



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



## ***GENDER EQUALITY***

# **The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU**

# Subtitle

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## **The Need for a Human Rights and Gender Based Approach**

# Aim

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- To explore, through a qualitative approach, the conditions characterising migrant women's employment in EU rural areas and on farms (case studies in Italy and Spain).
- To illustrate the **structural and situational factors that make women vulnerable to exploitation**, which is considered as a continuum (Skrivankova 2010) ranging from relatively less severe forms of exploitation up to slavery or THB.

# Aim

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- To critically analyse **EU legal instruments and policies on THB and exploitation**, by also taking into account related migration policies.
- To provide examples of **national policies and “from below” practices** addressing THB and exploitation in agriculture.
- To propose policy recommendations for EU Institutions and Member States **from a gender and human rights perspective.**

# Conceptual Framework

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- The **condition of vulnerability** is not only linked to inherent personal characteristics, but is also “situational”, as caused and/or fostered by social, political, economic or environmental factors of persons or social groups, including also abusive interpersonal and social relationships (Mackenzie, Rogers & Dodds 2014).
- Migrant women are exposed to multiple forms of intersectional discrimination (Crenshaw 1991).
- This definition is congruent with the “position of vulnerability” contained in **Directive 2011/36/EU**.
- In this condition of vulnerability people are forced to “choose” between incomparable goods (Kittay 2008), by often “accepting” situations of exploitation and abuse.

# Background

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- Today, migrants in the EU are mainly **refugees and Eastern EU nationals**, with **an high increase in the femininisation of migrations** related to the **gender segmentation of the labour market**.
- They are exposed to **specific forms of situational vulnerability** which, in the case of women, are compounded by **gendered dynamics and power relations**.
- These forms of vulnerability meet the requirements of **the model of production** that characterises the agricultural sector in the EU.
- There is a **lack of solid and consistent data about migrant women workers in agriculture in the EU**.

# Case Studies in Italy and Spain

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- Italy and Spain have become new destinations for increasingly consistent migrations, especially from Africa and also from Eastern Europe.
- **Labour market segmentation** based on national origins, social and legal conditions, and gender **is prevalent in Southern European countries.**
- Italy and Spain are the two EU countries with the **greatest number of migrant workers, with a significant presence of migrant women, employed in the agricultural sector.**

# Findings from Case Studies

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- Policies establishing **systems of seasonal, temporary and circular migration**, as the case of Spain especially reveals, may increase **workers' dependency on employers** and facilitate their **continuous substitution**, taking advantage of specific situations of vulnerability.
- Despite their possibility to freely move across Europe, **EU citizens are also prone to abuse and severe exploitation.**



# Findings from Case Studies

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- In Italy and Spain both **EU and non-EU migrant women farm workers face sub-standard and exploitative working conditions**, including **inadequate and degrading accommodation**, often located in isolated areas.
- **Family responsibility** may be an added factor of vulnerability.

# Findings from Case Studies

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- In the case of Romanian women workers in Ragusa, labour exploitation seems to be often accompanied by **sexual blackmail and abuses**.
- According to our findings, similar cases seem also to occur in Huelva.
- In both Italy and Spain there are also suspected cases of **sexual exploitation** of migrant women who are not directly employed in agricultural work but who live **in rural areas and ghettos**.

# International Legal Framework on THB, Slavery and Forced Labour

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- The interpretation of the definition of THB set out in the UN Palermo Protocol, and related notions, such as slavery and forced labour still remains contentious.
- As also emerged from **relevant case law of the ECtHR the relationship between these connected but different issues is not clear.**
- The 2005 Council of Europe Anti-Trafficking Convention has introduced a clear **human rights and gender based approach to THB.** In particular, it affirms the principles of **unconditional assistance** and **non-punishment** of victims of THB.
- ILO Protocol of 2014 to the 1930 Forced Labour Convention (No. 29) and Forced Labour (Supplementary Measures) Recommendation (No. 203) have adopted a **human rights approach to forced labour.**

# EU Legal Instruments on Exploitation and THB

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- Council Directive **2004/81/EC** and Directive **2009/52/EC** mainly focus on combatting illegal immigration and on criminal provisions against perpetrators.
- **Directive 2011/36/EU** has marked an important shift by adopting an integrated and gender and human rights-based approach.
- **The principle of unconditional assistance and the principle of non prosecution of the victims contained in Directive 2011/36/EU** have not been consistently incorporated into EU legislation concerning THB and exploitation.
- **Directive 2011/36/EU** has been inadequately implemented in many EU MS.

# EU Legal Instruments on Exploitation and THB

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- The mechanisms to enable victims of severe labour exploitation to access justice and remedies provided by **Directive 2012/29/EU** have not been fully implemented by MS.
- The provision on the possibility for the worker to change their employer, contained in **Directive 2014/36/EU**, is not mandatory for MS and this constitutes a limit in reducing the condition of vulnerability of workers. Also, this Directive does not really address the role of temporary work agencies.
- EU legislation on posting workers (**Directive 96/71/EC** and **Directive 2014/67/EU**) does not adequately prevent situations of social dumping and exploitation.

# EU Policies Concerning THB and Migration

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- The innovative approach of Directive 2011/36/EU seems not to have been fully embraced by EU policies.
- For instance, the **EU Strategy Towards Eradication of THB**, the **European Agenda on migration** and the **EU Action Plan against migrant smuggling**, tend to view vulnerability only in terms of inherent conditions of particular groups, such as children and women.
- Although the EU Strategy Towards Eradication of THB has adopted an integrated and comprehensive approach, it does not mention important provisions on the protection of victims, i.e. the principle of unconditional assistance.

# EU Policies Concerning THB and Migration

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- In the **European Agendas on Security and Migration**, THB is seen as a form of organised crime linked to smuggling, with no consideration to the effective protection of the human rights of victims.
- The European Agenda on Migration focuses on border management and actions against smugglers, while it does not provide **effective legal migration channels to EU as a means to reduce THB**.
- These documents do not take into account cases in which **suspected smugglers are victims of THB** themselves.
- **The EU policies on asylum** risk to foster migrants' vulnerability to exploitation, especially in the agricultural sector.

# National Policies and Good Practices

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- Unconditional assistance and protection: **Article 18 of Italian Legislative Decree No. 286/1999** provides victims of violence or severe exploitation with assistance and with a residence permit for humanitarian reasons irrespective of their cooperation in criminal proceedings. Yet, Article 18 is often inadequately applied throughout the country.
- Licenses: the **UK Gangmasters and Labour Abuse Authority (GLAA)** regulates the activities of labour providers through a licensing system aimed at preventing labour exploitation and protecting vulnerable workers in various sectors. Its effectiveness has been undermined by a lack of resources.



# National Policies and Good Practices

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- Accountability in supply chains: for instance, in 2012 Belgium provided that outsourcers, contractors and subcontractors become **jointly and severally liable for the payment of compensation to workers**. This is implemented only in some sectors, such as construction. It would be important to **develop similar mechanisms in all high-risk sectors, including agriculture**.
- Transparency in supply chains: Some governments – such as the UK and Italy - have adopted provisions aimed at **promoting transparency in supply chains to prevent and combat abusive labour practices**. The **lack of strong monitoring and enforcement systems** however seems to limit the effectivity of these provisions.

# “From-Below” Practices in Italy

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- Protection and prevention: the case of Ragusa - **The Proxima association** has implemented diverse support services, including a transport service, for migrant workers, especially migrant women, employed in the greenhouses, and a school-bus for their children.
- Raising Awareness and Transparency: The Campaign #FilieraSporca - The associations **Terra! Onlus**, da Sud and terrelibere.org have developed **the campaign #FilieraSporca** (dirty supply-chain), to pressure corporations and companies to clean up their supply chains.
- Alternative Short Supply Chains - Projects aimed at creating alternative and short supply chains built on fair working conditions, the quality of the product and respect for environmental standards. For instance, **Sos Rosarno** (Calabria), **Funky Tomato** (Basilicata and Campania), and **Contadinazioni** (Sicily).

## Concluding Remarks

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The only way to prevent and combat exploitation in the agricultural sector is to implement a **variety of concerted actions aimed, from a gender and human rights perspective**, at tackling the structural factors of a socio-economic system which relies on the poverty and precariousness of workers and their vulnerability to being blackmailed and abused.

# Recommendations for EU Institutions

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- To develop **gendered analytic categories and tools to collect and elaborate real and disaggregated data** on women workers in agriculture in the EU.
- **To revise policies on temporary and circular migration**, taking into account their limits and risks in terms of the creation of a particularly vulnerable labour force.
- To develop **a system of constant monitoring the activities of labour market intermediaries**, especially in the Eastern EU countries and in high risk sectors.
- To promote **coordinated actions to regulate, license and control labour providers and employment agencies**.
- To provide that **CAP subsidies** are also **conditional on the protection of labour and social rights of workers**.
- To promote **legal and safe entry channels to Europe**, along with **forms of regularisation of undocumented migrants**.

# Recommendations for EU Institutions

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- To ensure that in the EU legislation, **EU citizens are adequately protected from severe exploitation**, by paying attention to **gender-based violence and exploitation**.
- **To review EU policies on asylum** ensuring universal and effective access to the asylum procedure and that accommodation centres are located in urban and well-connected areas. Special attention should be given to a gendered perspective.
- **To promote the recognition of the right to access to safe abortion services, especially for victims of abuse and trafficking.**
- **To revise EU policies by adopting the innovative approach of Directive 2011/36/EU**, incorporating the definition of the position of vulnerability.
- **To include, in all EU instruments and policies, the provisions on the non-punishment of victims and on unconditional assistance to victims.**

# Recommendations for MS

## To improve measures of prevention:

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- **Providing analytic instruments and promoting research activities for identifying women victims and potential victims** of exploitation and THB in sectors such as agriculture.
- **Creating safe and legal entry channels not directly linked to quotas.**
- **Revising special national programmes for the admission of migrant agricultural workers**, by ensuring their possibility to change employer and facilitating the obtainment of a permanent employment contract.
- **Promoting and developing national campaigns and awareness-raising activities** at all levels aimed at addressing the **social acceptability of abusive practices** in the agricultural sector, with special concern to the gender dimension.

# Recommendations for MS

## To improve measures of prevention:

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- **Implementing concerted measures aimed at regulating, licensing, and monitoring the activities of labour providers and employment agencies.**
- **Strengthening labour inspection activities** with a gender sensitive approach.
- **Providing systematic training** to members of trade unions, NGOs, labour inspectors, lawyers, law enforcement agencies, and judicial authorities on gendered features of labour exploitation and trafficking, and on applicable provisions.

## **Recommendations to MS**

### **To directly address the situation of vulnerability of women migrant agricultural workers:**

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- **Developing programmes for adequate housing and transport.**
- **Providing systematic information** to both employers and workers about their rights and duties.
- **Developing bilateral agreements with non-EU countries of origin to allow workers to redeem contributions in case of return to their countries.**
- **Ensuring full access to social rights and assistance**, with special regard to pregnancy and maternity.



## Recommendations to MS

### To directly address the situation of vulnerability of women migrant agricultural workers:

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- **Developing national programmes** to improve access and information to *sexual and reproductive* health services.
- **Enhancing rights information and access to justice and remedies.**
- **Developing specific programme of assistance and protection** of female victims of sexual and/or labour exploitation aimed at providing victims with **concrete job alternatives.**
- **Supporting and promoting the role of trade unions and NGOs.**
- **Fostering co-operation and knowledge sharing.**

## Recommendations to MS To Promote Transparency in Supply Chains:

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- **Implementing a system of joint and several liability** for the payment of compensation to workers.
- **Establishing certifications of quality** for companies that respect fair working conditions, taking into account the entire supply chain and defining, at the same time, effective procedures for evaluating the criteria to obtain such certifications.
- **Encouraging companies to make a list of their suppliers known.**
- **Requiring products to have a label indicating their origin**, as well as information about the supply chain.
- **Developing solid campaigns of information about transparency in supply chains and corporate social responsibility.**

## **Recommendations to MS To Enhance Legal and Political Instruments on THB and Exploitation:**

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- **Ensuring the full transposition of Directive 2011/36/EU** from a human rights and gender based perspective.
- **Ensuring the full transposition of Directive 2012/29/EU**, including the right to reside in and access the labour market of the MS where the victim has been abused.
- **Ensuring that both EU and non-EU nationals are protected from labour exploitation** in national legislations.

## **Recommendations to MS To Enhance Legal and Political Instruments on THB and Exploitation:**

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- **Establishing efficacious mechanisms through which workers can recover their wages or any differential wages**, guaranteeing the full transposition of the provisions of Directive 2009/52/EU concerning the back payments to be made by employers.
- **Providing an efficient system of data collection on victims** of THB and severe exploitation in sectors such as agriculture.
- **Securing funding** for victim assistance and protection programmes.
- Establishing an **independent National Rapporteur** on anti-trafficking measures.

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