

## PROTEX

### PROTex against EXploitation:

#### Exploitative offences versus legitimate work in a digitalised labour market

#### Concept paper

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### **1. State of the Art**

The concept of exploitation is at the core of the division between **criminalised and legitimate forms of work**. Since the prohibition of slavery, national, European, and international norms have **criminalised various forms of exploitation**. Many treaties have been adopted to repress the exploitation of prostitution, as in the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and forced labour, defined in the 1930 Forced Labour Convention. Overarching various forms of exploitation, the 2000 Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children criminalises **human trafficking**. Exploitation is a core element of human trafficking, also one of the most serious offences under EU law.<sup>1</sup> Human trafficking is indeed legally defined as the recruitment, transportation, transfer, harbouring, or receipt of persons, by coercive or deceptive means for the **purpose of exploitation**. Both trafficking and exploitation violate several human rights of victims, and negatively affect economic and social development. Despite the human trafficking offence listing forms of exploitation, a universal definition of the offence might not be possible until we

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<sup>1</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

“reflect on [its *ratio legis*]: the exploitation of people in conditions contrary to human dignity”.<sup>2</sup> **Yet, no legal definition of exploitation** is provided for by the law or the courts, neither international nor national.

As a result, **LEAs struggle to apply various offences related to exploitation**, and national transpositions differ even within the EU.<sup>3</sup> One example is particularly striking when it comes to qualifying trafficking for labour exploitation among neighbouring countries. Belgian judges retain the qualification of trafficking despite the absence of violence or ill-treatment; on the contrary, French and Luxembourg<sup>4</sup> judges apply this offence restrictively by requiring proof of extreme work conditions and treatment to qualify labour exploitation.<sup>5</sup> Generally, **the case law offers no clear indications on the elements to delineate between criminalised and legitimate conditions of work.**

A lack of common understanding of exploitation results in **different justice being provided to victims.**<sup>6</sup> Depending on national and individual interpretations, some people might not be acknowledged as victims. As a result, they will not benefit from State protection, particularly because they will not be granted the specific rights of trafficked victims, a reflection period and a residence permit. Research has already shown stereotypical identification practices, excluding the protection of, for instance, trafficked men<sup>7</sup> or sex workers.<sup>8</sup> Also, they might be considered undocumented migrants to be repatriated or as perpetrators of other offences, such as loitering for sexual solicitation. Therefore, **protection against exploitation presupposes the correct identification of exploitative situations and a clear understanding of their indicators to ensure posterior conviction.**

<sup>2</sup> C.-E. Clesse et al., *Traite et trafic des êtres humains : législations belge, française, luxembourgeoise et suisse*, Bruxelles, Larcier, 2022, p. 493

<sup>3</sup> S. Lannier, *Le blanchiment d'argent dans le cadre de la traite des êtres humains en sa forme d'exploitation sexuelle : une approche comparative*, Master's Thesis, Université de Bordeaux [Faculté de droit], Pessac, France, 2019

<sup>4</sup> Commission Consultative des Droits de l'Homme du Grand-Duché de Luxembourg, *Rapport sur la traite des êtres humains au Luxembourg Années 2021-2022*, no. 4, 29 February 2024, p. 95

<sup>5</sup> B. Lavaud-Legendre, “Travailleurs sans-papiers, entre respect de la dignité et non-discrimination. Traite des êtres humains et dignité : divergences d'appréciation entre la France et en Belgique”, *Revue de droit du travail*, Dalloz, 2020, p. 212

<sup>6</sup> S. Lannier, “Quelle justice pour les victimes de traite des êtres humains ? Entre genre, âge et origine”, in M. Bal et al. (eds.), *Genre et justice : perspectives croisées*, Presses universitaires de Bordeaux, Les Cahiers de la MSH Bordeaux, forthcoming

<sup>7</sup> I.M. Barron, C. Frost, “Men, Boys, and LGBTQ: Invisible Victims of Human Trafficking”, in L. Walker, G. Gaviria, K. Gopal (eds.), *Handbook of Sex Trafficking*, Springer International Publishing, 2018, pp. 73-84, DOI:10.1007/978-3-319-73621-1\_8

<sup>8</sup> M. Jakšić, “« Tu peux être prostituée et victime de la traite »”, *Plein droit*, 18 March 2013, vol. 96, no. 1, pp. 18-22

However, not only criminal law tackles exploitation: the fight against human trafficking requires a comprehensive approach.<sup>9</sup> **Labour law** is meant to reduce power inequalities between employers and employees and assure minimal protection to the latter category.<sup>10</sup> **By hypothesis, the application of labour law protects against situations of exploitation.** Yet, the protective aspect of labour law is challenged by the reduction or lack of protective provisions at the national and European levels.<sup>11</sup> Also, the increasing circumvention of the legal concept of “employee” excludes the application of labour law.<sup>12</sup> Thus, **defining the scope of labour law and identifying whose workers are excluded from it is core to assessing the grey area, including informal economies, between criminal and protected work situations. Particularly, the situation of platform workers has driven much research in this field.** Legally, the debate has been limited to their employment status.<sup>13</sup> Many other fields, such as sociology, raised more **practical concerns about the realities of work and the circumstances of exploitation.**<sup>14</sup>

Despite most anti-trafficking research being focused on sexual exploitation,<sup>15</sup> another topic has been biased on the notion of exploitation: **sex work.** Indeed, **legal research mostly fails to acknowledge the diversity in sex workers’ experiences,** including a wide range of risks of exploitation between voluntary and forced work.<sup>16</sup>

<sup>9</sup> B. Lavaud-Legendre, *Approche globale et traite des êtres humains - De l’« injonction à la coopération » au travail ensemble*, CNRS, 2018, online <https://halshs.archives-ouvertes.fr/halshs-02177213> (retrieved on 29 October 2021)

<sup>10</sup> E. Kocher, *Digital Work Platforms at the Interface of Labour Law: Regulating Market Organisers*, Bloomsbury Academic, 2022, pp. 129-131, DOI:10.5040/9781509949885

<sup>11</sup> L. Ratti, A. Garcia-Muñoz, “EU law, In-Work Poverty, and vulnerable workers”, *European Law Open*, 2022, vol. 1, no. 3, p. 746, DOI:10.1017/elo.2022.41

<sup>12</sup> B. Langille, “What is Labour Law? Implications of the Capability Approach”, in B. Langille (ed.), *The Capability Approach to Labour Law*, Oxford University Press, 28 March 2019, p. 123, DOI:10.1093/oso/9780198836087.003.0007

<sup>13</sup> For instance, in Belgium, P.-P. van Gehuchten, “Travail en entreprises de plateformes et lien de subordination”, *Louvain Law Review*, 2022, vol. 2021/2, pp. 301-316; in France, S. Robin-Olivier, “The Digitalisation of Labour Law in France”, in E. Verhulp, G. Anderson, M. De Vos (eds.), *The Cambridge Handbook of Technological Disruption in Labour and Employment Law*, Cambridge University Press, Cambridge Law Handbooks, 2023, pp. 107-121, DOI:10.1017/9781108878647.007; in Spain, A. Ginès Fabrellas, “The zero-hour contract in platform work Should we ban it or embrace it?”, *IDP: revista de Internet, derecho y política*, 2019, no. 28, p. 4

<sup>14</sup> For instance, T. Vieira, “Platform couriers’ self-exploitation: The case study of Glovo”, *New Technology, Work and Employment*, 2023, vol. 38, no. 3, pp. 493-512, DOI:10.1111/ntwe.12272

<sup>15</sup> W.M. Sweileh, “Research trends on human trafficking: a bibliometric analysis using Scopus database”, *Global Health*, 2018, vol 14, no 1, p 106

<sup>16</sup> J. Doezeema, “Forced to Choose Beyond the Voluntary v. Forced Prostitution Dichotomy”, in K. Kempadoo, J. Doezeema (eds.), *Global sex workers: rights, resistance, and redefinition*, New York, Routledge, 1998, p. 34

Both in countries where sex work is regulated as a labour activity and where it is not, LEAs rarely identify criminal behaviours due to a stereotypical vision of trafficked victims.<sup>17</sup> Such an issue regards both traditional sex work sectors, and online forms of sex work, such as in the pornography or webcamming industry. Indeed, various criminal and civil cases are ongoing for deceptive recruitment and extreme exploitative situations.<sup>18</sup>

**As a result, labour law is increasingly relying on the concept of exploitation, without defining it,** and focusing on extreme forms of abuse.<sup>19</sup> When research aims for a more general concept of exploitation, it usually refers to forms of exploitation<sup>20</sup> or to the Marxist philosophical or political origin of the concept, overlooking the life experience of affected persons.<sup>21</sup> Although these reflections are very useful as general conceptualisations, a data-driven analysis is necessary to support LEAs.

## 2. Need for This Research

The PROTEX project addresses a critical gap in both legal and sociological research. The **absence of a clear definition of exploitation** has significant implications for the **identification and protection of victims**. In practice, inconsistent legal interpretations result in uneven access to justice and state protection. Without a harmonised framework, some victims are denied recognition, while others are misclassified as undocumented migrants or even as offenders themselves.

The **digitalisation of work** further complicates this landscape. Platform workers operate in an ambiguous legal space where employment protections are limited,

<sup>17</sup> J. Leser, R. Pates, “On the affective governmentality of anti-trafficking efforts: an ethnographic exploration”, *Journal of Political Power*, 2019, vol. 12, no. 3, pp. 337-357, DOI:10.1080/2158379X.2019.1669263

<sup>18</sup> L. de Foucher, “Affaire « French Bukkake » : procès requis pour « viols », « proxénétisme » et « traite d’êtres humains »”, *Le Monde.fr*, 2023, online [https://www.lemonde.fr/societe/article/2023/07/19/affaire-french-bukkake-proces-requis-pour-viols-proxenetisme-et-traite-d-etres-humains\\_6182559\\_3224.html](https://www.lemonde.fr/societe/article/2023/07/19/affaire-french-bukkake-proces-requis-pour-viols-proxenetisme-et-traite-d-etres-humains_6182559_3224.html) (retrieved on 24/7/2023)

<sup>19</sup> V. Mantouvalou, “Legal Construction of Structures of Exploitation”, in H. Collins, G. Lester, V. Mantouvalou (eds.), *Philosophical Foundations of Labour Law*, Oxford University Press, 2018, p. 188, DOI:10.1093/oso/9780198825272.003.0011. See also article 2.i of the Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

<sup>20</sup> M. Zukerfeld, “Platforms and exploitation in informational capitalism”, in J. Haidar, M. Keune (eds.), *Work and Labour Relations in Global Platform Capitalism*, Edward Elgar Publishing, ILERA publication series, 2021, pp. 46-68

<sup>21</sup> J. Wolff, “Structures of Exploitation”, in H. Collins, G. Lester, V. Mantouvalou (eds.), *Philosophical Foundations of Labour Law*, Oxford University Press, 2018, p. 0, DOI:10.1093/oso/9780198825272.003.0010

increasing their susceptibility to exploitative conditions. Similarly, sex workers and pornography content creators face a lack of legal recognition, which exposes them to deceptive recruitment practices and extreme exploitation. Thus, there is a need to connect work conditions prohibited under criminal law with the scope of the employment relationship.

Current research does not adequately address these emerging challenges. While studies have examined human trafficking, they have largely neglected the nuanced experiences of workers in digitalised sectors. Research is needed to understand how exploitation is experienced by affected persons and the impact of digitalisation on exploitative conditions. The PROTEX project will conceptualise an updated **legal definition of “exploitation” in the digital age** to improve the identification of human rights violations, based on a **legal review of exploitative offences and how these respond to forms of exploitation in selected and rapidly changing work sectors uncovered through a sociological study**. The project aims for an understanding that is both conceptually robust and practically applicable. This is crucial to guide LEAs in identifying victims and ensuring that all workers’ rights are protected.

As trafficking and exploitation are often transnational in the **European context**, a comparative perspective is necessary to produce adequate research results. The project seeks to address the inconsistencies in applying legal frameworks in different countries, thus promoting harmonised protection and legal action. Further research on this issue is particularly timely after the 2024 update to the anti-trafficking directive.<sup>22</sup> The text adds new forms of exploitation, such as the exploitation of surrogacy, while refusing to conceptualise exploitation, while States still struggle to identify victims of traditional forms of, labour and sexual, exploitation. As exploitation must also be framed with the digitalisation of work, this project will bring early insights from the Platform Work Directive.<sup>23</sup>

### 3. Link with Existing Research

Despite the need to clarify and operationalise the concept of exploitation, **little research has been done on this term**. Few works assess this grey area between

<sup>22</sup> Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

<sup>23</sup> Directive (EU) 2024/2831 on improving working conditions in platform work



criminalised behaviours and those protected under labour law,<sup>24</sup> except when researching informal sectors.<sup>25</sup> Even **fewer explore the concept of exploitation in light of the life experiences of affected persons, particularly when digitalisation impacts the reality of work.**<sup>26</sup> Furthermore, most research usually considers whether sexual exploitation or labour exploitation, whether men-dominated platform work sectors, such as food delivery, or forms of platform work mostly conducted by women, such as webcamming, thus, overlooking interconnection and gender specificities. For instance, some results from the United Kingdom focus on the digital evolution of sex work in line with exploitation risks.<sup>27</sup> Yet, conversely to other kinds of platform work, limited research exists on online sex workers' employment status.<sup>28</sup>

Under an anti-trafficking perspective, Skrivankova theorised, on the one hand, the concept of “continuum of exploitation”, “to describe the complexity of the exploitative environment and concrete individual situations of workers”.<sup>29</sup> On the other hand, supranational organisations provide exploitation or trafficking indicators to guide LEAs between criminalised and non-criminalised forms of work,<sup>30</sup> yet these are not updated and remain still vague. While research exists on the roots and indicators of human trafficking, it is usually dedicated to identifying a specific phenomenon, and does not reflect on the general concept of exploitation.<sup>31</sup> These gaps become more

<sup>24</sup> With the exception of A. Bogg et al. (eds.), *Criminality at work*, Oxford New York, Oxford University Press, First edition, 2020

<sup>25</sup> H. Koff, “Informal Economies in European and American Cross-border Regions”, *Journal of Borderlands Studies*, Routledge, 2 October 2015, vol. 30, no. 4, pp. 469-487, DOI:10.1080/08865655.2016.1165133 ; H. Koff, “Macro-Lessons from Micro-Crime: Understanding Migrant Crime through the Comparative Examination of Local Markets”, *Theoria*, Berghahn Journals, 1 December 2009, vol. 56, no. 121, pp. 92-117, DOI:10.3167/th.2009.5612105

<sup>26</sup> With the exception of, in the United States, D. Brennan, “Subjectivity of Coercion: Workers' Experiences with Trafficking in the United States”, in P. Kotiswaran (ed.), *Revisiting the law and governance of trafficking, forced labor and modern slavery*, Cambridge, University Press, Cambridge studies in law and society, 2017, pp. 134-156

<sup>27</sup> R. Keighley, T. Sanders, “Prevention of modern slavery within sex work: Study protocol of a mixed methods project looking at the role of adult services websites”, *PLOS ONE*, 2023, vol. 18, no. 5, p. e0285829, DOI:10.1371/journal.pone.0285829

<sup>28</sup> H. Rand, “Selling sexual services in the digital age: Flexible work opportunities for the self-employed entrepreneur or precarious unregulated labour?”, in S. Dewey, I. Crowhurst, C.O. Izugbara (eds.), *Routledge International Handbook of Sex Industry Research*, Routledge, Routledge international handbooks, 1st ed., 2018; H.M. Rand, “Challenging the Invisibility of Sex Work in Digital Labour Politics”, *Feminist Review*, 2019, vol. 123, no. 1, pp. 40-55, DOI:10.1177/0141778919879749

<sup>29</sup> K. Skrivankova, *Between decent work and forced labour: examining the continuum of exploitation*, Joseph Rowntree Foundation, JRF programme paper: Forced Labour, 2010, p. 4

<sup>30</sup> International Labour Office, European Commission, *Operational indicators of trafficking in human beings Results from a Delphi survey*, 2009; UNODC, “Human trafficking indicators”, UN, 2020

<sup>31</sup> For instance, M. Kavenagh, M. Stoeltje, M. Dank, “Practitioner Reflection: Reliance on Informal and Gig Economies Leaves LGBTQ+ Populations with Fewer Economic Choices and Greater Vulnerability to Trafficking”, *Journal of Human Trafficking*, 2024, pp. 1-10, DOI:10.1080/23322705.2024.2310349; G. Fernandez Pacheco Alises, M. del M. García Navarro, “What are the risk factors for human trafficking

pressing as research has been conducted on the facilitation of human trafficking by technologies, without **reflecting on the impact of digitalisation on the working or exploitative conditions and on operationalising these results to support the identification of victims**.<sup>32</sup> Yet, research on visible indicators online is necessary to proactively identify victims in cyberspace.<sup>33</sup> Finally, the thesis of Weatherburn conceptualised “exploitation”, although to labour exploitation in criminal law.<sup>34</sup>

The PROTEX project builds upon existing this legal and sociological knowledge but seeks to bridge the gap between both frameworks. It extends prior research on human trafficking by incorporating the perspectives of affected individuals and examining how digitalisation reshapes exploitative work conditions. Furthermore, it contributes to the growing body of literature on platform work by shifting the focus from employment classification to the broader question of worker protection.

#### 4. Objectives and Research Question

The primary research question of the PROTEX project is:

*How can sociological understandings of exploitation contribute to clarifying the boundary between criminalised and protected working conditions in the labour market, in order to improve the effectiveness of legal protections for victims?*

To address this overarching question, the project will explore several sub-questions:

- If they exist, what intrinsic characteristics define exploitation?
- What are the key risk indicators for identifying exploitative working conditions?

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among African women?” *Revista Española de Investigación Criminológica*, 2020, vol. 18, no. 2, pp. 1-25, DOI:10.46381/reic.v18i2.441; J.S. Norwood, “Labor Exploitation of Migrant Farmworkers: Risks for Human Trafficking”, *Journal of Human Trafficking*, 2020, vol. 6, no. 2, pp. 209-220, DOI:10.1080/23322705.2020.1690111; A. Norfolk, H. Hallgrimsdottir, “Sex Trafficking at the Border: An Exploration of Anti-Trafficking Efforts in the Pacific Northwest”, *Social Sciences*, 2019, vol. 8, no. 5, p. 155, DOI:10.3390/socsci8050155

<sup>32</sup> S. Raets, J. Janssens, “Trafficking and Technology: Exploring the Role of Digital Communication Technologies in the Belgian Human Trafficking Business”, *European Journal on Criminal Policy & Research*, 2021, vol. 27, no. 2, pp. 215-238, DOI:10.1007/s10610-019-09429-z; G. Antonopoulos, G. Baratto, A. Di Nicola, *Technology in human smuggling and trafficking: case studies from Italy and the United Kingdom*, Cham, Switzerland, Springer, Springerbriefs in criminology, 2020; S. Sarkar, “Use of technology in human trafficking networks and sexual exploitation: A cross-sectional multi-country study”, *Transnational Social Review*, 2015, vol. 5, no. 1, pp. 54-68, DOI:10.1080/21931674.2014.991184

<sup>33</sup> S. Lannier, “Using US Artificial Intelligence to Fight Human Trafficking in Europe: Potential Impacts on European Sovereignities”, *eu crim*, 2023, DOI:10.30709/eu crim-2023-002

<sup>34</sup> A. Weatherburn, *Clarifying the scope of labour exploitation in human trafficking law: Towards a legal conceptualisation of exploitation*, Thesis, Tilburg University, 2019, p. 335

- How does digitalisation impact exploitative practices?
- How can an integrated approach to criminal and labour law enhance worker protection?
- Can a new conceptualisation of human trafficking be developed based on these insights?

The project's objective is to develop an evidence-based, interdisciplinary framework for defining and addressing exploitation. This will involve analysing legal definitions, evaluating sociological risk indicators, and examining real-world case studies to propose a more effective approach to worker protection and victim identification.

The research aims to have a significant impact on practitioners, including LEAs, labour inspectors, and policymakers, both at national and European level. By providing a clearer operational definition of exploitation and updated risk indicators, the project will enhance the ability of these actors to identify and assist victims of exploitation offences and human trafficking. Additionally, it will contribute to the development of more effective legislative frameworks and enforcement strategies, ensuring that vulnerable workers receive adequate protection. Training materials and policy recommendations derived from the research will also support practitioners in applying the findings in real-world scenarios, leading to more consistent and just outcomes.

## **5. Methodology**

The PROTEX project employs a mixed-methods approach, combining legal analysis with sociological fieldwork. The project additionally moves beyond the traditional categories of criminal and labour law. It will combine a legal analysis of the concept with a sociological study of the lived experiences of affected populations to create a clear, evidence-based definition of exploitation. This methodology ensures a comprehensive understanding of exploitation from both normative and empirical perspectives.

### **Legal Analysis:**

- Material scope (legislation and case law):
  - Criminal law: exploitation offences, human trafficking



- Labour law: employment relationship, work standards, platform work, sex work
- Geographical scope:
  - EU and Council of Europe instruments.
  - Comparative analysis of Luxembourg, Belgium, France, and Spain.

**Sociological Study:**

- Systematic review of risk factors and indicators of human trafficking.
- Analysis of lived experiences to identify exploitation indicators, through semi-structured interviews with five key groups:
  1. Victims of exploitative offences, mainly of human trafficking.
  2. Platform workers, focusing on food delivery workers.
  3. Sex workers.
  4. Online sex workers.
  5. Employees in at-risk sectors as a control group, mainly from the restauration and construction sector.
- Approx. 50-100 interviews across the four target countries, using purposive sampling.

**Interdisciplinary Integration:**

- Comparison of legal and sociological findings to develop a holistic definition of exploitation.
- Development of updated exploitation indicators for LEAs and policymakers.
- Gender-sensitive analysis to account for structural inequalities in exploitative work conditions.

**Ethical Considerations:**

- Informed consent procedures to ensure voluntary participation.
- Confidentiality measures, including anonymisation and pseudonymisation of interview data.
- Collaboration with NGOs and advocacy groups to ensure ethical engagement with vulnerable populations.