—as other workers to claim remedies, in practice, it is challenging given their precarious situation.

Stronger monitoring mechanisms for labour law is seen as part of the measures that could potentially address the demand-side of trafficking. The **labour inspector's** role was identified as key in overseeing compliance with labour law and detecting cases of abuse, as well as acting as mediator. However, the nature of domestic work taking place in a private household, either prevents labour inspections entirely or considerably limits their jurisdiction. Labour inspectors are progressively included in anti-trafficking efforts to address human trafficking for labour exploitation (Belgium, the Netherlands, France), and monitoring in private homes should be integrated in their mandates.

POLICY IMPLICATIONS AND RECOMMENDATIONS

This Policy Brief calls for the adoption of a comprehensive approach to tackling the demand-side of trafficking in the domestic work sector that addresses its multiple dimensions through a combination of multi-level actions. Preventing trafficking from occurring and discouraging inappropriate demand includes the reduction of vulnerability to abuse on the side of workers and the limitation of the opportunities for exploitation on the side of employers. Four spheres of action are proposed below.

Enhancing detection: breaking the cycle of invisibility

Under-detection of situations of THB in domestic work is a crucial impediment to anti-trafficking efforts. Measures to facilitate detection should include:

- Targeted training for police officers, prosecutors, and labour inspectors to increase their knowledge and understanding of trafficking and labour exploitation in the domestic work sector
- Increased support for trade unions and other organisations working with domestic workers and migrant workers who are in a position to identify cases of trafficking
- Support for self-organised groups of domestic workers undertaking advocacy and empowerment work.

Raising awareness: ensuring better knowledge on all sides

- Implementation of awareness-raising activities by government and trade unions as well as organisations and associations working with domestic workers. Awareness-raising campaigns should target:
 - The wider public - on issues of labour exploitation and trafficking in domestic work promoting a zero tolerance approach and improving public attitudes on the status of domestic work in general
 - Potential employers and private households - on employers obligations (information about national laws)
 - Domestic workers – by providing information about their rights and the means for seeking redress. This can include the distribution of information through information sessions, pamphlets, or brochures.
- Awareness-raising should contain an element of public information campaign but needs to be complemented by increased support for organisations working with the groups directly affected to make contact with hard-to-reach groups

Strengthening domestic workers' rights and empowerment of workers

Some key aspects that need to be addressed are:

- Better regulations setting fair work conditions for domestic workers. To be effective in reducing undeclared work, regulations must include incentives to comply for both employers and workers. Rather than just providing a flexible and easy-to-use system for employers, regulations must also enhance the worker's position (eliminate schemes that maintain or create dependence and/or precariousness).
- Appropriate regulations responding to the demand for full-time care workers, including intensive, 24/7 care.
- Reform tied-visa regimes and remove live-in requirements and facilitate change of employer as these conditions exacerbate the risk of exploitation for domestic

- Ratification of ILO Convention No. 189 on Domestic Workers by all EU member-states

At the European level, the EU parliament's adoption on 28 April 2016 of the resolution on women domestic workers and carers in the EU (2015/2094 (INI)) should be a stepping stone to foster member-states' obligations regarding the respect and protection of domestic workers' rights.

Enforcement of the law and monitoring

A widespread sense of impunity should be challenged by effective enforcement of the law and greater sanctioning of employers and agencies involved in exploitation and trafficking in the domestic work sector. This can include:

- Expansion of the mandate of labour inspectors:
 - Rethink the role of the labour inspectorate within private homes. Improving measures can draw on innovative practices that provide alternatives to house visit (e.g. in Ireland, a meeting between the employer and employee is organised in the event that the employer refuses an on-site visit)
- Establishment of a firewall between labour inspection, immigration control, and law enforcement (OHCHR, 2014)). The firewall principle would waive the obligation to report irregular migrants to migration authorities for all other institutions.
- Establishment and strict enforcement of regulations on recruitment and placement agencies, with clear and stringent requirements, monitoring of their practices, and penalties for non-compliance.

Finally, despite increased attention for labour exploitation within the **anti-trafficking efforts**, **targeted government actions on domestic work remain negligible** and often non-existent. More tailored attention is needed to better understand trafficking in domestic work as well as to increase the knowledge of all practitioners and to inform policymakers.

RESEARCH PARAMETERS

Scope and methodology

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

The key research objectives 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 demand; and, iii) examine gaps in legislation and policies.

The research was conducted at the national level in seven countries. Country studies were based on desk research and qualitative interviews. Desk research comprised of review and analysis of multiple sources of data: academic research, grey literature, legal and political texts. It also included case law analysis of past and current cases of THB in domestic work. For each country study, ten to fifteen interviews were conducted with key stakeholders working in different sectors—judicial authorities, lawyers, policy makers and/or representatives of government institutions, NGOs, including direct service providers to trafficked persons, trade unions, labour inspectors (or labour inspection agency, law enforcement, experts. In total, 104 interviews have been conducted, between March and August 2015. The sampling procedure and the interview guide were common for all the countries.

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