

# Demand Arguments in Different Fields of Trafficking in Human Beings

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October 2017

DemandAT Working Paper No. 13



This project has received funding from the European Union's Seventh Framework Programme for Research, Technological Development and Demonstration under Grant Agreement No. 612869

## About the project

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Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in trafficking as well as protecting the human rights of victims. However, European countries are increasingly exploring ways 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 from related areas on regulating demand.

**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, 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, 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, and imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

## Project Facts

**Coordinator:** International Centre for Migration Policy Development (ICMPD)

**Partners:** University of Bremen (UBr); University of Edinburgh (UEDIN), International La Strada Association (LSI), University of Lund (ULu), University of Durham (UDUR), European University Institute (EUI); Geneva Centre for the Democratic Control of Armed Forces (DCAF); La Strada Czech Republic (LS CZ)

**Duration:** 1 January 2014 to 30 June 2017 (42 months)

**Funding:** 7<sup>th</sup> Framework Programme, European Commission (DG Research), total volume 3.2 million. EC contribution: 2.5 million.

**Website:** [www.demandat.eu](http://www.demandat.eu)

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### Legal Notice

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## **Abstract**

The present paper aims to critically engage with the explanatory framework of demand as it is employed in various debates and to shed light on main demand-side arguments put forward in the context of various forms of trafficking in human beings. This paper delivers mainly a positive analysis, in the sense that it seeks to clarify ‘what is there’ – which arguments are used in which debates –, rather than to identify what action should be taken – which would subscribe to a normative analysis (Robert & Zeckhauser 2011). It is a stock-taking exercise of main demand-side arguments in debates on various types of trafficking in human beings. The paper critically engages with the normative side of demand-side arguments only in as much as this is required to reconstruct the arguments for a better understanding of policy measures proposed.

The general argument identified in debates is that there is a demand that fosters exploitation related to trafficking in human beings. The paper aims to retrace the arguments used in debates on demand in particular areas of trafficking in human beings – for sexual exploitation, for labour exploitation, for the exploitation of begging, for illegal adoption, trafficking for forced and servile marriages and trafficking for the removal of organs – in order to better understand the assumptions behind demand-side arguments, the way demand is understood and contextualised and how it is considered relevant in addressing various types of trafficking in human beings. One of the main findings is that although ‘demand’ is mostly referred to in its economic understanding – the willingness and ability to purchase a good or a service – the way in which the notion of demand is being employed varies and is often inconsistent.

## 1 Introduction

Article 18 of Directive 2011/36/EU<sup>1</sup> states that ‘Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings’. Considering that neither the Directive nor the UN Anti-Trafficking Protocol<sup>2</sup> provides further instructions in terms of how ‘demand’ should be understood and what exactly states should do, there are various understandings of ‘demand’ and various opinions on the appropriate measures to address it. Public debates on demand in the context of trafficking in human beings matter in as much as they determine, or at least contribute to the narratives on this issue, narratives which in turn influence public policies (Jones & McBeth 2010). The general argument put forward by policy makers is that there is a demand that fosters exploitation related to trafficking in human beings<sup>3</sup>. This paper aims to reconstruct argumentations used in debates on demand in particular areas of trafficking in human beings in order to better understand the assumptions behind these arguments, the way demand is understood and contextualised and how it is considered relevant in addressing various types of trafficking in human beings.

The present paper refers to trafficking in human beings for: sexual exploitation, labour exploitation, forced begging, forced and servile marriages, illegal adoptions as well as trafficking in human beings for the removal of organs. These particular types of trafficking in human beings were identified as the most referred to in the public debates – starting with debates on demand for sexual services already 150 years ago (Cyrus 2015), expanding to other fields over time, with relatively recent acknowledged ‘marriages of convenience as a type of exploitation of victims of trafficking in human beings’ (EUROPOL 2014a), as well as child trafficking for exploitation in forced criminal activities and forced begging (EUROPOL 2014b; Healy & Rogoz 2012).

Today there are at least two major, somehow competing frameworks describing trafficking. Although the adoption of the UN Anti-Trafficking Protocol introduced for the first time an international, general definition of trafficking, the Protocol did not overrule the 1949 UN Convention for the suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others (Cyrus 2015).

The genesis of the 1949 Convention traces back to the League of Nations’ 1933 Convention for the Suppression of the Traffic in Women of Full Age. The definition of trafficking in the 1949 Convention was based on the one from the 1933 Convention, but added ‘the exploitation of the prostitution of another person even with the consent of that person’ as trafficking and also expanded the meaning of trafficking to the interference of third parties

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<sup>1</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>. Accessed 24 March 2016.

<sup>2</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, New York, 15 November 2000. Available online at: <http://www.osce.org/odihr/19223?download=true>. Accessed 12 January 2017.

<sup>3</sup> For an analysis on demand and its role in trafficking in human beings, see Norbert Cyrus & Dita Vogel (2015), Demand Arguments in Debates on Trafficking in Human Beings: Using an historical and economic approach to achieve conceptual clarification. DemandAT Working Paper 1. Available at: <http://www.demandat.eu/sites/default/files/DemandAT%20WP1%20Cyrus%20Vogel%20June%202015a.pdf>. Accessed 1 January 2017.

(e.g. keeping a brothel or renting a place for prostitution purposes) (Cyrus 2015). The 1949 Convention was developed in the UN Human Rights Framework, which translated into States declaring self-commitment to handle persons in a particular way. However, the 1949 Convention received relatively few ratifications, since it considered prostitution as being against dignity. The UN Anti-Trafficking Protocol received many more ratifications, but it is placed in the context of UN Crime Prevention and Criminal Justice. The UN Anti-Trafficking Protocol introduced the first internationally wide accepted definition of trafficking which incorporated some of the provisions of the 1949 UN Convention, but also introduced new ones, particularly with regard to the purpose of trafficking acts – sexual exploitation, forced labour or services, slavery, practices similar to slavery, servitude or the removal of organs (Idem).

The two frameworks, referring to the same issue – trafficking in human beings – have created and, as we will see towards the end of this paper, still generate confusion with regard to the definition of the issue and measures to address it. This only adds to the complexity of the international legal definition of trafficking<sup>4</sup>. There are authors who acknowledge that ‘the definition of human trafficking is operationalised from different perspectives based on the primary research area – for example, labour, migration, criminal justice – [...] with each area conceptualising trafficking within its own domain’ (Laczko & Danailova-Trainor 2009). But reference to the human rights approach can also be used as a rhetoric device. Sigma Huda, former UN Special Rapporteur on trafficking in human beings, especially women and children, noted that

‘principally, trafficking is a human rights issue, not a market economy issue. Analysing trafficking solely in economic terms inevitably masks its human rights dimensions. Tools of economic analysis are designed to explain and evaluate markets in terms of efficiency. Such tools are not necessarily well-designed for furthering the goal of protecting human dignity’ (UN Economic and Social Council 2006).

This statement remains unclear, mainly because it brings in the idea of an economic analysis as somehow opposed to a human rights approach, when in fact these two are different approaches referring to different issues. The Human Rights Declaration is first and foremost addressing nation states and imposes a duty ‘to secure their universal and effective recognition and observance [of universal rights], both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction’<sup>5</sup>. In addition, there is no overall accepted definition of dignity, neither at legal nor scientific level. For instance, while sex work is for one a violation of dignity, for another is linked with individual autonomy and is an aspect of dignity; to suppress the individual autonomy, the right to choose to engage in sex work, would be a violation of dignity for them. However, the idea of an economic analysis sends the audience to references such as: trafficking as business model or demand

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<sup>4</sup> ‘The understanding of the relation of the three elements [of trafficking – acts, means and purpose –] is an issue of controversy. Also the interpretation of enlisted purposes, integral element of the trafficking offence, is contested. In particular the meaning of the terms “sexual exploitation”, “exploitation of the prostitution of others”, but also or “forced labour” or “slavery-like” (Gallagher 2010: 177-191, Jordan 2011a). Until now, International Law does not provide a generally accepted standard definition of exploitation (Andrees and van der Linden 2005; Shamir 2012: 86f, Todres 2013)’ (Cyrus 2015: 42).

<sup>5</sup> The Universal Declaration of Human Rights (UDHR), <http://www.un.org/en/universal-declaration-human-rights/>. Accessed 24 August 2017.

for a good or a service produced or offered through practices involving trafficking in human beings<sup>6</sup>.

Demand in the context of trafficking in human beings entered the public debate through the debate on prostitution<sup>7</sup>. Prostitution was formulated as a public problem towards the end of the 18<sup>th</sup> century, when commercial sex became more visible due to a combination of factors – ‘urbanisation, industrialisation, internal migration, poverty and the organisation of a standing army [...] in combination with established social conventions (traditional patriarchal gender relations, formal and informal restrictions on marriage)’ etc. (Weeks 2012 in Cyrus 2015: 19). In the second half of the 19<sup>th</sup> century, when the UK regulated prostitution (regarded then as a ‘necessary evil that cannot be suppressed, but only contained’), a number of activists united against the state regulation. These groups of activists – ‘social purity reformers’, ‘moral feminists’, abolitionists<sup>8</sup> etc. – used the term of ‘white slavery’ in various ways, with abolitionists giving it a new meaning: women were enslaved not by prostitution, but by the system of regulation of prostitution. In order to maintain public attention for their cause, activists included the issue of ‘traffic in white slaves’ in their discourse. The wording of ‘white slaves’, together with the allegation that English young women were being held hostages in Brussels brothels had a great impact on the public and then led to a law amendment raising ‘the age of consent from twelve to sixteen and outlawed procuring for foreign brothels’ (Cyrus 2015: 25). Demand comes into the debate as a root cause for the international procurement of women for prostitution. From the perspective of those supporting state regulations on prostitution, demand is the ‘male drive that was perceived as a “necessary evil” that cannot be suppressed and thus should be satisfied and administered by a system of state regulation of prostitution with the licensing of brothels, spatial restriction of the areas where prostitution was licensed, registration duty and compulsory medical examinations of women engaged in prostitution’ (Cyrus 2015: 35). For the ‘moral feminists’ prostitution meant the enslavement of women, and men were responsible for it, by creating the demand which resulted in the supply. The abolitionists saw demand as ‘created artificially by vice markets organised as economic business and protected by the state regulation of prostitution’ (Cyrus 2015: 37).

The historical analysis of the issue of trafficking in international law and of demand within international debates prior to the adoption of the UN Anti-Trafficking Protocol revealed that the notion of demand was not a major issue of concern (Cyrus 2015). In fact, even in the UN Anti-Trafficking Protocol, the issue of demand was introduced as a response to ‘the last draft proposal submitted by the Ad Hoc Committee to the last session (2-27 October 2000)’ (Cyrus 2015: 74):

‘But in response to this draft proposal, the delegate of the United States submitted to the Ad Hoc Committee a document with an alternative suggestion, proposing to add three more paragraphs in article 10 dealing with “prevention of trafficking in person”. One of the three paragraphs introduced the term “demand”. This proposal was accepted in the last negotiation session with only a minor change. Thus, the initiative for the inclusion of the demand provision in the UN Trafficking Protocol traced back to the debates on the public handling of prostitution

<sup>6</sup> The report from which the statement is quoted refers indeed to “a thematic study on the relationship between trafficking and the demand for commercial sexual exploitation” (UN Economic and Social Council 2006: 1).

<sup>7</sup> For a comprehensive historical perspective on debates on demand in the context of trafficking, see Norbert Cyrus (2015), ‘The Concept of Demand in Relation To Trafficking in Human Beings. A review of Debates since the late 19<sup>th</sup> Century’. DemandAT Working Paper No. 2. October 2015. <http://demandat.eu/publications/norbert-cyrus-concept-demand-relation-thb-review-debates-late-19th-century>. Accessed 29 March 2016.

<sup>8</sup> In this context, ‘abolitionism is not about the abolition of prostitution but about the abolition of state regulation of prostitution’ (Cyrus 2015).

in the USA. Also the subsequent debates on the interpretation of the demand provision [were] decisively influenced by this national debate. The *travaux préparatoires* provides no information about what the drafting parties intended with the demand provision (Gallagher 2010). Due to missing references to any authoritative official clarification in the *travaux préparatoires*, the term “demand” is open for a wide range of diverging and mutually exclusive interpretations. In addition to this, the UNODC (2005) Legal Guide does not contribute substantively to the questions which drafters had in mind when the term demand was included’ (Cyrus 2015: 74).

After methodological considerations, the paper unfolds as following. The first section describes general characteristics of each debate, by presenting main demand arguments, terminology employed in the debate, as well as policy approaches. The second section deals with commonalities and differences in these debates by summing up the main recurrent demand-side arguments involving regulatory mechanisms, the normative approach to demand in particular debates as well as some reflections on the market perspective vs. the human rights perspective on human trafficking.

## 1.1 Methodological considerations

This paper is part of a larger research project which analyses measures addressing demand in anti-trafficking policies (DemandAT). In addition to critically investigating the notion of demand in anti-trafficking policies, the project provides for a critical account of measures and policies addressing demand (for sexual services, demand for domestic work, demand for goods produced through global supply chains), as well as a critical account of particular strategies employed such as public campaigns or law enforcement approaches to address trafficking. This paper is part of the attempt to provide a better understating of how the notion of demand is used in anti-trafficking.

Concerning the methodology employed, the paper delivers mainly a positive analysis<sup>9</sup>, in the sense that it seeks to clarify ‘what is there’ – which arguments are used in which debates –, rather than to identify what action should be taken – which would subscribe to a normative analysis (Robert & Zeckhauser 2011). It is a stock-tacking exercise of main demand-side arguments in debates on various types of trafficking in human beings. The paper critically engages with the normative side of demand-side arguments only in as much as this is required to reconstruct the arguments for a better understanding of policy measures proposed.

Assuming that ‘problems are not given’, but are set ‘through the stories we tell – stories whose problem-setting potency derives at least in some cases from their generative metaphors’ (Schön 1998: 138-139), understanding how demand is used in various debates on anti-trafficking policies contributes to a better understanding of the issues at stake and to a better formulation of policy options to address them. In Parsons’ understanding, ‘frames

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<sup>9</sup> It is important to note that the approach is not a ‘positivist’ approach in the sense of the classical dispute in the social sciences between positivists and constructivists. A positive analysis is based on the understanding that ‘knowledge about social relationships and practices is constantly being created, modified and recreated through processes of social interaction. People in society perceive social phenomena as a reality that is independent of their own volition, even though these social phenomena are constructed by human beings and can therefore be changed by them’ (Castles 2012).



may be thought as modes of organising problems, giving them [...] form and coherence. A frame involves the notion of constructing a boundary around reality which is shared, or held in common by a group or community' (Parsons 1995). As trafficking has been argued to be 'demand driven' (COM(2016) 719 final; Anderson & O'Connell Davidson 2003), the relevance of demand makes the notion of demand part of a particular frame in which trafficking seems to be defined and redefined as a highly relevant and a growing phenomenon (ILO 2014; US State Department 2016) of nowadays societies.

Going further, Parsons argues that 'explanatory frameworks endeavour to show how something happens the way it does. On the one hand it may claim to be a 'heuristic' model – [...] it aims to provide a framework which may be used to explore, a method by which we can learn [about] a complex problem or process. [...] On the other hand, a model may lay claim to being 'causal' – that it would predict or hypothesise that if x happens, then y will occur' (Idem). In this sense, demand seems to be part of a 'causal' explanatory framework, as it is argued that a particular demand causes particular practices which include exploitation which in turn leads to trafficking<sup>10</sup>. Considering that 'when we deploy a framework, [...] we are imposing a way of thinking about the world; we are creating an order out of what does not have an objective order in itself' (Idem), the exercise proposed in this piece of research is to critically engage with the explanatory framework of demand as it is employed in various debates. Concretely this entails a reconstruction of demand arguments based on the reasoning of main regulatory mechanisms employed to address demand. In all mentioned areas the issue to be addressed is exploitation – be it sexual exploitation, for the removal of organs or exploitation through begging. The concept of demand is used in these debates, on one hand to explain how the issue at stake (a particular kind of exploitation) came to exist and on the other hand to support particular policies to address the issue (or to suggest which one is more appropriate). The demand arguments and the policy approaches proposed refer to types of regulations. The indirect question raised in these debates can be translated into the following: 'what kind of demand-side intervention is the most appropriate to address the issue at stake?' To briefly describe the types of regulations suggested by various actors engaged in particular debates, we use the typology put forward by Boswell and Kyambi (2016). In their view, regulatory tools to steer societal behaviour can be categorised according to their main underlying mechanisms, resulting into a differentiation between command and control measures, peer pressure, market-based and design based regulations.

From a normative perspective, and in particular markets (so for particular goods), addressing demand subscribes to an attempt of maintaining or contributing to a fair society. In his book on 'What Money Can't Buy: The moral limits of markets' (2012), Michael J. Sandel exemplifies two (related) objections to the commodification of particular goods and services. In his view, markets alter the goods that are put up for sale and he explains this phenomenon through the 'corruption objection' and the 'fairness argument' (Sandel 2012). According to the corruption objection's argument, the involvement of markets (involvement of commercialisation) is seen as a corrupting element in the sense that making a service or a good available to purchasers is changing the nature of that service or that good in itself. This

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<sup>10</sup> For an explanation on the phrase 'demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking' see Marjan Wijers (2017), Demand, Prostitution Regimes and Human Rights. [http://demandat.eu/sites/default/files/Commentary\\_DemandAT\\_ProstitutionRegimes%26HumanRights\\_MarjanWijers\\_July2017.pdf](http://demandat.eu/sites/default/files/Commentary_DemandAT_ProstitutionRegimes%26HumanRights_MarjanWijers_July2017.pdf). Accessed 31 August 2017.

argument has been put forward by leading economists in the 1970s<sup>11</sup>. The commercialisation effect was seen as a consequence of the, at that time, 'rising 'economic imperialism' which manifested [through] the extension of economic analysis in other areas of social and political life' (Idem). The general assumption was that 'the commercialisation process does not affect the product' (Idem). The 'commercialisation effect' has been since further discussed and explained in various ways. One manifestation of the commercialisation effect was called the 'crowding-out effect' – according to which the involvement of money reduces the motivation for participation in a collective effort (Sandel 2012). To sum up, the corruption objection points out that 'certain moral and civic goods are diminished or corrupted if bought and sold. The argument from corruption cannot be met by establishing fair bargain conditions. It applies under conditions of equality and inequality alike' (Sandel 2012: 111).

Demand arguments seem to be constructed to explain why particular exploitative situations exist, but also to suggest the kind of measures most appropriate to address these situations – that is measures addressing demand. To showcase this, the following sections on characteristics of debates on demand in the context of trafficking in human beings are structured as following: first, demand arguments are being expounded according to the main issue at stake and both the explanatory and normative functions of demand in relation to that particular type of exploitation. Second, main categories of practice employed in particular debates are explained, as understanding these categories of practice is instrumental to understanding the role demand plays in these debates. The term 'categories of practice' refers to what Brubaker and Cooper (2000) speak of, based on Bourdieu's work, as 'something akin to what others have called "native" or "folk" or "lay" categories. These are categories of everyday social experience, developed and deployed by ordinary social actors, as distinguished from the experience-distant categories used by social analysts' (Brubaker & Cooper 2000: 4). Finally, each section includes policy approaches employed so far based on particular demand arguments in specific debates.

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<sup>11</sup> In 1976 Fred Hirsch (British economist, senior adviser to the International Monetary Fund) points to the 'commercialisation effect' as 'the effect on the characteristics of a product or activity of supplying it exclusively or predominantly on commercial terms rather than on some other basis – such as informal exchange, mutual obligation, altruism or love, or feelings of service or obligation' (Hirsch 1976 in Sandel 2012: 120-121)

## 2 Characteristics of the debates on demand arguments in the context of trafficking in human beings<sup>12</sup>

### 2.1 Sexual exploitation

#### Demand arguments

As already mentioned, the notion of ‘demand’ in the context of trafficking gained its popularity within the debate on prostitution and subsequently on trafficking for the purpose of sexual exploitation, as it is this debate which first led to considerations of policy options to address the demand side.

The main issue in the discussion on demand in the context of trafficking for sexual exploitation, as it circles around the issue of prostitution, it implicitly refers to the question of whether prostitution is legitimate work or it is rather exploitation. In order to simplify the matter, there are authors who suggest that in today’s debate at least two main opposing positions have emerged. One equals prostitution with trafficking for sexual exploitation (in this particular context also referred to as trafficking in women). The other sees prostitution as a type of work in which exploitation occurs, not because of the nature of the work itself, but as a result of the illegality of the sex work and the stigmatised position of sex workers.

According to the former point of view, when it comes to demand, men buying women’s bodies – women being therefore commodities – represents the main issue at stake, the core of the problem of trafficking (Van Doorninck 2014). The particularity of this approach resides in the theoretical framework in which it is presented – prostitution is opposed on the basis of promoting gender equality in society and fighting violence against women (Kennedy Jarmo 2013).

Supporters of the latter (prostitution as work) argue for regulating prostitution in the same way as other employment sectors. According to this view, sex workers are entitled to rights like any other worker. And the fact that sex workers are excluded from labour rights, due to the illegality of their work or work places, is seen as the core of the problem. To continue describe the differences between these two perspectives, one can make use of the various terms employed in the debate – criminalisation, decriminalisation, legalisation, regularisation etc. Similarly, the two views have been described by some as non-abolitionist and neo-abolitionist respectively (see the section below on categories of practice).

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<sup>12</sup> This sub-section summarises the six working papers on demand in the context of various forms of trafficking in human beings. The working papers were drafted in the framework of Work package No. 6 of DemandAT project, authored by:

Marieke van Doorninck – the paper on sexual exploitation;

Aseman Bahadori – paper on labour exploitation;

Claire Healy and Mădălina Rogoz – paper on begging and petty crime;

Albert Kraler and Marisa Raditsch – paper on forced and servile marriages;

William Huddleston – paper on illegal adoption;

Jimmy Perumadan – paper on the removal of organs.

The working papers have not yet been published.

There are authors underlying the fundamental difference between neo- and non-abolitionist approaches with regard to demand – while the first sees demand as the main issue which leads to exploitation and trafficking in women, the latter sees demand as a secondary concern, the main one being lacking access of sex workers to labour rights<sup>13</sup>. Unlike the neo-abolitionists, non-abolitionists advocate for decriminalising prostitution and regulating sex work through labour laws. Demand is generally understood as demand for sexual services, particularly as demand created by male purchasers of sexual services.

In the perception of neo-abolitionists, male demand for prostitution can be translated as ‘demand for (the idea of sexually exploitable) women’ because paying for the satisfaction of sexual desire is inevitably an act of sexual exploitation. ‘Neo-abolitionists view consent as being invalidated due to a presumed internalization of sexism and of male privilege over the female body on behalf of the prostitute: he or she is disabled from making informed consent due to an indoctrination of patriarchal ideals which are inherently oppressive’ (Kennedy Jarmo 2013: 12-13). Moreover, the male demand for prostitution fuels trafficking in human beings. Without the demand for women’s bodies, there would be no market forces producing and sustaining the roles of pimps and traffickers as ‘distributors’, nor would there be a force driving the ‘production’ of a ‘supply’ of people to be sexually exploited (Van Doornink 2014). In this particular argumentation prostitution is inherently associated with trafficking for sexual exploitation while demand is seen as a cause of trafficking.

In the framework of DemandAT, the research on prostitution policies made useful suggestions to overcome the limitations of terminology employed in the debate. The research comprised, in fact, three studies. The first study consists of a comparative research of ‘how demand-side measures operate in three countries with different legal approaches to sex work (Sweden, Germany and New Zealand). The second study is based on a qualitative interview survey with Swedish men who purchase sex. The third study outlines a classification of prostitution policies, proposing a new general tripartite policy typology using the labels repressive, restrictive and integrative’ (Östergren 2017: 1). These policy regimes are characterised by a number of features, such as: understandings of commercial sex, intention with regard to the sex work sector, ideology, policy instruments, impact on the sector and impact of the legal status of sex workers. Annex 1 makes a summary of characteristics of each of the policy types.

### Categories of practice:

The field of prostitution policy is particularly rich in terminology and the choice of terminology is relevant, as it has to do with particular viewpoints on coercion, as well as on policy approaches, as shown below.

Less agreed upon in the debate, but referred to in relevant (academic) literature, are the terms neo- and non-abolitionism. Neo-abolitionists equal prostitution with sexual exploitation (also referred to as trafficking in women). Prostitution is regarded as violence against women which maintains gender inequalities in society. Thus, the solution proposed is to outlaw prostitution (either selling sex services or buying sexual services).

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<sup>13</sup> ‘While feminist theorists have offered a rich diversity of perspectives on prostitution, debate has frequently centred around the issue of whether it should be viewed *a priori* as either a cause of women’s oppression by men or as an expression of women’s freedom of choice’ (Smith 2011).

Non-abolitionists regard prostitution as a type of work in which exploitation occurs, not because of the nature of the work itself, but as a result of the illegality of the sex work and the stigmatised position of sex workers. The solution proposed is to decriminalise sex work and to regulate it in the same way as any other employment sector.

To refer to persons offering sexual commercial services, neo-abolitionists (supporting client criminalisation) use the term of 'prostituted person', while organisations supporting decriminalisation of prostitution use the term 'sex worker' (Östergren & Johansson 2015). Other terms employed, particularly with regard to exploitation and trafficking for the purpose of sexual exploitation, are survivor, trafficked person or, less employed in the debate, victim of trafficking.

But terms such as criminalisation or decriminalisation can mean different things to different people. For instance, criminalisation can refer to the policy measures according to which 'clients and/or pimps are prosecuted with the general aim to abolish prostitution altogether' (Bernstein 2007 in Wagenaar et al. 2013). Criminalisation can refer to making it illegal for people to sell sexual services. Regulation refers 'to control the criminal and public order aspects of prostitution, such as restricting the number of sex workers and sex facilities, containing sexually transmitted diseases, restricting prostitution to certain parts of the city and fighting trafficking' (Wagenaar et al. 2013: 13). Decriminalisation can refer to actions aimed at abolishing all prostitution specific (penal) legislation and leave sex work controlled by the labour law.

#### Policy approaches:

Wagenaar et al. (2013) refer to four main 'policy regimes': criminalisation of selling sex, criminalisation of clients, regulation and decriminalisation. However, the authors note that the terms refer mainly 'to the intentions of policymakers', as they do not describe the implementation level. In addition, the authors acknowledge that 'in reality the boundaries between regimes are fluid and considerable within-country differences erode the regime concept' (Wagenaar et al. 2013: 16).

Supporters of the criminalisation approach (either of criminalisation of selling sex or of clients) argue that prostitution is in itself immoral and harmful and a fair and moral society cannot accept such a practice. Supporters of criminalising the purchase of sexual services argue that this approach seems to be a very effective tool for combating trafficking. Sweden, the US (Federal Level legislation), Norway, Iceland or Northern Ireland are some of the states supporting, in one way or another, the criminalisation approach. This approach gained considerable support at international level. In 2014 a non-legislative resolution of the European Parliament called on EU Member States to implement national legislation to criminalise the purchase of sexual services; the Parliamentary Assembly of the Council of Europe also adopted a resolution according to which the criminalisation of purchase of sexual services appears to be the most effective tool for combating trafficking in human beings (Van Doornink 2014). However, this approach has been criticised by sex workers' rights organisations, non-abolitionist-academics and a number of UN bodies, for a number of reasons. First, the policy option on criminalising the purchase of sexual services is considered too narrow, as it focuses on male buyers and ignores the complexities of prostitution and of trafficking. Second, critiques raise concerns that criminalisation of clients

may only render sex workers more vulnerable and less safe, as selling sex will eventually go underground. Third, a number of experts and researchers working on THB have clarified that there is no clear evidence that 'prostitution in itself is a cause of human trafficking' (UNAIDS 2014: 1). In addition, it was argued that the impact of criminalising the purchase of sexual services, seen as an anti-THB measure in some of the states evaluated by GRETA, must be assessed in the light of all possible consequences in order to establish the clear link between criminalising the clients and reducing THB/exploitation of women and that the approach does not have unintended and unwanted results. Moreover, one of the main points of critique is that criminalising the purchasers of sexual services is generally not evidence-based nor based on the expertise of those involved in the sex industry and can have unintended negative effects both on sex workers and their clients<sup>14</sup>. 'Commodifying workers through demand-based discourses ignores the very real fact that trafficked persons, migrants and workers are people who are trying to access labour and migration opportunities' (GAATW 2011: 16).

In addition to the option of criminalising the sex industry altogether and criminalising only the purchase of sexual services, there is also the criminalisation of knowingly using the services of victims of trafficking and sexual exploitation. This particular approach is stipulated in Article 19 of the CoE Convention on Action against Trafficking in Human Beings<sup>15</sup> and Article 18 of the Directive 2011/36/EU<sup>16</sup>. Several EU countries implemented such a provision or are discussing it<sup>17</sup>. A recent report of the European Commission on the national legislations implementing this particular provision from the Directive 2011/36/EU states that the analysis 'demonstrates a rather diverse legal landscape which fails to effectively contribute to discouraging demand of such services' (COM(2016) 719 final: 10). The main argument for such a provision resides in its deterrent effect<sup>18</sup>, as the Commissions' report explains that 'in the complete absence or inadequate criminalisation of the use of such services in the context of trafficking in human beings, the activity of traffickers which by definition includes exploitation of their victims, may not only be less discouraged, but adversely may be even fostered including through a culture of impunity' (Idem). The critics of such an approach argue that a specific provision for clients of sex workers would isolate the sex industry in the trafficking debate and would ignore the root causes of trafficking, 'such as poverty, ethnic discrimination, societal marginalisation' (COM(2016) 719 final: 8-9) and, more generally, lack of opportunities. In addition, critics have also underlined the difficulty to

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<sup>14</sup> For a discussion on the Swedish Sex Purchase Act, see Susanne Dodillet & Petra Östergren (2011), The Swedish Sex Purchase Act: Claimed Success and Documented Effects. Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011. Available at: [http://www.plri.org/sites/plri.org/files/Impact%20of%20Swedish%20law\\_0.pdf](http://www.plri.org/sites/plri.org/files/Impact%20of%20Swedish%20law_0.pdf). Accessed 12 January 2017.

<sup>15</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008371d>. Accessed 18 January 2017.

<sup>16</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>. Accessed 24 March 2016.

<sup>17</sup> The UK and Finland introduced provisions criminalising the knowingly use of the sexual services of victims of trafficking.

<sup>18</sup> For a discussion on the deterrence effect of the penal legislation, see Valerie Wright (2010), Deterrence in Criminal Justice. Evaluating Certainty vs. Severity of Punishment. Available at: <http://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>. Accessed 12 January 2017.

prove such a crime in court and suggested other laws (such as on rape, sexual assault) as more effective to punish those who use the services of persons forced into prostitution.

In a more recent book, Wagenaar, Amesberger & Altink (2017) note that ‘whenever we talk of policy, what we should have in mind is the totality of what policy entails in the real world’. One argument that the authors ‘develop in this book is that policy choices have consequences. What looks good and morally just on paper has concrete, real-world consequences once policy is operationalised and implemented. It is every nation’s sovereign right to prohibit or legalise sex work, but in the final analysis such policies come as “packages” of beliefs about and attitudes towards women, laws, rules, agencies, professionals, policy instruments, practices and consequences, both intended and unintended” (Wagenaar, Amesberger & Altink, 2017: 3-4).

Correspondingly, the typology developed in the framework of DemandAT (See Östergren 2017) does exactly that. It considers the ideology and the intention of a policy regime towards the sex sector, but also the policy instruments possible under that particular regime, as well as the impact on the sector and the impact on the legal status of sex workers (See Annex 1). From this perspective, under the repressive regime (where commercial sex is understood as a negative social phenomenon and the intention of the policy is to eradicate the sex sector in order to protect society and/or those selling sex from harm), policy instruments are: criminal law prohibiting selling and/or purchasing sex and third-party facilitation; campaigns aimed at deterring the sale and/or purchase of sex; exit or behaviour rehabilitation programmes for those selling and/or purchasing sex. Under the repressive regime, the sector operates illegally and sex workers have no access to labour rights and it is difficult or no possible at all for them to access social security systems, to seek social and medical assistance on own terms, to self-organise or to collaborate with each other and/or with authorities (Östergren 2017).

Under the restrictive policy regime (where commercial sex is understood as a negative social phenomenon and policy intends to restrict the sex sector in order to protect society and/or those selling sex from harm, under a religious or avoiding moral harm ideology), possible policy instruments are: criminal and administrative law; local ordinances regulating under which conditions sex sales can take place, i.e. laws against soliciting, zoning laws or licensing systems; exit or behaviour rehabilitation programmes for those selling and/or purchasing sex (Idem).

Under the integrative regime commercial sex is understood as a multifaceted social phenomenon containing undesirable elements; the intention of policies is to integrate the sex work sector into the societal legal and institutional framework in order to protect those selling sex from harm and the ideology is a rights-based one. In this regime policy instruments are: labour, commercial and administrative law regulating sex workers’ employment rights and obligations, as well as specific legislation protecting them from exploitation; detailed implementation directives and codes of conduct for authorities and operators; campaigns and initiatives with the aim to combat stigma and promote collaboration between the sex sector and authorities (Idem).

## 2.2 Labour exploitation

### Demand arguments:

In the debate on trafficking for labour exploitation, trafficking is described as being market-driven<sup>19</sup>, a market with a particular supply and demand mechanism. The individuals who are susceptible to being tricked or forced into slavery-like working conditions constitute the supply. Those looking for cheap, vulnerable and highly exploitative work force constitute the demand (IOM 2004; Aronowitz 2010 in Bahadori 2014). In this understanding, demand is comprised by main groups benefiting from trafficking and labour exploitation: traffickers, employers, consumers, companies using sub-contracted trafficked labour etc. However, some stakeholders argue that a purely economic approach tells only part of the story and offers at least two contradicting perspectives – on one hand individuals are seen as victims and mere commodities and on the other they are treated as rational actors who migrate in order to improve their economic situation (Molland 2010 in Bahadori 2014). Another issue raised points to the fact that demand for labour is a natural condition of the economic process, whereas the demand for exploited labour is highly irregular and unacceptable (Idem). For these reasons some stakeholders have argued for a wider, more integrative approach – by focusing only on wrongdoers: ‘we ignore the state’s approach to migration and employment, which effectively constructs groups of non-citizens who can be treated as unequal with impunity’ (Anderson & Andrijasevic 2008 in Bahadori 2014).

‘In short, it is not the mere existence of the demand for cheap labour in other countries that generates the conditions for trafficking. It is the lack of access to those opportunities that makes the migration of workers to meet the demand illegal and it is their illegal status that makes migrant workers vulnerable to trafficking. While the vulnerability of women and girls is significantly increased by the impact of unequal gender relations at every stage in the process, the fundamental issue is the lack of legal channels through which migrant workers can access employment opportunities that according to international human rights standards are theirs by right’ (Heyzer 2002: 7).

### Categories of practice:

The concepts used in the debate to describe what constitutes demand in the context of trafficking for labour exploitation are quite diverse. Stakeholders use an array of different notions such as demand, destination factors or demand-side factors. ‘Destination factors’ (ILO 2005 in Bahadori 2014) are distinct factors that increase the vulnerability of workers and facilitate their exploitation, such as: the economic demand of third parties (recruiters, traffickers), employers and consumers, the environment that creates demand (economic, cultural, social, legal and national framework). Demand-side factors, similar to the destination factors, refer to globalisation, free market economics, rapidly integrating markets and the lack of regulation which lead to cheap, flexible and easily disposable labour to be high on

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<sup>19</sup> Research conducted in the framework of DemandAT Project shows that trafficking in human beings is not in itself a market, but a concept which defines particular exploitative situations which can take place in a market context. For a discussion on concepts, see Vogel, D (2017) ‘The Concept of Demand in the Context of Trafficking in Human Beings’ *Psychosociological Issues in Human Resource Management* 5(1), 2017, pp. 193–234, ISSN 2332-399X, eISSN 2377-0716.



demand. In addition, companies outsource their production in countries with lower labour protection rights and overall lower human rights standards, in order to optimise their cost structure. This is what GAATW (2011) calls the 'migration of work' which results in supply chains hard to oversee and monitor (Bahadori 2014).

### Policy approaches:

Addressing the demand in the context of trafficking for labour exploitation resides on the idea that demand-related measures would need to aim towards discouraging the motivation of social actors (be it companies or individuals) to engage in THB for labour exploitation. This is to be achieved by maximising the costs of engaging in THB to an extent that this undertaking is 'reward-free'. There are several ways in which one can look at the various policy approaches addressing THB from this perspective.

One can describe these policy approaches as having both, a reactive and a proactive side. The reactive side of policies describes the responsive actions (or post actions) which are comprised mainly by law enforcement responses to THB (once the crime has taken place) such as prosecutions and convictions. This view considers strong law enforcement as essential in order to ensure that legislation is applied effectively. The proactive side of policies refers to measures designed to keep exploitation from occurring in the first place, done through the deterrent effect of the penal legislation against THB, as well as through measures aimed at improving working conditions for all workers (both native and foreigners) by, for instance, regulating minimum wages, working hours, paid holidays, voluntary overtime and written contracts. Proactive are also considered actions through which legal migration channels are created that fit labour demands on the legal labour markets, awareness raising efforts aimed at investors and employers, as well as consumers (informing them about working conditions in the supply chains), actions aimed at reducing discrimination on the labour market, measures supporting the voluntary implementation of codes of conduct regarding access to labour rights etc.

Another way to describe these policies is by looking at their main mechanism through which they intend to decrease the motivation to engage in labour exploitation. Boswell and Kyambi (2016) identify four main types of regulatory mechanisms aiming at steering societal behaviour. When applied to the types of measures aimed at addressing the demand-side in relation to trafficking and labour exploitation, the mechanisms can be described as: command and control (anti-trafficking legislation, penal codes), peer pressure type of measures (codes of conduct for employment conditions in the supply chains), market based mechanisms (requirements for companies to show case their involvement in addressing trafficking in their supply chains by publicising their suppliers and reports on employment conditions) and design<sup>20</sup>.

DemandAT research on addressing trafficking, forced labour and slavery in supply chains formulated four principles that, if respected, have the potential to reduce trafficking, exploitation and slavery in and through supply chains. According to the first principle,

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<sup>20</sup> For examples of regulatory tools addressing demand, see Rogoz et al. (2016), Responses to Demand in the Context of Trafficking in Human Beings: Regulatory measures from twelve national contexts. Available at: <http://demandat.eu/publications/madalina-rogoz-et-al-responses-demand-context-trafficking-human-beings-regulatory>.

responsibility for ethical supply chains must be understood to include, along culpability and liability, also the duty to address injustices from which third parties might benefit. According to the second principle, initiatives addressing trafficking, forced labour or slavery, in order to have an impact, need to be enforceable<sup>21</sup>. The third principle acknowledges that genuine worker participation is an important factor in addressing trafficking, forced labour and slavery in and through supply chains<sup>22</sup>. Finally, crucial are the public regulations aimed at protecting workers' and migrants' rights as well as labour standards<sup>23</sup>.

## 2.3 Trafficking for illegal adoptions

### Demand arguments

Trafficking in human beings for illegal adoptions<sup>24</sup> entered the broader policy and academic debates on THB in the 1990s<sup>25</sup> and it is worth mentioning that, in comparison to the other debates covered by this review, debates on trafficking for illegal adoptions are minimal<sup>26</sup>. Within the debates on international adoptions, trafficking in human beings is often referred to in a broader context of abuses. In fact, literature often conflates trafficking with other crimes such as kidnapping, sale of children<sup>27</sup> and child laundering (Gallagher 2010 in Huddleston 2014).

Before unfolding main demand arguments, it is useful to mention the two debates within which demand is referred to. The first debate takes place within the general framework of existing anti-trafficking discussion. In this debate trafficking for illegal adoptions is conceptualised within the bigger framework on trafficking for sexual exploitation, labour exploitation and other forms of exploitation. The second debate is formulated around abuses in the global system for international adoption. Stakeholders involved in this debate refer to the subject with a focus on child protection and adoption rather than referring exclusively to trafficking. The practices presented in the literature subscribe to what was defined as a service market, in which the adoption intermediaries provide a legal service to prospective adoptive parents. In addition, in connection with intercountry adoptions, there is an

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<sup>21</sup> This principle is in accordance with one of the findings of the DemandAT study on information campaigns aimed at changing consumer behaviour in order to address demand in the context of trafficking (See Vogel & Cyrus 2017).

<sup>22</sup> A similar feature of the integrative regime (when it comes to prostitution policies) has been formulated as an integrative part of a policy regime where policy measures with the potential to reduce exploitation in the field are possible (See Östergren 2017).

<sup>23</sup> Similar results were reached by the DemandAT study on demand in the context of trafficking in the domestic work sector (See Ricard-Guay 2016).

<sup>24</sup> 'Illegal adoption' is mentioned in the *Travaux Préparatoires* of the UN Anti-Trafficking Protocol, as 'two delegations wanted to ensure that the protocol would cover trafficking for other purposes such as illegal adoptions and trafficking in body organs'. The Directive 2011/36/EU explicitly mentions illegal adoption as a form of trafficking (De Witte 2012).

<sup>25</sup> The 1990 Van Loon Report on intercountry adoption and the documents elaborated during the preparations of the Hague Convention on Protection of Children and Co-operation in Respect to Intercountry Adoption (1993) led to debates on abuses in international adoptions with a focus on trafficking in children within the international adoption process.

<sup>26</sup> DemandAT is a research project mainly about measures addressing demand in the context of trafficking. The project did not look into child trafficking as such, but it considered it a transversal issue addressed by measures critically reviewed in the project.

<sup>27</sup> Article 2 of the CRC optional protocol defines the sale of children as 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'.

international demand for ‘adoptable children’ – children who are eligible and in need to be adopted in another country than their own. The desire to adopt, the argument goes, if cannot be met within the applicant’s (adopting parent’s) own country, it shifts to countries where it is assumed that children would or should be eligible, and are in need of being adopted abroad (Cantwell 2011). Within the demand for ‘adoptable children’ there is also a demand for a specific profile of a child (who is usually expected to be young and healthy). This demand for a specific profile of a child, the argument goes, leads to the ‘commodification’ of what has been called the relatively rare ‘adoptable child’ (Smolin 2005). This in turn leads to abusive and illegal practices (including trafficking, kidnapping, child laundering and sale of children) within the international adoption process in order to provide children who meet this ‘demanded’ profile. If this demand is created by adoptive parents, there is also a demand for ‘adoptable children’ by international adoption agencies in sending countries, local orphanages, government official etc. These actors directly involved in the international adoption system, alongside with judges and legal notaries in sending countries, are susceptible to corruption as a result of the large sums of money involved in each case of international adoption<sup>28</sup> (Smolin 2005).

#### Categories of practice:

Very few cases of THB for illegal adoption appear to have been documented. However, demand is used in the debates referring to the international adoption system, where demand<sup>29</sup> is ‘understood as a structural response to the legitimate desire of prospective parents in developed countries to found a family, to take a child in need of a stable family environment from another country through adoption’ (De Witte 2012).

The ‘intercountry adoption system’ (Smolin 2006), is a catch-all phrase used to capture the international and national legal frameworks and the established processes governing intercountry adoption. It provides for an explanation of the role demand plays in international adoptions; the victims referred to are always the adopted children; the image of the humanitarian ‘saviour’ associated with intercountry adoption had been further endorsed through a rise in the practice among celebrities (Huddleston 2014).

‘Baby factories’<sup>30</sup> is a term used in media reports to describe criminal activities characterised by the ‘restriction of a person’s movement against such person’s will, forced impregnations, sale of babies and illegal adoptions’<sup>31</sup> (Huntley 2013: 10). In this context, as the argument goes, reports on ‘baby factories’ link them with illegal adoption, organ harvesting or the use of babies in ritual practices.

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<sup>28</sup> Although this situation resembles forced adoption, this issue was not covered by the review, as the debate on forced adoption in Europe does not seem to make reference to trafficking in human beings. For further reference, see Council of Europe Report on ‘Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe Member States’ (CoE 2015).

<sup>29</sup> Demand for intercountry adoptions is also understood to be reactive on a global scale - ‘when one country closes its borders, another country may liberalize its policies’. ‘It appears as if this market (intercountry adoption system) is demand driven, since demand currently exceeds supply, and that therefore “intercountry adoption is driven by prospective adoptive parents wishing for a child” and that the “supply” of children has tended to respond to demand’ (De Witte 2012).

<sup>30</sup> Note that the term is being referred in the literature, thus the reference in this paper.

<sup>31</sup> Note that demand is briefly mentioned, as demand for babies, but there is no proper discussion on the term.

'The term "child laundering" expresses the claim that the current intercountry adoption system frequently takes children illegally from birth parents, and then uses the official processes of the adoption and legal systems to "launder" them as "legally" adopted children'(Smolin 2006: 115). In his contribution, Smolin links the demand for adoption services in industrialised countries with the practice of illegal adoptions or 'legalised' illegal adoptions from sending countries; although this may or may not be linked with THB, in his assessment it is suggested to be linked with a much wider range of abusive and illegal practices such as kidnapping and sale of children, as well as THB (Huddleston 2014).

### Policy approaches:

The policy response suggested to address demand for 'adoptable children' within the intercountry adoption system (and which can lead to illegal practices such as trafficking or child laundering) is a better enforcement of adoption laws and processes, eliminating corruption from the process and encouraging financial transparency in adoption processes (Smolin 2012).

With regard to international trafficking for illegal adoption the solution put forward is to make domestic adoption easier (through more efficient adoption procedures) in order for adoptive parents to be able to adopt from the internal market which would curb the demand for illegal adoptions on the international market. Measures that could curb abuses within the system include a mandatory requirement for adoption agencies to disclose adoption costs in a standardised format, setting mandatory fees and donation limitations per adoption on a country by country basis, publicise adoption fees for each country and provide lists of known and trusted adoption agencies (Huddleston 2014). The policy response suggested is, therefore, a greater monetary transparency in adoption cases plus regulation and monitoring of adoption agencies. This is expected to decrease abusive practices developed in adoption procurement services in response to the demand for 'adoptable children'.

## **2.4 Forced Begging**

### Relevance of demand arguments in the context of trafficking for the purpose of exploitation through begging

Demand in the context of trafficking for the purpose of begging is not that straightforward as it is in the case of other types of trafficking where the economic model or demand/supply seems to apply. Whether we can speak of demand, the test is: 'What is the commonly supplied and demanded good in a market transaction exchanged on the basis of a negotiated price in the field of begging? The consideration of demand arguments in debates on begging, exploitative begging and trafficking for exploitation through begging opens up the question whether the concept of demand applies in these contexts. In the literature review we undertook for this research we found only one argument explicitly using the demand/supply model in the context of begging (Healy & Rogoz 2014):

'What is the economical nature of this transaction? [directly asking for money in a public space, money which are not to be returned] We reply that the transaction is one of supply and demand, belonging to the same class as the supply of and the demand for personal services. The combined willingness and ability of a number of persons in the community to give dimes to beggars constitutes a demand for beggary, just as much as if advertisement, 'Beggars wanted, liberal alms guaranteed', were conspicuously inserted in the columns of a newspaper [...]. Mendacity will exist according to the same laws that govern the existence of other trades and occupations' (Newcomb 1985 in Becker 1993).

Most literature argues that the socio-economic environment in which exploitation takes place is contributing to demand. Consequently, demand in this particular context is addressed either through campaigns aimed at changing the behaviour of the general public or of that part from the general public which gives alms to those begging, or demand is addressed through actions of law enforcement authorities targeting those who exploit others through begging. Campaigns can either be information campaigns instructing the public not to give money or can offer alternatives to people who want to support those involved in begging (such as supporting NGOs working with people involved in begging) (Healy & Rogoz 2014).

#### Demand arguments:

While services subscribing to begging activities (e.g. selling items for a price which has little to do with the actual value of the item, screen wind washing at crossroads etc.) can be regarded to subscribe to the personal services market, demand in the context of begging is not that straightforward (Healy & Rogoz 2014). In fact, in this particular context – exploitation through begging or trafficking for the purpose of begging – the notion of demand as such is only rarely to be found. The debates refer to demand mostly in connection to the reasons behind a particular type of intervention: anti-trafficking policies aimed at reducing demand created by traffickers themselves as well as information campaigns which can target both 'givers' or the general public in order to change the general attitude towards begging.

In European media two debates stand out. First, there is the general debate on whether the passers-by should support those who are begging or not. Second, there is a debate on the link between begging and migration with a particular focus on the link between begging and certain ethnic groups such as Roma or travellers.

Another debate, mainly between particular academics and policymakers is whether begging is profitable enough to be THB related, since the main motivation of perpetrators to engage in trafficking activities is explained by THB being a highly profitable endeavour. In other words, the relative earning power of the exploiter of people through begging creates a demand. However, as one argument goes, begging is not profitable enough for traffickers to consider exploiting people for the purpose of begging (Adriaenssens & Hendrickx 2011), therefore there cannot be a demand in this particular context.

Law enforcement agencies, however, consider that the exploitation of begging as a form of trafficking is supported by the willingness of passers-by to offer alms to people engaged in begging activities (ANITP 2010). Although this does not constitute demand in its economic understanding, it is part of a demand-side argument explaining the existence of begging.

### Policy approaches:

The two most prominent debates refer to policies addressing begging by targeting those who give money to people engaged in begging activities and the policy option of banning begging altogether<sup>32</sup>. Banning begging altogether can be seen as subscribing to what has been called a ‘culture of control’ (O’Sullivan 2012), which mirrors the concern that the public needs to be protected. On top of these differences two interrelated debates seem to be constant [in European context] – organised begging is often associated with Roma communities and it is ‘particularly associated with immigration’ (Healy & Rogoz 2014).

## **2.5 Forced or servile marriages**

### Factors shaping demand:

With regard to trafficking for the purpose of forced or servile marriages, it is worth mentioning that no explicit references are made to marriage in the UN Anti-Trafficking Protocol. However, an interpretation of Article 3 of the Protocol could imply the promise of marriage as a means element to deceive someone for the purpose of exploitation, such as sexual exploitation. The act of marriage in itself does not figure as a form of exploitation. However, research on debates on demand in this area found that certain practices surrounding marriage have been related to slavery (even if not specifically to THB)<sup>33</sup>.

In exploring demand-side arguments there are two types of discourses organised around two types of marriages. First, there are cross-border marriages arranged by professional brokers (also known as mail-order brides). Second, there are forced and underage marriages. Cross-border marriages arranged by professional brokers have received (alongside forced and underage marriages) the most attention in the anti-trafficking field. Marriages of convenience within EU have relatively recently been branded as an emerging trend of marriages in the context of trafficking (Kraler & Raditsch 2014).

According to literature, forced marriages take place in third countries, mostly in rural areas, involving poor families, but are also practiced in families of immigrant origins in EU countries. Furthermore, relevant literature reports the usage of forced marriages as a way to ‘cure’ homosexuality. In academic debates demand as such features with regard to forced marriages only in so far as it refers to the motivation of parents and others to force young persons into marriages. Factors shaping demand are cultural norms, power relations within families, gender issues etc. These factors – preferences, wants, desire – do not constitute demand in economic terms, but are influencing demand – which is the willingness and ability

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<sup>32</sup> This refers to completely banning begging (be it exploitative or not); Belgium, Denmark, Austria (some federal provinces), the UK, Luxembourg and Spain adopted legislations prohibiting begging. Recently in Norway there was a debate on prohibiting begging (Healy & Rogoz 2014).

Begging activities can also be restricted to particular areas of the public space and within particular time intervals.

<sup>33</sup> For instance, Art.7(c) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the CoE Recommendation (2005) of the committee of Ministers to Member States on the Protection of Women Against Violence includes forced marriage on a list of various types of violence against women; the CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) does not specifically refer to THB, but covers the forms of violence that are faced by women and girls in trafficking situations (Kraler & Raditsch 2014).

to purchase a good or service at a certain price (Vogel 2017). Therefore, the reference is made in section to sources of demand rather than to demand as such.

The sources of demand for child marriage are related to 'economics and the desire to control female sexuality' (Warner 2004), religious justifications and traditional ways to settle disputes among families or clans by forging new alliances (Idem). According to a list provided by ECPAT UK<sup>34</sup>, the reasons for child marriages can be one or more of the following: to maintain the family's honour and pride in the eyes of the community; to strengthen ties with the community or extended family, potentially to improve the family's financial position; to control behavioural patterns in order to comply with traditional family or community norms; to preserve and maintain the family's wealth, which may be in the family's native country; to prevent relationships with individuals from outside one's ethnic, cultural, religious group or caste; to assist relatives immigrating to the UK; to fulfil long-standing family commitments and promises; to maintain the traditional marriage order in which older siblings marry first (Bohkari 2009). According to Sabbe et al. (2013), child marriages are also authorised by magistrates in family courts in African countries. As one argument goes, in case of loss of virginity or pregnancy, it would be detrimental to the girl's status for the judges to decide against the marriage (Sabbe et al. 2013).

In a broad sense, demand for cross border or mail-order marriage has to do with factors such as: the desire for companionship, sex, reproductive and domestic labour, procreation or control and dominance. Thus this refers essentially to preferences rather than to demand in the economic sense (which is the willingness and ability to purchase a good or a service). However, in countries with an imbalanced sex-ratio (such as China), countries in which there are more men than women, cross border marriages are increasingly demanded (Jeffreys 2009); other sources of demand portrayed in the literature are the matchmaking websites (Vartti 2001) as active actors on the match-making market. In this context men are portrayed as an ideal-type of customer (demand) and women portrayed as the matching supply.

When it comes to marriages of convenience, the sources of demand identified in the literature are comprised by the foreign nationals seeking residence or citizenship rights in a particular country. In the EU this phenomenon plays out within the framework of the EU Citizenship Directive (2004/38/EC) and was initially brought to light and documented by Aleksandra Jolkina in 2010 via newspapers articles and in a book geared towards a Latvian readership titled *Mrs. Europe for Sale*<sup>35</sup> (Kraler and Raditsch 2014).

#### Categories of practice:

Forced marriage has been used as 'an umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, early marriage, fictitious, bogus or sham marriage, marriage of

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<sup>34</sup> Based on data gathered in the United Kingdom only.

<sup>35</sup> Latvian women were presented with a fraudulent job offer in Ireland. Upon arrival they were married with TCNs, some consensual others through abuse and coercion. The TCNs were then granted residence rights in the EU, whereas if they had married an Irish national this right would not have been granted. Jolkina (2010) mentions poverty as the ultimate driving force for both spouses (Latvian and TCNs) to be involved in such a practice (Kraler and Raditsch 2014).

convenience, unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage' (Rude-Antoine 2005).

'The notion of 'servile' marriage overlaps with the notion of forced marriage and refers to a situation where a person is sold into marriage or inherited (for example to a brother of a woman's deceased husband). Legally, it is addressed by the Supplementary Slavery Convention of 1956. The term itself seems to have been popularised by Anti-Slavery International since the early 1990s, although in Anti-Slavery International's use the term denoted a much broader set of issues' (Kraler & Raditsch 2014).

A marriage of convenience is defined as 'a marriage contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State'<sup>36</sup>. While the use of force or threat to compel someone to marry in the context of a marriage of convenience have previously been contemplated in national legislation, having been criminalised in Belgium, for example (Kraler and Raditsch 2014), most recently, marriages of convenience within the European Union have been branded as an emerging trend that is a type of exploitation of victims of trafficking in human beings. In this type of trafficking, women with EU citizenship are lured under false pretences from their countries of origin to a country of destination where they are married to third country nationals. These third country nationals have previously paid a broker to make these arrangements and therefore obtain residency or leave to stay in the European Union as family members of European citizens (Europol 2014a).

#### Policy approaches:

The most recurrent policy approaches mentioned by the literature were those aimed at addressing forced marriages. First, it has been argued that criminalisation of forced marriages would lead to a decrease in the practice. This option has been criticised, as the measure would 'push the issue underground' by creating fear of the consequences of reporting for involved family members (Kraler & Raditsch 2014). Second, family migration policy has been regarded as another instrument to address forced marriages. A particular measure, also highly contested, was the increase of the minimum age for spouse reunification (in Denmark it was set at 24, but also changed in the UK and in the Netherlands). At the EU level, EU Council Directive 2003/86 EC on the rights of family reunification sets a minimum age of entry to 21 for either spouse who wishes to follow their partner who is a legal resident of an EU Member State. Raising the minimum age was associated in the literature with several risks: first, there are potential psychological and physical impacts on, for instance, those children sent abroad to marry and having to remain abroad until reaching the necessary age for family reunification; second, the discriminatory nature of the proposed increase in age was pointed out, in that the main purpose of the measure would be to ban certain groups from entering the country; in other words, such measure can have the effect to 'stamp out' certain cultures and their practices. Moreover, it was argued to be an unjustifiable measure since the age of consent for all other matters is 18 (Hester et al. 2007).

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<sup>36</sup> According to the European Migration Network Glossary.



## 2.6 Trafficking for the removal of organs

### Demand arguments:

In comparison with other forms of trafficking, removal of organs is a rather new issue in the debate on trafficking in human beings. In fact, there are two different, interlinked debates that address the issue of demand in the context of organ removal – trafficking in human beings for the removal of organs (THBOR) and trafficking in organs, tissues and cells. This paper looks at the debate on demand in the context of THBOR and only marginally at demand in the context of trafficking in organs, tissues and cells, unless it contains linkages to trafficking in human beings. Moreover, as THBOR, covered by article 3 of the UN Anti-Trafficking Protocol<sup>37</sup>, is mainly referred to in the debate in relation to transplantations from living donors, cadaveric organ donations not connected to trafficking in human beings are not covered by this review<sup>38</sup>.

The debate on THBOR has two main traits. First, it is characterised by moral and ethical considerations on motivations for organ donations – whether organ donations should be altruistic and reward free or not. These concerns translate in the debate into policy measures implementing the principle of non-commercialism of human organs<sup>39</sup> and addressing organ tourism. Second, the debate is dominated by the, what was called, the ‘scarcity argument’. According to this argument, there is a ‘persistent and global shortage of human organs for transplantation, where many patients spend years waiting for a transplant; and many of them die while on the transplant waiting list. This situation makes some patients take desperate steps, including unethical and illegal actions, to obtain a life-saving organ’ (Bos 2015). Challenging this argument, Scheper-Hughes (2000) suggests that demand for human organs is driven by the ‘myth of scarcity’ that is invented by physicians, hospital administrators, government officials and intermediaries. The preference for higher quality organs – organs from living donors – led to the belief of scarcity, whereas at the same time ‘leftover’ organs – organ donations from deceased persons – are regularly sent from industrialised countries to other parts of the world. Consequently, donations from deceased donors are replaced by living donations, which seems to have created a higher demand for organs from living donors (Scheper-Hughes 2000).

In the context of organ removal, demand is understood in economic terms – the willingness and ability to purchase a given product or service at a given price (Vogel 2014). In this context, it is arguably the mismatch between supply of legitimate organ donations and demand for organs that give rise to the emergence of an informal market of organs in which trafficking in human beings may occur. When this mismatch is connected with ‘diverging

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<sup>37</sup> Research on the *Travaux Préparatoires* of the UN Anti-Trafficking Protocol concludes that the proposal to include organ removal in the Protocol was made very late in the negotiation process and was highly contested as it was seen, at that time, to refer to trafficking in organs rather than trafficking in persons (Gallagher 2010).

<sup>38</sup> The paper on which this summary is based on does not cover, for example, national regulation systems on deceased organ donations (opt-out or opt-in systems) or ethical concerns on retrieving organs from brain dead persons (different understandings of death) (Perumadan 2014).

<sup>39</sup> For a presentation of the paramount principle of prohibiting ‘financial gains with the human body or its parts’ see Joint Council of Europe/United Nations Study (2009), Trafficking in Organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs.

national legislation and sharp disparities in levels of national wealth', organ removal also involves border crossing (Perumadan 2014).

### Categories of practice:

The cross-border movement of a person with the aim to receive an organ for transplantation has been called 'transplant tourism' (Ambagtsheer et al. 2013). The travel for transplantation may involve the cross-border movement of organ recipients but also of organ donors, the transport of organs themselves and as well the cross-border movement of transplant professionals for transplantation purposes. Although the term 'organ trafficking' is used in the debate as interchangeable with trafficking in human beings for the removal of organs, some scholars point out to the difference between the two: organ trafficking refers to illegal trade in organs, tissues and cells, which does not necessarily involve trafficking in human beings (OSCE 2013; Gallagher 2010). Organ trade can involve: transplant tourisms, transplant commercialism and trafficking in human beings (Ambagtsheer et al. 2013).

According to the Declaration of Istanbul (DOI)<sup>40</sup>, which is a non-binding guideline for transplant professionals, the travel for transplantation<sup>41</sup> is legitimate unless it contains elements of trafficking or transplant commercialism. DOI is the first document that defines and distinguishes between THBOR, travel for transplantation, transplant tourism and transplant commercialism. DOI does not condemn the travel for organ transplantation that is the movement of donors, recipients or transplant professionals for transplantation purposes as such. However, according to DOI, when the travel for transplantation involves trafficking or any form of commercialism, it constitutes transplant tourism (Perumadan 2014). Organ commercialism or organ trade refers to the action of buying or selling of organs. Despite the fact that the DOI is legally not binding, it has a strong influence on transplantation centres, professionals and organ transplant policy in general.

A Joint Council of Europe/United Nations Study (2009) clarifies the difference between trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs. These are two distinct crimes prohibited by different legislation<sup>42</sup> and the 'object' of criminal offence is different – in one case it is the illegal selling of organs, tissues or cells, whereas in the other case it is the trafficking of a person (CoE & UN 2009).

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<sup>40</sup> DOI was implemented in 2008 by the two most prominent international networks of transplantation professionals – The Transplantation Society (TTS) and the International Society of Nephrology (ISN).

<sup>41</sup> 'Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes. Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population' (DOI 2008).

<sup>42</sup> The CoE Convention against Trafficking in Human Organs bridges existing gaps in legal systems through the creation of new criminal offences (those that do not fall under THBOR), with no need to prove the means (from the 3 elements of THB – the action, the means and the purpose). The Convention obliges signatory states to create new offences, in case these are not included in their respective penal codes: illicit removal of organs, gains for organ donations, use of illicitly removed organs, illicit solicitation of organs, preservation, import, export etc. of illicitly removed organs.

### Policy approaches:

Practitioners and scholars are divided on how to adequately address the demand for organs from living donors. While some favour a controlled incentivising, such as a life-long health insurance for donors, others focus on the effective implementation of the prohibition on THBOR (Perumadan 2014).

Organ commercialism, or organ trade, is almost universally prohibited by law, with the only exception of Iran, where a legal market regulated by the government permits compensation payments for the donor by the government and by the recipient of the organ (Ambagtsheer et al. 2013). The prohibition of organ commercialism is supported by the reason of protection of poor people from being subject to exploitation and fraud (Perumadan 2014).

‘In general, the circulation of kidneys follows the established routes of capital from South to North, from poorer to more affluent bodies, from black and brown bodies to white ones, and from female to males, or from poor males to more affluent males’ (Scheper-Hughes 2003)

Several arguments are discussed in the literature as causes for the shortage in organs for transplantation. Proponents of the decriminalisation of organ commercialisation argue that lengthy and uncertain waiting time intervals for organ transplant plus the prohibition of purchasing organs (or the prohibition for giving incentives to potential donors) in home countries, drive patients to seek illegal channels for receiving organs and even to travel to countries with weak transplantation laws (Ambagtsheer et al. 2013; Ambagtsheer & Weimar 2012). The argument is that the blanket ban on organ sales keeps the organ supply low and hence, increases their profitability on the informal market. Ambagtsheer and Weimar (2012) compare the organ trade with the drug trade, another demand-driven market, and they conclude that criminalising the commercialisation of organ donations triggers THBOR because criminalisation increases the vulnerability of organ donors, raises the value of desperately wanted organs and shifts crime to other places (Perumadan 2014).

There are scholars requesting to open the debate on the prevalent principle of non-commercialism and some have even proposed the legalisation of compensations for organ donors. For example, Erin and Harris (2003)<sup>43</sup> propose a regulated market system with one single purchaser, such as a national health agency, that buys and distributes organs in order to avoid direct selling and purchasing. Furthermore, a geographical limitation to either a nation state or a region such as the European Union is proposed. Only people resident within this limited territory should be allowed to sell into the system and only residents and their families should be eligible to receive organs. This regulation, as noted by the authors, should avoid the exploitation of low-income countries and their population (Erin & Harris 2003 in Perumadan 2014). The Working Group on Incentives for Living Donation (2012) – a group of scholars and surgeons – has further elaborated the Erin and Harris proposal (2003) and published some guidelines for an incentive system for living organ donations which triggered a fierce debate on the organ commercialisation. This proposal includes first the removal of disincentives (e.g. travel expenses, lost income, disability insurance) and second, a regulated incentive system that guarantees benefit and protection from harm to the donor. The

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<sup>43</sup> Erin and Harris (2003) question the prohibition of organ trade on grounds of ethical obligations towards those people who are in need for organ transplantations. They state, ‘So long as thousands continue to die for want of donor organs we must urgently consider and implement ways of increasing the supply’ (Erin & Harris 2003). Hence, in order to increase the availability of organs the authors propose an ethical market for human organs (Perumadan 2014).

proposed incentive system highlights the importance of an informed decision-making, a medical follow up for the donor, legal remedies in case of wrongdoing and an incentive of adequate value. The Working Group suggests long-term health care, tax credit, tuition or job training, or payments (small payment at the beginning and annual small payments when returning for follow-up visits) as possible incentives. This position is strongly condemned by prohibitionists of organ commercialisation. Delmonico et al. (2012) for example refer to the worldwide recognition of the prohibition of organ commercialisation that is laid down in international law and note that setting a price for organs is impossible. Delmonico et al. criticise the Working Groups' suggestion to develop and test a regulated system of incentives for organ donation that is 'akin to suggesting that countries conduct an experiment in fixing a price for "voluntary" slavery' and the incentive proposal accepts 'to build a medical procedure on permitting the poor and vulnerable in any community to [give up to one of their] kidney[s] for the wealthy sick' (Delmonico et al. 2012 in Perumadan 2014). In addition, Delmonico et al. (2012) question the interests of the Working Group because it was funded by Philippine organisations that favoured organ sales to foreign recipients.

Ambagtsheer et al. (2013: 21) conclude that policies focusing on 'demand for organ transplantation' (seen as the root cause of trafficking in human beings for the purpose of organ removal) is more effective than policies based on prohibition and punishment. In line with this, the research project funded by the European Commission on Living Organ Donation in Europe (EULOD) came to the conclusion that a bottom-up strategy targeting the demand for organ transplantation is more effective than rigorous measures intended to prevent and punish transplant tourism (Ambagtsheer et al. 2012 in Perumadan 2014), by making transplantation systems more efficient and accessible<sup>44</sup>. Discussion at the International Round Table on organ removal<sup>45</sup> addressed the issue of physicians' responsibility and their role in reporting potential crimes; as most illegal organ transplantations (involving either trafficking in organs or trafficking in human beings) are thought to take place in regular hospitals, integrated solutions require a law enforcement response involving physicians and also reforms in the transplant procedures.

Budiani-Saberi and Columb (2013) reject the idea of framing trafficking for the purpose of organ removal within an economic paradigm of supply and demand. Instead of demand-side policies such as financial incentives for organ donations, the authors recommend to put victims' human rights in the centre of all policy efforts<sup>46</sup> (Budiani-Saberi & Columb 2013). However, this approach would still subscribe to an economic view on the matter, as it addresses the supply of human organs (by protecting potential donors). An UN.Gift Background Paper (2008) on trafficking in persons for the purpose of organ removal notes that policies targeting to reduce demand for organs through trafficking have to first address

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<sup>44</sup> This is Objective No. 4 of the Action Plan on Organ Donation and Transplantation (2009-2015): Strengthened Cooperation between Member States (SWD(2014) 147 final).

<sup>45</sup> International Round Table on 'Health and Gender Aspects and Implications of Human Trafficking – Organ Removal and Establishment of Health Focal Points' held in Vienna on 25 September 2015 in the framework of the Regional Implementation Initiative on Preventing & Combating Trafficking in Human Beings, Institute for the Danube Region and Central Europe (IDM). <https://thbregionalimplementationinitiative.wordpress.com/2015/09/25/international-round-table-25-september-2015-vienna-organ-removal-and-establishment-of-health-focal-points/>.

<sup>46</sup> Our aim here is to report the argument. However, one must note the fact that this particular position subscribes to a normative frame which not only aims at countering, but also to silence another frame – in this case the market frame. The issue here is that normative considerations do not prevent that markets exist for goods which, for ethical reasons, should not be traded.

the health deterioration which leads to organ failure and second to increase the supply of organs donated through legal channels.

### 3 Commonalities and differences in various debates

#### Demand arguments:

In most of the above mentioned areas of trafficking in human beings, with the exception of the debate on exploitation of begging and to a certain extent the debate on forced or servile marriages – the issue at stake is presented as demand-driven. The most prominent demand arguments are within the debate on trafficking for the purpose of sexual exploitation, the debate on trafficking for illegal adoptions and on trafficking for the removal of organs. In all these debates demand is mostly referred to in economic terms, although rarely explicitly defined as such – the willingness and ability to purchase a good or service at a particular price.

The market of sexual services is argued to be exclusively demand driven as without the demand for such services there would be no services in the first place<sup>47</sup>. What the debate also addresses is the link between the demand for sexual services and trafficking in human beings for sexual exploitation. While there are stakeholders arguing that this is a causal link – in the sense that the demand for sexual services generates situations of trafficking for the purpose of sexual exploitation (SOU 2010) – there are researchers and academics (Dodillet & Östergren 2011) who have argued that there is no clear evidence that this is indeed the case.

With regard to illegal adoption, it has been argued that there is indeed a demand for ‘adoptable children’ from foreign countries by potentially adoptive parents, particularly in cases where other means to have children have failed for these prospective parents (either reproduction through assisted technologies or domestic adoption). ‘The demand expressed by parents is typically defined in a general sense, as a desire for a family, which is then translated into “effective demand” (Cantwell 2011) by adoption agencies and intermediaries. [...] The demand exerted by adoption procurement services in sending countries, rewarded by the large sums of money associated with adoptions, is reported to sometimes be fulfilled through the use of illegal and abusive means [...]. Within this framework, trafficking is conceptualised as a means to supply “adoptable” children to the market, alongside practices of kidnapping, sale of children and the laundering of children’s identities to create legalised orphans legible for adoption’ (Huddleston 2014).

With regard to trafficking for the removal of organs, it has been argued that, due to a shortage in high quality organs<sup>48</sup> an illegal market for organ transplantations has emerged. Frequently used concepts in this debate are organ ‘demanding’ or ‘supplying countries’, as well as ‘regulated market’. In the debate it is commonly expressed that ‘organ supply’ does not meet the ‘demand for organs’ and hence a ‘shortage’ in organs exists (Perumadan 2014).

<sup>47</sup> The paradox here is that this particular point of view is supported by societal actors who reject a market approach to trafficking altogether, with the justification that trafficking is a human rights issue. However, a market based approach would justify (although not supported by evidence) criminalising the clients, approach which is supported by the same actors.

<sup>48</sup> Considered to originate from living donors

In two other debates – on trafficking for the exploitation of begging and for servile marriages – the notion of demand, in its economic sense, does not play a central role in explaining the employed practices. In the context of exploitation of begging the concept of demand is difficult to apply. It is only marginally used to explain the motivation of those giving alms to people engaged in begging activities. People give money to others (engaged in begging), as the argument goes, in order to feel they contribute to improving the life of others, less fortunate; it is a way to pay one's contribution in its most direct way. This, has been argued, has a psychological or theological explanation which contributes to understanding how individuals behave in society, but it does not justify the behaviour in terms of a market as there is no clear service or good sold and bought on this market.

When it comes to the marriages market, it can be argued that there demand for a life partner on what can be understood as a match-making market. However, as this cannot be translated into the willingness and ability to buy the marriage in itself, but the match-making service (at a certain price), there are rather preferences which operate on the market. For this reason the debate is explained through what was called the sources of demand, rather than demand in economic terms. These sources of demand range from cultural, familial, economic and personal preferences to concrete direct purposes of accessing residence rights in the EU.

#### Demand-side arguments involving regulatory mechanisms:

As mention in the methodological clarifications, to briefly describe the types of regulations suggested by various actors engaged in particular debates, we use the typology put forward by Boswell and Kyambi (2016). In their view, regulatory tools to steer societal behaviour can be categorised according to their main underlying mechanisms, resulting into a differentiation between command and control measures, peer pressure, market-based and design based regulations. In the debates under review two of these mechanisms were identified. 'Command and control' steers societal behaviour through sanctions imposed for violating the existing regulations, while 'design' is a more subtle approach which intervenes on the social behaviour not through sanctions, but through crafting the options for particular behaviour. Although these are distinct mechanisms, in reality they manifest simultaneously in what has been called combined regulatory measures (Rogoz et al. 2016).

Command and control approach is quite of a popular one in several of the debates. One of the main arguments supporting this approach, regardless of the type of exploitation, resides in the following, as stated in a recent EC report: 'the number of successful investigations, prosecutions and convictions has unquestionably a deterrent effect' (COM(2016) 719 final). The most prominent example is the criminalisation of the purchase of sexual services seen as a way to address demand which is regarded as directly responsible for the extent of trafficking for the purpose of sexual exploitation. Criminalisation of the purchase of sexual services, at least at the level of the debate, is expected to reduce the number of those purchasing sex which in turn will eventually reduce the extent of trafficking in human beings for the purpose of sexual exploitation.

The second mechanism identified refers to regulating particular fields through design, such as the intercountry adoption system or the organ transplantation systems. Human organ commercialisation is strictly regulated in most countries, based on 'sociocultural, legal and

other factors' (Shimazono n.a.). Organ donations from living donors are strictly regulated and the involvement of commercialisation is strictly prohibited in most countries in order to protect both the recipients and the organ donors. By creating a national (or even an European) program of human organ transplantation, for instance, in which all donors and recipients have to register in order to have access to medical facilities, all legal organ donations from living donors would go through this system. This type of regulation, in conjunction with the command and control approach – criminalisation of commercialisation of human organs and of trafficking in human beings for the removal of organs – are meant to ensure that illegal transplantation are kept to a minimum. Although not universally accepted, the international health community seems to have reached some consensus on banning the trade in human organs. The next subsection presents and comments on some of the arguments put forward in this debate.

#### Arguments based on the normative approach to demand:

The 'corruption objection' and the 'fairness argument' (Sandel 2012) are particularly relevant for the debate on demand for sexual services and policies addressing exploitation in sex work.

'Some people oppose prostitution on the grounds that is rarely, if ever, truly voluntary. They argue that those who sell their bodies for sex are typically coerced, whether by poverty, drug addiction or the threat of violence. This is a version of the fairness objection. But others object to prostitution on the grounds that it is degrading to women, whether or not they are forced into it. According to this argument, prostitution is a form of corruption that demeans women and promotes bad attitudes towards sex. The degradation objection doesn't depend on tainted consent; it would condemn prostitution even in a society without poverty, even in cases of [persons] who liked the work and freely chose it' (Idem).

The fairness argument 'points to the injustice that can arise when people buy and sell things under conditions of inequality and dire economic necessity. According to this objection market exchanges are not always as voluntary as market enthusiasts suggest. A peasant may agree to sell his kidney or cornea to feed his starving family, but his agreement may not really be voluntary. He may be unfairly coerced, in effect, by the necessities of his situation' (Idem). So the fairness argument applies to the debate on the demand for organs in the context of trafficking in human beings.

The corruption argument applies also to the debate on illegal adoptions. As described above, abuses occur in the international adoption system, in particular in relation to the adoption processes involving large sums of money (Smolin 2006). Therefore, the involvement of money changes the nature of the 'adoptable child' – a healthy child in need to be adopted by adoptive parents living in a foreign country – by creating the premises for abuses, such as forced adoptions.

#### Two critical perspectives on the market approach to trafficking in human beings

At the level of debates, addressing demand for goods and services produced through various types of trafficking is supported by a particular view on trafficking in human beings. The

'market metaphor has been taken up by many stakeholders to describe the two basic mechanisms that are seen as driving exploitation and trafficking' (Bahadori 2014). Firstly, at the level of debate, there seems to be an abundant supply of exploitable labour (Anderson & O'Connell Davidson 2003), which has also been termed as the supply of people susceptible to being manipulated into slavery-like conditions (IOM 2004). Secondly, there is a demand of traffickers/third parties, employers/buyers within supply chains, and the consumers for services and goods produced and offered by exploitable labour. 'In this more economic approach, the behaviour of these groups is believed to be governed mainly by a cost-benefit analysis – which is why proposed strategies addressing demand in this specific context focus on increasing the costs of engaging in exploitation and trafficking' (Bahadori 2014). And increasing the cost of engaging in these types of activities is thought to be achieved through command and control type of interventions – criminalization of trafficking and related activities, as well as through a strong law enforcement approach. While for a long time the argument has been that punishments for committing the crime of trafficking are not severe enough, research into the deterrent effect of criminal law enforcement shows that the severity of the punishment has a much smaller deterrent effect than the certainty of punishment (Wright 2010).

A more general market approach of trafficking has also been criticised. First, the demand-side approach to trafficking suggests 'that trafficking can be eliminated if the conditions for its market are less favourable. Yet the conditions for the market of trafficking cannot be separated from relationships, dynamics, and contexts that exist in and beyond trafficking' (Suchland 2015). Second, the problematic issue with using the notion of demand in relation to trafficking is the subsequent reference to legitimate and illegitimate (and illegal) markets. Wouldn't then be more logical to address the fundamental causes of these irregular markets which are the lack of access to resources and structural inequalities rather than the specific demand for a specific good/ service in a specific market? In other words, supporting demand-side type of interventions in order to reduce trafficking seems to support intervening on existing markets which are illegal and illegitimate in the first place. Moreover, if trafficking is regarded as a human rights violation, the paradigm for the solution resides in the human rights sphere. The solution for a business model of trafficking was phrased as creating obstacles for those profiting from the business. The difference between these two approaches comes more to light under Sandel's argument. In his approach, human rights protection is not up to markets. States are responsible for ensuring human rights are respected. So, if THB creates a market, then (so the argument goes) states shall intervene to disrupt this market. But regarding THB as a violation of human rights in itself cannot be addressed from a market perspective. The question of how these (apparently) different policies addressing trafficking from different perspectives has been raised by Hila Shamir (2012) in a call for paradigm shift from a human rights approach to 'a labour approach that targets the structure of labour markets prone to severely exploitative labour practices' (Shamir 2012).



## 4 Conclusions

This paper made a summary of recurrent demand arguments in debates on various types of trafficking. Debates and arguments used are particularly relevant for policy formulation and for the support which a particular policy approach receives from the relevant stakeholders and the general public. Although demand is not clearly defined nor consistently referred to in many, if not all of the debates reviewed, it is increasingly used to as an explanatory frame for the existence of trafficking in human beings as an activity and also to justify particular policy approaches.

Using Parson's arguments, we mention in the introduction that on one hand, 'explanatory frameworks endeavour to show how something happens the way it does'. Arguments making use of demand in order to explain existing practices were found in the debates on trafficking for sexual exploitation, for labour exploitation, for the removal of organs and for illegal adoptions. 'On the other hand, a model may lay claim to being "causal" – that it would predict or hypothesise that if x happens, then y will occur' (Idem). Demand as a cause of trafficking was explicitly formulated as such in the framework of trafficking for the purpose of sexual exploitation. In the other debates demand is not explicitly formulated as a cause, but it is one of the driving forces, together with lack of regulations and poor implementation of existing regulations (in the debate on illegal adoptions), scarce supply (in the debate on trafficking for the removal or organs) as well as lack of access to resources and poverty. This analysis – of demand as a framework – enabled us to see beyond the now general statement that 'trafficking is demand-driven'. Concretely, the paper reconstructed demand arguments by explicating main terminology employed and policy options according to declared intention of policies. When analysing demand arguments in debates on trafficking in human beings from a normative perspective, particularly using Sandel's approach, one conclusion refers to those areas (related to trafficking) which should not be ruled by markets. This is particularly relevant when it comes to human rights and it is consistent with the fact that states are the protectors of human rights, since states are signatories and implement relevant international conventions. If trafficking in human beings is a human rights violation, then states are the ones to take action against it. By bringing in demand for services or products offered or produced through practices involving trafficking in human beings, the responsibility of addressing trafficking is shared with other societal actors, such as firms, but also individuals themselves.

The shift in attention to demand in the debates on trafficking in human beings, as the argument goes, puts the focus on those considered directly responsible for exploitation and trafficking. Although not less criticised, this approach has also moral associations, as it seems to point toward the moral and (on some cases) the legal responsibility of members of the society – such as clients (in the case of sexual services)/consumers (of goods and services provided by exploited people)/ those who donate to people engaged in (exploitative) begging activities – vis-à-vis the recurrent situations of exploitation. One of the main arguments against the demand-side approach to trafficking is that exploitation is not possible due to the demand for goods or services (produced through exploitation), but it is possible due to structural inequalities and lack of access to resources.

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## 6 Annexes

### Annex 1. Main features of the repressive, restrictive and integrative policy types

<b>Policy Type</b>	<b>Repressive</b>	<b>Restrictive</b>	<b>Integrative</b>
<b>Understanding of commercial sex</b>	Negative social phenomenon.	Negative social phenomenon.	Multifaceted social phenomenon containing undesirable elements.
<b>Intention</b>	Eradicate the sex work sector in order to protect society and/or those selling sex from harm.	Restrict the sex work sector in order to protect society and/or those selling sex from harm.	Integrate the sex work sector into societal legal and institutional framework in order to protect
<b>Ideology</b>	Religious, moral harm or radical feminist	Religious or moral harm.	Rights-based.
<b>Policy Instruments</b>	Criminal law prohibiting selling and/or purchasing sex and third-party facilitation. Campaigns aimed at deterring the sale and/or purchase of sex. Exit or behaviour rehabilitation programmes for those selling and/or purchasing sex.	Criminal and administrative law, and/or local ordinances regulating under which conditions sex sales can take place, i.e. laws against soliciting, zoning laws or licensing systems. Might prohibit third-party involvement. Exit, or behaviour rehabilitation programmes for those selling and/or purchasing sex	Labour, commercial and administrative law regulating sex workers' employment rights and obligations, and specific legislation protecting them from exploitation. Detailed implementation directives, and codes of conduct for authorities and operators. Campaigns and initiatives with the aim to combat stigma and promote collaboration between sector and authorities.
<b>Impact on sector</b>	Always operates illegally	Can operate legally, but under conditions more restrictive than those of other service sectors.	Can operate legally under conditions similar to other service sectors
<b>Impact on legal situation of sex workers</b>	No access to labour rights, not possible or difficult to access social security systems, seek social and medical assistance on own terms, self-organise, collaborate with each other and/or with authorities.	Partial or no access to labour rights, might have difficulty accessing the social security system, seeking social and medical assistance on own terms, self-organising, collaborating with each other and/or with authorities	Full access to labour rights, can seek social and medical assistance on own terms, can self-organise, collaborate with each other and authorities, and influence self-regulation (i.e. develop codes of conduct and ethical standards in sector).

Source: Östergren (2017)

Annex 2. Summary of main arguments in various debates

<b>THB for/ Exploitation in relation with</b>	<b>Categories of practice</b>	<b>Demand</b>	<b>Main demand argument</b>	<b>Policy approaches</b>
<b>Sexual exploitation</b>	<p>1. prostitution, women in prostitution, prostituted person (concepts used by neo-abolitionist organisations)</p> <p>2. sex worker, sex work (concepts used by organisations supporting the decriminalisation of sex work)</p> <p>3. commercial sexual services</p>	<p>1. consumer demand = demand for sexual services, particularly by male purchasers of sexual services.</p>	<p>1. neo-abolitionists: male purchasers of women's bodies create the demand for prostitution. This demand should be illegal</p> <p>2. non-abolitionists: purchasers of sexual services are the demand, but this is not the cause of exploitation in the sex work sector; a specific provision for clients of sex workers is unwanted, as it isolates the sex industry in the trafficking debate and this emphasis ignores the root causes of THB; in addition, the offence is difficult to prove in court while other existing laws (on rape, sexual assault) are more effective ways to punish those who use the services of a person which is forced into prostitution.</p>	<p>1. neo-abolitionists equal prostitution with sexual exploitation (also referred to as trafficking in women); prostitution is regarded as violence against women which maintains gender inequalities in society; the solution proposed is to criminalise prostitution (either selling sex services or buying sexual services)</p> <p>2. non-abolitionists regards prostitution as a type of work in which exploitation occurs, not because of the nature of the work itself, but as a result of the illegality of the sex work and the stigmatised position of sex workers; the solution proposed is to decriminalise sex work and to regulate it in the same way as other employment sectors.</p> <p>3. policy measures as per the 3 policy types: repressive, restrictive, integrative (as presented in Annex 1)</p>

<p><b>Labour exploitation</b></p>	<p>1. destination and demand-side factors: factors that increase the vulnerability of workers and facilitate their exploitation, such as: the economic demand of third parties (recruiters, traffickers), employers and consumers, the environment that creates demand (economic, cultural, social, legal and national framework)</p>	<p>1. demand for cheap labour force 2. demand for products/services produced/delivered through cheap labour force, prone to exploitation</p>	<p>1. globalisation, free market economics, rapidly integrating markets and the lack of regulation lead to cheap, flexible and easily disposable work force to be high on demand</p>	<p>1. demand-related measures need to aim towards discouraging the motivation of these groups (clients, consumers, traffickers, exploiters) to engage in THB for labour exploitation 2. the costs or risks of engaging in THB should be maximized to an extent that makes this undertaking utterly reward-free.</p>
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<p><b>Illegal adoptions</b></p>	<p>1. intercountry adoption system = catch-all term including the international and national legal frameworks and the established processes governing intercountry adoption</p> <p>2. 'baby factories' = term used by the media to describe criminal activity characterised by the "restriction of a person's movement against such person's will, forced impregnations, sale of babies and illegal adoptions" (Huntley 2013)</p> <p>3. child laundering denotes practices through which children are taken illegally from birth families and then 'laundered' through the adoption system as 'orphans' and then 'adoptees' (Smolin 2012)</p> <p>4. adoptable child is a term used to describe the child in need to be adopted and who should be adopted (usually abroad).</p>	<p>1. demand for 'adoptable' children (in destination/receiving countries) comes from the desire to adopt which, if unable to be met within the applicants own country, shifts to countries where the assumption is made that children would - or should be eligible, and in need of adoption abroad (Cantwell 2012)</p> <p>2. demand for 'adoptable' children in sending countries expressed by international adoption agencies, local orphanages, government officials, judges and legal notaries that are susceptible to corruption as a result of the large sums of money that are made available during intercountry adoption cases.</p>	<p>1. within the debate on abuses in intercountry adoption, demand is understood as a structural response to the legitimate desire of prospective parents in developed countries to found a family, to take a child in need of a stable family environment from another country, through adoption</p>	<p>1. illegal adoptions as a form of trafficking, addressed though penal codes</p> <p>2. within the intercountry adoption system, policy approaches refer to different kinds of regulations: making domestic adoption easier by making official procedures faster and more efficient for prospective adoptive parents, in order to curb the demand for adoptions abroad using the illegal adoption market. Other suggest better enforcement of adoption laws and processes, eliminating corruption from the process and encouraging financial transparency in adoption processes + greater monetary transparency in adoption cases + regulation and monitoring of adoption agencies as a means to decrease abusive practices developing in adoption procurement services in response to market demand</p>
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<p><b>Begging</b></p>	<p>1. begging activities 2. trafficking, exploitation of others through begging</p>	<p>1. demand is only marginally used in the debate; demand in economic terms does not apply to begging as it is difficult to define the service offered and/or the price</p>	<p>1. a demand/supply explanation of trafficking for the purpose of exploitation through begging subscribes to the demand/supply model of trafficking in general, according to which traffickers create a demand for exploitable working force; the relative earning power of the trafficker or exploiter of people through begging adds up to the debate; however, it has been argued that begging is not profitable enough for traffickers to even consider exploiting others for the purpose of begging.</p>	<p>1. information campaigns for the public 2. regularisation of begging activities: in certain public areas, forbidding children to be engaged in begging 3. banning begging activities altogether 4. addressing THB for exploitation through begging with penal codes</p>
<p><b>Forced or servile marriages</b></p>	<p>1. forced marriage as an umbrella term (marriage as slavery, arranged marriage, child marriage, bogus or sham marriage etc.) 2. cross-border marriages arranged by professional brokers (mail-order brides) 3. marriages of convenience</p>	<p>1. demand expressed in debate through non-economic issues: preferences, wants, desires for a particular kind of spouse. For this reason demand can be expressed as the motivation of parents and others to force young persons into marriages. Thus, one may speak of factors shaping demand: cultural power relations within families, gender etc. 2. demand expressed by professional brokers for potential spouses 3. demand by foreign nationals seeking residence rights in EU (through a marriage of</p>	<p>1. preferences for a particular kind of spouse (e.g. particular ethnic background, specific age, specific residence rights etc.) leads to practices involving exploitation or even THB for the purpose of marriages of convenience</p>	<p>1. criminalisation of forced marriages, criticised for its possible unintended effects of pushing the issue underground since family members might refrain from reporting a forced marriage 2. increase the minimum age for spouse reunification in the EU, criticised for its associated risks: children sent abroad to marry in their parents country of origin have to remain abroad until reaching the necessary age for family reunification.</p>

		<p>convenience with an EU resident/national)</p>		
<p><b>Removal of organs</b></p>	<p>1. trafficking in human beings for the removal or organs</p> <p>2.trafficking in organs, tissues and cells</p> <p>3.transplant tourism is the travel for transplantation which may involve: cross-border movement of organ recipients, organ donors, transport of organs, transport of transplant professionals.</p> <p>4.transplant commercialism</p> <p>5.organ commercialism is the practice of buying and selling or organs including the facilitation of trade in human organs</p>	<p>1.demand for (high quality) human organs or for organ transplantations seen as a root cause of THB for the removal of organs</p>	<p>1.scarcity argument: the demand for high quality human organs (from living donors) is higher than the supply. This leads to people taking desperate steps, including unethical and illegal actions involving situations of exploitation or THB for the removal of organs. This mismatch between demand and supply leads to the illegal market for organs, in which THB for organ removal occurs</p>	<p>1.criminalisation of organ commercialisation in most countries; its critics argue that prohibition to purchase organs or to offer incentives to potential donors drive patients to seek illegal channels for receiving organs; the blanket ban on organ sales keeps the organ supply low and hence, increases their profitability on the informal market</p> <p>2.legalisation of organ commercialisation through the creation of a market system with one single purchaser - a state/inter-state health agency - which should operate on a defined territory of either a country or a group of countries (EU) in order to avoid exploitation of organ donors from low-income countries. Critics of this approach refer to selling organs as 'voluntary slavery'.</p>

**About the main author**

**Mădălina Rogoz** is a Research Officer for ICMPD's Research Department. Her research interests include data gathering and usage of data in anti-trafficking policies as well as policy evaluation with a focus on anti-trafficking policies in the European context. On the DemandAT project she is researching demand in different forms of trafficking in human beings and working a comparative analysis of government responses to trafficking. She is also assisting in the coordination and management of the project overall.

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

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European University Institute – Robert Schuman Centre for Advanced  
Studies  
Florence, Italy

Geneva Centre for the Democratic Control of Armed Forces  
Geneva, Switzerland

La Strada Czech Republic  
Prague, Czech Republic

FUNDING SCHEME: FP7 Framework Programme for Research of the European  
Union – Collaborative project Activity 8.5 – The Citizen in the European Union

DURATION: 1 January 2014 – 30 June 2017 (42 months).

BUDGET: EU contribution: 2,498,553 €.

WEBSITE: [www.demandat.eu](http://www.demandat.eu)





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