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### PHS-Quality Project: Job Quality and Industrial Relations in the Personal and Household Services Sector. - Country Report: The Netherlands

Jansen, N.; Ramos Martin, N.

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## PHS-QUALITY Project

Job Quality and Industrial Relations in the Personal and Household Services Sector - VS/2018/0041



### COUNTRY REPORT: THE NETHERLANDS

N. Jansen and N. Ramos Martin

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## 1. Introduction

Personal and domestic services (services provided at home) include a range of activities pertaining to the wellbeing of families or individuals, such as childcare, care for the elderly and handicapped, cleaning and gardening.<sup>1</sup> Eurofound and the Dutch Economic Council (**SER**) use the following definition of personal and domestic services:

‘all those services provided by public or private organisations, or by the third sector, which substitute paid work (in the form of a job or self-employment) for work which was formerly performed unwaged within the household. Therefore, all services provided inside and outside the home of the user are included, as long as they maintain and support members of a private household.’<sup>2</sup>

Services provided at home are not considered to be a separate sector in the Netherlands. This form of service overarches several existing sectors, with cleaning and care being the most important of them. Generally speaking, household services in the Netherlands (but also in other countries) are provided by relatively poorly educated women (who relatively often come from a migration background) on a part-time basis.<sup>3</sup> Many services are provided on an informal basis.

Improving the quality of household services are both high on the European agenda and the aim of this research paper is to analyse current legislation and regulations, comprising government policy and initiatives by social partners in relation to these forms of service, and the potential for improvements they could be used to bring about.

Research on household undertaken by the Dutch Committee on Household Services in 2013 and 2014 showed that more than 13% of households in the Netherlands used a service provider who was employed within the household, with cleaning being the most significant form of service.<sup>4</sup> Care (or homecare) and other forms of support are quite a different type of service in the home, which is

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<sup>1</sup> Parliamentary Papers II, 2010/11, 29544, no. 281.

<sup>2</sup> A. Cancedda, *Employment in household services*, European Foundation for the Improvement of Living and Working Conditions 2001 and *Een werkende combinatie. Advies over het combineren van werken, leren en zorgen in de toekomst* [in Dutch] (advice dated October 2016, SER 2016/08), The Hague: SER 2016, p. 144

<sup>3</sup> On this, for instance, see: L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: [in Dutch], Clara Wichman Association for Women and Law 2010 and A. Cancedda, *Employment in household services*, European Foundation for the Improvement of Living and Working Conditions 2001, chapter 4.

<sup>4</sup> *Dienstverlening aan huis: wie betaalt de rekening?*, [in Dutch] advice From the Committee on Services in the Home, March 2014

financed partly by government via care in kind or a personal care budget (**PCB**). Since household services are not a separate sector but rather consist of a number of activities that fall into their own distinct sectors, we have focussed in this research paper on the two sectors where service in the home is an essential element of the sector, namely (i) cleaning and (ii) nursing, attendance and homecare. The social partners and experts we interviewed for this research were often involved in one of these two sectors.

The market for household services has a number of special features. The person for whom the work is done is a private individual and the work is done in and around that individual's own home. Also, it is often work that an individual could do personally if he or she decided to do so. For private individuals, complying with all the obligations that an employer faces is expensive and involves a fair amount of administration. For the government, supervision and control are difficult, and this means that the work is attractive to people do not want to submit a formal tax return and also for immigrants living illegally in the Netherlands. If households opt not to outsource the work and do it themselves, this has a negative impact on job opportunities for service providers and on labour participation for members of the household. Governments across Europe are wrestling with the same problem. In the Netherlands, the "Services in the Home Regulation" has been introduced, reducing administrative burdens for private individual employers and dragging domestic work out of undeclared. At the same time, however, it weakens the worker's position in terms of labour law. Our report starts off by discussing this Regulation and its background.

The project's main research question is: *How can legal regulation, public policy and social partners' action improve job quality and fight informality in PHS sector?*

The aims of the project are: 1) to provide insights into the experiences of implementing legislation and public policies aimed to improve rights, reduce informality and enhance service quality; 2) to analyse the challenges social partners face in improving conditions and rights through collective bargaining /social dialogue; 3) to discuss and disseminate the project results. The methods used are semi-structured interviews with public authorities, trade unions, experts, employers and employer organizations. 10 interviews have been conducted. The interview data were triangulated with desk research and analyses of collective agreements and other relevant documents from social partner organizations, national statistics as well as research reports and academic research studies.

The report focused especially on two purposefully selected case studies: cleaning and healthcare provided in private households. Since household services are not a separate sector but rather consist of a number of activities that fall into their own distinct sectors, we have focussed in this research

paper on the two sectors where household services is an essential element of the sector, namely (i) cleaning and (ii) nursing, attendance and homecare. The social partners and experts we interviewed for this research were involved in one of these two sectors.

## 2. Legislation and regulations: "Services in the Home Regulation"

### 2.1 Introduction

One important starting point for the Dutch government is that the public domain should concentrate on its core tasks, and therefore confine itself to achievable basic levels of protection and organisation. In many areas, this means that social partners are responsible for themselves.<sup>5</sup> For generations, therefore, the Dutch government has played a minor role in formulating terms of employment such as wages, allowances, payments and so on. These are often worked out in a negotiation process between employers and employees at both individual and collective levels.<sup>6</sup> The Dutch Civil Code sets out many important civil law rights and obligations for employers and employees, specifically as regards this basic level of protection and organisation. For example, there is a minimum right to holidays, a minimum right to wage payments during sickness and the law on dismissal. There are also public law regulations that entail rights and obligations for employers and employees, such as the Working Conditions Act, the Working Hours Act and the Minimum Wages Act.

The Services in the Home Regulation (also referred to here as the "Regulation") governs the legal position of people who, generally for four days a week or less, provide services exclusively or almost exclusively for the households of the private individuals who employ them. This legal position comprises primarily a number of exceptions to the normal duties under public and civil law that are imposed upon employers and employees. Collective labour agreements, or **CLAs**, regulate a wide area of terms of employment in the Netherlands. The operational ambit of CLAs is determined by the parties to the CLA themselves and this means that they can decide for themselves what work is covered by the scope of a CLA and what is not. They are also at liberty to differentiate as to the levels of terms of employment by reference to positions or sub-activities in a particular sector.

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<sup>5</sup> To illustrate this, see the SER request for advice of 19 November 1993.

<sup>6</sup> N. Jansen, *Een onderzoek naar de representativiteit van vakbonden in het arbeidsvoorwaardenoverleg* [in Dutch], Kluwer: Deventer 2019

Section 3 in this paper discusses how far CLAs relate to household services and, if they do, whether they contain any exceptions under labour law for this type of service. First of all, though, Sections 2.2 – 2.7 discuss the background and contents of the Regulation.

## 2.2 Background to the Regulation

The Services in the Home Regulation replaced the previous 'Cleaning Services for Individuals Regulation' (the **RSP**) in 2007; the latter was based on the premise of subsidising supply and demand in the market, with the aim of reducing the price of personal service. This previous Regulation, which was also described as the 'white charlady regulation', did not, according to the government, make a sufficient contribution to stimulation of the market for personal services or stimulating the lower end of the labour market.<sup>7</sup>

The Services in the Home Regulation was introduced with the aim of stimulating the market for personal services by reducing the burdens on employers. The Regulation makes it easier to have all manner of services performed in the home because households need not concern themselves with administrative or financial burdens that still apply to more conventional employers.<sup>8</sup> The premise underlying the current Regulation is that a private individual who wants to arrange for personal services on fewer than four days a week need not withhold any wages tax or employee insurance premiums and need not pay them himself. The private individual and the workers need only decide for themselves the price for which the service will be provided. This last point applies to a certain level, because there are still rules in force on minimum wages. The government commented, during the parliamentary progress of the Regulation, that many people thought they were part of the 'undeclared' if they had someone doing work in their homes and weren't making any formal returns to the Dutch Tax & Customs Authority or the Employee Insurance Implementation Board (**UWV**), so that lots of people were just doing these jobs themselves. The idea was that the Regulation would offer a solution to this misunderstanding by clarifying that households did not need to deduct any tax or premiums. The government's thinking was that if households knew that they could hire someone without these burdens and if hiring someone for home/garden/kitchen work became increasingly normalised, the demand for personal service would increase.<sup>9</sup> In this way, the Regulation effectively legalised undeclared work, in a manner of speaking.

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<sup>7</sup> For an overview of the legal position between 1945 and 2007, see: L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, Chapter 4.

<sup>8</sup> Parliamentary Papers II, 2007/08, 30804, 3, p. 7.

<sup>9</sup> Parliamentary Papers II, 2007/08, 30804, 3, p. 7.

The fact that households did not need to pay anything did *not* mean that the service providers themselves were in the same boat. People who did household work would have to include their earnings in their income tax returns every year. The Regulation had no budgetary impact for the government, because there was merely a shift from wages tax revenue to income tax revenue. When it was defining the type of work to be covered by the scope of the Regulation, the government opted for work where the household had a realistic choice between doing the job themselves and getting someone else to do it. Dropping the duty to withhold tax for household work is designed to encourage outsourcing of this work rather than having it done by the household.<sup>10</sup>

As regards the special legal position of domestic staff, who were generally working for less than four days a week, it was mentioned that they had a lesser need for protection because this sort of work was often done in practice by people whose partners also had paid work, or where the local authority was supplementing the income of a personal service provider up to the social minimum.<sup>11</sup>

Encouraging the outsourcing of services is inappropriate when the work involved is such that the service cannot realistically be provided by the employer for himself. The distinction between different services and the treatment of types of employers means, according to the government, that there is justification for treating these cases differently, so that any reliance on the principle of equality will not succeed.<sup>12</sup> This choice in regard to defining the work is subject to an exception, although it is not mentioned explicitly. Providing care, via a personal healthcare budget or home help to members of the household or otherwise, is not covered by the Regulation, even though providing these types of service oneself is not a realistic option in most cases. The government did not explain why this type of service was nevertheless included in the scope of the Regulation.

## **2.3 Contents of the Regulation**

### **2.3.1 Wages tax, national insurance premiums and Healthcare Insurance Act**

Section 5(1) of the Wages Tax Act 1964 explicitly excludes from the definition of employment those who provide services, generally on fewer than four days per week, for natural persons by whom they

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<sup>10</sup> Parliamentary Papers II, 2006/07, 30804, 37.

<sup>11</sup> Parliamentary Papers II, 2006/07, 30804, 8.

<sup>12</sup> Parliamentary Papers II, 2007/08, 30804, 6.

are employed. This definition is relevant because it forms the entree for the obligations encompassed in the Wages Tax Act (and associated Acts). Since the relationship between the household and the service provider is not regarded as being employment, within the meaning of this Act, those who engage domestic staff are not obliged to make deductions for wages tax or, consequently, for the national insurance premiums due by the service provider either (Section 57(2) of the Social Insurances (Financing) Act, nor indeed the income-dependent contribution for the Healthcare Insurance Act (s. 49(2), Healthcare Insurance Act). The service provider, on the other hand, is obliged to pay income tax and national insurance premiums and the HIA income-dependent contribution on that income. This payment is made on the basis of the income tax return.

### **2.3.2 Dutch Civil Code (DCC): labour, wages and control**

The protective provisions of labour law in the DCC apply if there is an employment contract in place between the service provider and the household. There is an employment contract if a party undertakes to work in the service of another for wages during a defined period (Article 7:610, DCC). The fact that work is done in service means that there must be an element of control (see, e.g., Dutch Supreme Court, 22 March 2013, ECLI:NL:HE:2013:BY9295). This control relationship may be present if the employer has a say in how the work is done. If there is no such control at all, then there is no control relationship and no employment contract.

It is important in relation to control whether the principal has the authority to issue instructions and directions that the contractor must observe. It is not a decisive point whether the principal actually issues such instructions and directions in practice (DSC, 8 May 1998, NJ 2000/81).

The mere fact that the contractor must observe instructions and directions when working is likewise not enough to be able to conclude that there is a control relationship. The nature and scope of the power to issue instructions are decisive for determining whether or not there is a control relationship that is characteristic of an employment contract. It is not generally straightforward to indicate what degree of authority to issue instructions is needed to amount to employer's control.<sup>13</sup>

When assessing whether or not there is an employment contract (satisfying the elements of labour, wages and control), the Supreme Court has also determined that no significance should be attached to how the parties actually want the actual agreement to be legally classified. The way in which the

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<sup>13</sup> See on this, extensively, *Beoordeling gezagsverhouding* [Assessment of control relationship], annex to the Wages Tax Manual [*Handboek Loonheffingen*] 2019.

contract is actually performed is what decides its classification. If the established contents of an employment relationship between the parties satisfy the elements in Article 7:610, DCC, then it is impossible for the parties to avoid the consequences of this for labour law, tax and social security.

What this means is that if there is no element of control between the household and the service provider, there is no employment contract. In such cases, the service is provided on the basis of a contract for service (self-employment) and labour law generally does not apply to that type of relationship. In practice, it is fairly common for there to be no arrangements between the household and the service provider regarding the nature of the relationship. In the absence of a clear arrangement, a worker who considers that there is an employment contract can rely upon the legal presumption in Article 7:610a, DCC, if the working relationship has gone on for some time. This legal presumption is to the effect that workers who perform work for someone else, weekly or else for at least twenty hours per month for three consecutive months, in return for payment by that person are presumed to be doing that work in terms of an employment contract. The requirements set out in this legal presumption (at least three months and a time element) raise the question whether this presumption offers any comfort to service providers in domestic service.

### **2.3.3 Exceptions to the legal protection: sickness, information and dismissal**

If the working relationship between the service provider and the household qualifies as an employment contract, then labour law applies to that working relationship, with the exception of a number of peremptory provisions if the work is generally done for less than four days each week. The first provision where there is an important exception for what are termed domestic staff is Article 7:629, DCC, which governs continued payment of wages during sickness. A 'conventional' employee who cannot do the specified work because of disability arising from sickness, pregnancy or maternity will in principle retain a right to 70% of the agreed wage for 104 weeks. For domestic staff, this right is curtailed to six weeks (Article 7:629(2)(a), DCC).

The second provision where an exception is made for domestic staff relates to the issuing of information by the employer. As far as domestic workers are concerned, employers only have to give out information if the domestic worker asks for it (Article 7:655(4), DCC). A new European Directive was recently adopted in relation to the provision of information to employees. The Directive on transparent and predictable working conditions in the European Union (2017/0335 (COD)) not only contains adapted rules for the provision of information that an employer has to issue to its workforce but also contains a number of material rights that employers have to start observing, such as free

training and the option for flexible workers to request a new form of work, with greater security, after six months. To avoid disproportionately hefty expense for private households, the Member States may make an exception to these material rights for private households. The Dutch government will in all likelihood choose to adopt this exception. Correct implementation of the Directive does mean that the rules on providing information to domestic workers must be applied with equivalence, in the sense that – just as for 'conventional' employees – the employer has to give information to domestic workers on his own initiative and within a set period.

The final and also most important exception in the DCC pertains to the exception to the normal law on dismissal for domestic workers. The Dutch law on dismissals contains a preventative dismissal test, meaning that an employer cannot in principle terminate an indefinite employment contract without consent from the employee, the UWV or the sub-district court. The dismissal of domestic workers who generally provide services for less than four days a week to a private household is excepted from this main rule (Article 7:671(1)(d), DCC). What this means is that a household does not need prior consent to dismiss a domestic worker. In terms of Article 7:669, DCC, there has to be a reasonable ground for terminating an employment contract, and this also applies to cancelling an employment contract with a domestic worker. There is no exception to this. If an employment contract is terminated without reasonable grounds, a domestic worker can demand reinstatement of the employment contract or a fair payment, all in terms of Article 7:682(2), DCC. Just like a 'conventional' employee, a domestic worker can claim a transition payment on the termination of an employment contract. Since 1 January 2020, every employee is entitled to a transition payment from the first day of the employment contract.

The exception to the rule on dismissal has applied to domestic workers for quite a long time. When considering this exception in the 1980s, and partly in light of the limited extent of the work being done, the legislature thought that the interest of protecting the employment relationship for domestic workers who generally did their work for less than three days a week did not outweigh the administrative burdens or the intrusion into the personal lives of those involved, who would be bound by effective protection against dismissal for these employment relationships.<sup>14</sup>

#### **2.3.4 Exception: Equal Treatment Act**

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<sup>14</sup> Parliamentary Papers II, 1986/87, 19810, no. 3.

The Equal Treatment Act (the "**Awgb**") bans discrimination on the basis of religion, lifestyle, political inclination, race, gender, nationality, heterosexual or homosexual orientation or civic status, for example when concluding or terminating an employment relationship, and also for terms of employment and working conditions (s. 5(1), Awgb). This ban does not apply if the employment relationship is private in its nature and the difference in treatment is based on a feature that, by the nature of the specific professional activity or its context, is an essential and determinative requirement of the profession, provided that the aim is legitimate and the requirement is proportionate to that aim (s. 5(3), Awgb). This exception is intended to bring the right to equal treatment into balance with the right to have one's personal life respected, a right that is particularly onerous when it comes to the personal care or nursing of a member of the household. Unlike the other exceptions already mentioned, this exception is not confined to work for less than four days a week. There is more about the ban against discrimination in section 2.3.8.

### **2.3.5 Exception: peremptory employee insurances**

Perhaps the most important exception – and certainly the one most hotly debated in the literature and in practice – relates to the various employee insurances. These include the Unemployment Act (WW), Sickness Act (Zw) and the Work and Income (Capacity for Work) Act (WIA). The Zw is a safety net and offers an income provision to, for instance, those who are sick and unemployed and workers who lose their jobs during periods of sickness. The Zw is a safety net because a sick worker is in principle entitled to continued payment of wages for the first 104 weeks of his sickness. The Zw only comes into play after this claim for wages ends, so its main importance is for those who either have no employer, or no longer have one. These people are also called 'safety-netters' in the Netherlands. The WIA comes into play after 104 weeks of sickness. To put it another way, the WIA has a waiting period of 104 weeks. Also, the WIA requires at least 35% employment disability. This percentage reflects the residual earning capacity that a worker still has after 104 weeks of sickness. The WW is an income provision if someone is unemployed. The WW, Zw and WIA are employee insurances, meaning that they relate primarily to employees. The law also makes some other service relationships equivalent, so that these workers (who are not employees) are also covered by the ambit of employee insurances. A number of service relationships are also excluded from the ambit and one of them is for people who generally provide services for less than four days a week for the natural person with whom they have the service relationship. These people are therefore not obliged to be insured under the employee insurances. What this also means is that they cannot claim the benefit payments governed by these Acts, and that their employers are not obliged to pay premiums on the wages they pay. Domestic workers can of

course insure themselves voluntarily, but then they have to pay the due premiums themselves, and these are substantial.<sup>15</sup>

The Work and Care Act (WAZO) includes a special scheme for domestic staff and leave, connected to the exclusion from employee insurances. The WAZO includes a number of leave rules on matters such as pregnancy leave and maternity leave. There is no right to receive wages during pregnancy and maternity but a worker can claim a benefit payment from the UWV. The circle of those who have this entitlement comprises people who work on the basis of an employment contract and domestic workers are included in this. For those workers who receive a benefit payment under employee insurances, the WAZO awards a benefit right during pregnancy and maternity leave that is equal to the wage that the worker receives. Domestic staff cannot qualify for this benefit because they are not insured for these insurances. The exclusion of this group from an income provision during pregnancy and maternity leave is in breach of European law and this is why the WAZO includes a special pregnancy and maternity benefit for domestic staff and others. The benefit is referenced to the minimum wage rather than the worker's actual wage.

### **2.3.6 An actual case**

The legal position of workers who are covered by the Regulation therefore differs in a number of ways from that of 'conventional' workers. This section describes how that difference manifests itself in cases of sickness and dismissal.

#### *Sickness*

In terms of Article 7:629, DCC, workers retain the right to 70% of their salary for 104 weeks if they are unable to do the stipulated work because employment disability arising from sickness, pregnancy or maternity prevents them from doing it. During this period, the employee and the employer both have an extensive reintegration obligation, designed to get the employee to resume work in either their original post or an adapted one. The UWV checks on the employer's reintegration efforts at the end of the 104 weeks by means of what is termed the 'gatekeeper test'. In principle, an employee suffering from more than 35% employment disability qualifies for a benefit payment under the WIA after two years. Under the WIA, 'work according to capacity' is key, so that the question is not about what work people can no longer do but about what they can still do despite any functional restrictions. The starting point is that anyone suffering employment disability should use any residual capacity to work

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<sup>15</sup> For the amounts, see *Premievaststelling Vrijwillige Verzekeringen* [Setting voluntary Insurance premiums] 2020.

to the fullest. When assessing entitlement to a benefit payment, the UWV looks at what the applicant can still do, even with his or her limitations through sickness or handicap, and what he or she can earn with that. The UWV performs the gatekeeper test, mentioned above, before assessing the right to a benefit payment. It firstly assesses whether an adequate result has been attained from reintegration. If not, it looks at whether the employer and employee have made adequate efforts during the first two years of sickness to increase the employee's functional capabilities to best effect and whether the existing work capacities are being put to the best possible use in the employer's business or another business. If there is a positive finding on the efforts that have been made, the UWV proceeds to assess the right to benefits. If the finding is adverse, the assessment of the right to benefits is suspended and the employer's obligation to continue paying wages is extended by up to 52 weeks.

These provisions do not apply to domestic staff (i.e. people who generally provide services for less than four days a week for natural persons with whom they are in a service relationship). They only retain their entitlement to wages for six weeks of their period of sickness. The private household has a reintegration obligation towards domestic staff for the first six weeks, but this obligation stops after six weeks, as does the obligation to continue paying wages.

#### *Dismissal*

Normally, an employer can ask for consent to dismiss if there are reasonable grounds for doing so. If an employer has not obtained consent for dismissal from the UWV or the sub-district court (or from the employee) and still proceeds with dismissal, that dismissal can be annulled. If the dismissal is annulled, then the employment contract is deemed never to have come to an end. If what is described as the preventative dismissal test is breached, the employee can also opt for a fair payment. The employer must also observe the statutory notice period for dismissal (as the courts will do if the contract is dissolved) and may also be obliged to make a transition payment. The preventative dismissal test is an important safeguard against arbitrary and unjustified dismissal. This test does not apply to the cancellation of employment contracts with domestic staff, so that this safeguard is missing. There can be a test of whether the dismissal was reasonable, but only after the event. Once the employment has ended, normal employees can claim a benefit payment under the WW in most cases, but this does not apply to domestic staff.

#### *After sickness and dismissal*

Service providers who are covered by the Services in the Home Regulation have to fall back on the Participation Act in cases of (long-term) sickness and unemployment. A service provider's claim under the Participation Act is in most cases not much less than benefits under the WW, ZW or WIA, as the

wages of domestic staff are not far above minimum wage levels. The means test and partner test mean that there will sometimes be no recourse to assistance and sickness and unemployment in those cases can have radical repercussions on income.

### **2.3.7 International dimension: conflict with international arrangements<sup>16</sup>**

The Services in the Home Regulation, as it stands, is in breach of ILO Convention no. 189, *Decent work for domestic workers*, because, for instance, workers covered by the Regulation are excluded from social security. ILO Convention 189 is aimed directly at the position of domestic workers and contains provisions relating to them. It is clear from the preamble to the Convention that one of the main reasons for the Convention's existence is to protect the position of (migrant) women in developing countries. The Netherlands complies with most of the obligations in the Convention, such as safeguarding fundamental rights, preventing child labour, protecting against abuse, violence and intimidation, reasonable terms of employment, a duty to provide information, methods of payment, minimum wage, working conditions and work and rest times. The Netherlands does not, however, comply with the Convention when it comes to social security. Article 14.1, for instance, prescribes that:

*Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.*

The exceptions for domestic workers in relation to employee insurances, wages tax and the anomalous position in the WAZO compared to other employees with an employment contract are all in breach of this provision and represent obstacles to ratifying the Convention without adjustment of current primary and secondary Dutch legislation. The government subscribes to the aim of the Convention to improve the position of particularly vulnerable domestic workers around the world. According to the government, ILO Convention 189 sends a clear signal that abuse and exploitation of domestic workers must be suppressed, and the Netherlands has voted to adopt the Convention for this reason.<sup>17</sup> The Convention has not been ratified, however, because of the Services in the Home Regulation. The fact is that ILO Convention 189 is the only ILO Convention that has not been ratified by the Netherlands.

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<sup>16</sup> I will discuss the European law on the ban on discrimination in the next section.

<sup>17</sup> Parliamentary Papers II, 2014/15, 29427, no. 100.

As well as being in breach of ILO Convention 189, the Services in the Home Regulation is also in breach of the UN Convention on Women.<sup>18</sup> The aim of this Convention is to alleviate the subordinate position of women. In terms of Article 11, "*States shall take all reasonable measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights...*". These include the right to social security (Article 11.1(e)). Bijleveld and Cremers argue that the Netherlands is acting in breach of the Convention because the government, by defending the exception situation for part-time domestic workers (see the next section on this), is applying stereotypical concepts as it keeps on doggedly referring to the old 'breadwinners' model. Bijleveld and Cremers assert that withholding rights from part-time domestic workers cannot be justified on the basis of current arguments.<sup>19</sup> The body that supervises the Convention on Women is the Committee on the Elimination of Discrimination Against Women (CEDAW), and in 2016 CEDAW instructed the Netherlands to improve its safeguarding of the Convention as regards the legal position of part-time domestic workers.<sup>20</sup> In summary, CEDAW considers that the exception situation should be abolished. CEDAW has therefore recommended an amendment to the Services in the Home Regulation such that domestic workers will gain full social and labour law protection.

### 2.3.8 Ban on discrimination

The equal treatment of men and women is one of the most important aims of the EU and the equal treatment of men and women, as far as labour and related topics is concerned, is entrenched in Article 157, TFEU. Various European Directives have been adopted to safeguard the equal treatment of men and women, which have obliged the Member States to incorporate them into national law. The ban on discrimination is entrenched in the Dutch constitution and also – in accordance with European law – elaborated in lower legislation such as the Equal Treatment Act. The ban on discrimination not only entails a ban on direct discrimination but also a ban on making (prohibited) distinctions indirectly. Indirect (banned) discrimination means that an intrinsically neutral regulation has a discriminatory impact. Due to the fact that it is mostly women who work in the provision of personal and domestic care services, the effect of the exceptions already discussed in this section, relating to labour law and social security rules for part-time workers, is that women are treated unequally.<sup>21</sup>

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<sup>18</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, Chapter 9.3.

<sup>19</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 149.

<sup>20</sup> The conclusion of UN Committee on Women's Law in 2016. The Netherlands must safeguard women's rights better, pp. 35-38.

<sup>21</sup> See also: Parliamentary Papers II, 1986/87, 19810, no. 4.

Direct discrimination between men and women cannot be justified objectively, but such justification can be found when dealing with indirect discrimination. There can be objective justification if the provision has a legitimate goal and if the means for attaining that goal are suitable and necessary. According to the legislature, the Services in the Home Regulation discriminates indirectly because it is mainly women who provide the services that the Regulation deals with,<sup>22</sup> but this is a distinction that is objectively justified.

In this regard, the legislature has provided the following arguments for the exceptions under labour law.<sup>23</sup> The working relationships that are excluded are only of a limited scale and the reason behind them is often an extra income. After all, the smaller the scale, the less anyone ends up with this type of work to keep body and soul together. The employer is a natural person who gets help in the household for a few hours a week and that person cannot be burdened with all sorts of obligations that are linked to being an employer.

Asscher-Vonk has been critical in the past about the justification voiced by the legislature for the special exceptions to protection from dismissal of domestic staff who generally work for less than four days a week. She considers it is unclear why the protection of personal life of a private employer should be more weighty for part-time staff than for full-time staff. She has also raised questions about the administrative burden linked to asking for consent to dismiss someone, which the government does not want to impose on private individuals as employers. She reckons this is a burden to be expected.<sup>24</sup>

The exception for social security also discriminates indirectly and the legislature took the position in the 1980s that, while it would actually be correct in principle to abolish this exception, the exception was nevertheless objectively justified.<sup>25</sup> The arguments put forward by the legislature in this regard were slightly different from those relating to labour law. According to the legislature, there were practical and technical implementation objections against any peremptory insurance for personnel who worked for fewer than three days a week, while this group also had no need for social security. Scrapping the exception would also make the service more expensive, so that less domestic work would be done, or at least a significant proportion of the supply would disappear into undeclared.<sup>26</sup> Although the European Court of Justice has not yet commented on whether allowing this to continue

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<sup>22</sup> Parliamentary Papers II, 1986/87, 19810, no. 4.

<sup>23</sup> Parliamentary Papers II, 1986/87, 19810, no. 5.

<sup>24</sup> I.P. Asscher-Vonk, *'Huishoudelijk personeel en de werknemersverzekeringen'* [in Dutch], *NJB* 1987, pp. 235 and 236. Also see S.S.M. Peters, *Verdond sociaal recht* (diss) [in Dutch], Nijmegen 2006, pp. 280-292

<sup>25</sup> Parliamentary Papers II, 1985/86, 19261, no. 3.

<sup>26</sup> Parliamentary Papers II, 1985/86, 19261, no. 3. Also see CRvB 29 April 1996, RSV 1996/247.

is tenable, the legislature has also made reference to the judgments in *Nolte* and *Megner* to support its stance.<sup>27</sup> In these judgments – both in German cases – the Court held that Member States had broad latitude for making decisions when they were adopting social policy. The exclusion of employment relationships of limited size was deemed to be objectively justified.

Bijleveld and Cremers argue that the reference to these two judgments is not persuasive, because the exception of limited employment (less than 15 hours) is not the same as the exception for part-time domestic workers. Firstly, the criterion for part-time domestic workers is defined in terms of days rather than hours. Also, the German exception was generic, while the Dutch exception only applies to domestic workers.<sup>28</sup> Finally, it is important that the Court of Justice significantly curbed the policy latitude that Member States have for justifying discrimination on grounds of gender in its *Morneo* decision from 2012.<sup>29</sup>

The arguments proposed by the legislature for the special legal position of domestic staff who generally work for less than four days have been trotted out regularly over recent years by the government when discussing that legal position, and the legislature therefore seems to have little sympathy with the notions suggested in the literature.<sup>30</sup>

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<sup>27</sup> EC CJ 14 December 1995, C-317/93 and EC CJ 14 December 1995, C-444/93.

<sup>28</sup> Also see on this: L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 140.

<sup>29</sup> CJ EU 22 November 2012, C-385/11. Also see E. Cremers, '*De (deeltijd) huishoudelijk werker en de particuliere zorgverlener*', [in Dutch] in: G.W. van der Voet, *Labour Law Topics – Special Labour Relationships* [in Dutch], second edition, Boom juridisch, The Hague, 2017.

<sup>30</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 41 and Chapter 10.

### 3. Policy initiatives and advice

#### 3.1 Introduction

Political interest in the market for personal and domestic services arose during the 1990s and the focus was initially on the potential job opportunities for those working in this service area.<sup>31</sup> The Bakker motion, which was adopted, led to the government starting to investigate the possibilities of developing this market.<sup>32</sup> At the outset, political attention in relation to the market for personal and domestic services was focussed mainly on increasing job opportunities for the lower end of the labour market. This century, the developments in this market meant that there might also be a positive impact on the job opportunities of the families that used this type of service.<sup>33</sup> In this section, as well as discussing policy initiatives, we look into the various regulations and advice that have appeared in this area since the 1990s.

Domestic staff were entirely excluded from employee insurances up until 1967. The 'household help scheme' came into effect in 1967 and it was replaced by the current Services in the Home Regulation in 2007. In terms of the household help scheme, domestic workers were excluded from social security if they worked for less than three days a week in a private household. Under the present Regulation, this exclusion applies to those doing domestic work for less than four days a week. As for the exclusion from the DCC all domestic personnel were excluded from the preventative dismissal test until 1989. From 1989, this applied only to domestic workers who did household work for less than three days a week and, from 2007, this was linked to the exclusion already applying to social security.

#### 3.2 Private Cleaning Services Regulation

The Private Cleaning Services Regulation was introduced in the mid-1990s. This was known as the "white charlady regulation" and its aim was to tidy up the sector. One aim of the Regulation was to counteract undeclared and create job opportunities for the unemployed.<sup>34</sup> The result of the Private Cleaning Services Regulation was, briefly, that cleaning companies received a subsidy for employing the long-term unemployed for cleaning private homes. The domestic helpers working in terms of this

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<sup>31</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 121.

<sup>32</sup> *Parliamentary Papers II* 1996/97, 25000, XV, no. 25.

<sup>33</sup> See, for example, *A working combination. Advice on combining work, learning and care in the future* [in Dutch] (advice dated October 2016, SER 2016/08), The Hague: SER 2016.

<sup>34</sup> *Parliamentary Papers II*, 1997/98, 25633, no. 1.

Regulation were called 'white charladies', and this let cleaning companies compete with informal and often black market cleaning. 1200 white workers were at work in 2004.<sup>35</sup> This broke down into 740 x 32-hour jobs reaching 6500 households.<sup>36</sup> The term 'white charlady' ["*witte werkster*"] is still commonly used in practice. For instance, there are the websites *www.dewittewerkster.nl* and *www.ikzoekeenwittewerkster.nl*. These websites and the organisations behind them often act as employment agencies.

### 3.3 Advice from the Council for Work and Income

After the government proposed a repeal of the Cleaning Services for Private Individuals Regulation, the Lower House of the Dutch Parliament insisted on a new regulation covering the market for personal and household services. The result, at the start of this century, was a request for advice to the Council for Work and Income (the **RWI**).<sup>37</sup> The RWI was asked how the former 'white charlady' regulation could be remodelled. The RWI, an advisory body made up from local authorities, employers and employees, recommended a dual fiscal system. Put briefly, this proposal entailed that the work relating to personal services should remain untaxed up to a sum of EUR 500 per month. On the other hand, the worker would not be covered by employee insurances. According to the advice, this exemption would be in harmony with the existing practice that enjoyed wide social acceptance. Also, a variant would be introduced in terms of which a household could use a cleaning company and deduct the cost of this for tax purposes. The dual tax system would contribute to job opportunities for both better and less-well educated people. The government did not accept the proposal from the RWI because it felt that it would not result in any improvements in the market for personal services and would have major adverse consequences in terms of repression and improper use due to problems of implementation. The government also foresaw budgetary risks and legal objections, as well as the potential for undersired subsidy below the informal pricing level.<sup>38</sup> The RWI was asked to elaborate its advice in relation to feasibility, implementability and enforceability. The follow-up advice from the RWI arrived in 2006, following the outlines of its initial advice and elaborating further options on the details. According to the RWI, the introduction of the dual fiscal regime would provide a significant impulse to the market for personal services and would counteract undeclared. The option for deducting expenses for tax purposes meant that the rates for the taxed variant could compete with those on the informal market. The RWI considered that the proposals would create job opportunities at the lower end of the

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<sup>35</sup> Parliamentary Papers II, 1997/98, 25633, no. 1.

<sup>36</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 123.

<sup>37</sup> Parliamentary Papers II 2004/05, 29 544, no. 28

<sup>38</sup> Parliamentary Papers II, 2005/06, 29544, no. 62.

market while at the same time increasing job participation for those who were better educated and holding down two jobs.<sup>39</sup> The government did not share these conclusions<sup>40</sup> and the debate then fizzled out.

Bijleveld and Cremers correctly commented that it was fairly remarkable that after the RWI proposals, which could count on broad social support, there was barely any further political interest in regulating the market for personal and domestic services.<sup>41</sup> With their 2010 research paper 'A job like all the rest?!' [*Een baan als alle andere?!*], Bijleveld and Cremer intended to provide a new impulse to the debate on regulating the market for personal and domestic services, paying particular attention to the legal position of the workers. Bijleveld and Cremers considered that their position had wrongly been neglected in the discussions.<sup>42</sup>

### 3.4 The Committee on Services in the Home

Regulation of the market for personal and domestic services came back into the spotlight in 2012. The then Minister Asscher sent a letter of 19 December 2012 to the Lower House and mentioned in passing, concerning the current state of the labour market, that domestic workers were covered by the Services in the Home Regulation and that ratifying ILO Convention 189 on 'Decent work for domestic workers' would mean that more rights would have to be accorded to domestic workers.<sup>43</sup> Ratifying this ILO Convention would thus have consequences not just for the legal position of domestic staff but also for wage costs and employers' obligations. For these reasons, Asscher set up the Committee on Services in the Home in May 2013, to get advice on the possibilities of ratifying ILO Convention 189.<sup>44</sup>

In March 2014, the Committee on Services in the Home issued a report regarding the elaboration of a range of policy options.<sup>45</sup> The Committee concluded that any form of regulation of the market for household services laid the bill at someone else's door and that it was a political decision as to how that bill would be shared out. The Committee forcefully urged that the Services in the Home Regulation should be disapplied for publicly financed services. These were the services provided in terms of a

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<sup>39</sup> On this, see L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 129.

<sup>40</sup> Parliamentary Papers II, 2007/08, 29544, 128.

<sup>41</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 131.

<sup>42</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and the Law, 2010.

<sup>43</sup> Parliamentary Papers II, 2012/13, 29544, no. 425.

<sup>44</sup> Parliamentary Papers II, 2012/13, 448 and Government Gazette 2013, 14168.

<sup>45</sup> *Services in the Home: who pays the bill?* [in Dutch], advice from the Committee on Services in the Home, March 2014.

personal care budget, including home help. The Committee felt it undesirable that services that were – largely – financed by government funds should be provided by workers whose legal position was worse than that of other workers. Also, the employer was largely compensated for the employer taxes and, if the service was provided under a personal care budget, there was no realistic option of doing the work oneself. The risk of undeclared and suppressed job opportunities was virtually nil in the publicly financed portion of the market. Abolishing the Regulation for the private sector would have few consequences, in the Committee's view, as it could be assumed that only a very small number of people would abide by all the obligations in practice. The Committee felt that abolition of the Regulation should be accompanied by supplementary policy, so that some impact was actually achieved in practice. But that supplementary policy came at a price. The wage costs for hiring in domestic staff were simply too high for the creation of a market for household services. The Committee felt this could only be achieved with government subsidies.

The Committee described two forms of subsidy in its report. The first was a system of service cheques (or vouchers) based on the Belgian system. What this entailed was that a household could buy a cheque from an accredited body at a discounted price. The worker could then cash this in at a higher rate and would also be covered for the employee insurances. The second variant was a system of tax deductions, where households could deduct the hiring fees for a service provider against their tax. Both variants were charged on and would cost the government between EUR 900 million and EUR 1,200 million, while creating around 45,000 full-time jobs with full legal protection.

Responding to the Committee's advice, the government pointed out that improving the legal position of service providers in the home was a complex task, with no ideal solution.<sup>46</sup> The government argued that it was looking to find a balance, with the Services in the Home Regulation, between the administrative and financial burdens for private employers on the one hand and the rights of workers on the other hand. The government pointed out that a large proportion of service providers in the home were less well-educated women, so that this problem was also linked to the government's emancipation targets. A stronger legal position for these service providers can increase women's economic independence. At the same time, household services enhance the options for combining work and care duties for households where both partners are working. These services allow both partners to work away from home.

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<sup>46</sup> Parliamentary Papers II, 2014/15, 29427, no. 100.

According to the government, job supply in personal and domestic services makes a valuable contribution to the economy and it is therefore important for household services to remain accessible to private individuals, including those with personal care budgets. For those who use these budgets, the government also pointed out that these households cannot be faced with all of the administrative charges and obligations associated with being a conventional employer. At the same time, the government was also bearing in mind that costs could be suppressed via the Regulation and that pressure for large-scale use of home help would be an undesirable development. Policy should therefore be targeted at suppressing home help structures, meaning that use of the Services in the Home Regulation should not be the result of deliberate choices made by clients. As far as abolition of the Regulation for the private market was concerned, the government shared the Committee's view that no impact could be expected from abolition unless there was some supplementary policy. The government considered that this supplementary policy would involve substantial government subsidies, which would be susceptible to fraud because checks and enforcement were not readily possible in private homes. The government did not feel it desirable to issue subsidies for each hour worked if there was no possibility of checking how many hours were actually worked for private individuals in the home, or precisely what work had been done. Also, only part of the subsidy would actually end up with workers and a substantial proportion of it would evaporate in the costs and profits of intermediary companies, so that subsidies of this sort would be an ineffective and inefficient way of improving the position of those who provided household services.

### **3.5 SER advice 'A working combination, Part II'**

The SER, in its advice 'A working combination, Part II' from 2016, pointed out that the market for household and personal services had an important part to play in 'saving' time by buying in services.<sup>47</sup> In that sense, the market created forms of "time trading". Private individuals could 'save time' by purchasing services, provided that the outsourcing was easy and properly regulated, so that it would not take up extra time for preparation and supervision. In its advice, the SER noted that using a domestic helper in particular is time-saving and reduces subjective feelings of being rushed, and that this applied primarily to women who used the services. Cleaners, in particular, seem to be hired in order to save time. Financial considerations may hinder the use of services. The cost of hiring a cleaner or costs for delivery of shopping are hard for people on low incomes to afford. In its advice, the SER highlighted the job opportunity potential for personal and domestic services. On the one hand, these

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<sup>47</sup> *A working combination. Advice on combining work, life and care in the future* [in Dutch] (advice dated October 2016, SER 2016/08), The Hague: SER 2016.

are labour-intensive services that are mainly provided locally, so that job opportunities would remain in the Netherlands. Also, there could be increases in productivity if those buying the services could concentrate more easily on their own, more productive work.<sup>48</sup> With good government policy, the market for personal and domestic services could be developed further, offering new job opportunities, and this could help to facilitate the combination of roles and duties. The SER felt that this could create a win-win situation, provided that certain preconditions were met, such as safeguarding the quality of the work (*Decent Work*) and the quality of the services.

### 3.6 Au-pair policy

There are in fact separate rules in the Netherlands covering au-pairs who live with the host family. The aim of the Dutch policy on au-pairs is to facilitate cultural exchange by offering youngsters from outside the EU the chance to live with a host family in the Netherlands for a year. The au-pair is often seen as a cheap alternative to formal childcare. There is a special statutory regime for working with and as an au-pair. Under the au-pair rules (in Article 1j of the Employment of Foreign Nationals Act (Implementation) Decree), an au-pair can work for a maximum of 8 hours a day and 30 hours a week (light domestic work) and is entitled to at least two days off each week. Also, the au-pair can only stay in the Netherlands for a maximum of 1 year and, in return for doing work for the family, the au-pair receives expenses and accommodation and a maximum of EUR 340 'pocket money' per month. If the host family wants the au-pair to do other work, it will need a work permit and the au-pair will have to apply for an amendment to his or her residence permit. The SZW Inspectorate, the IND and the Foreign Nationals Police supervise due compliance with the au-pair rules and a fine under the Foreign Nationals Act is imposed for any infractions.

### 3.7 Borstlap Committee

In January 2020, the Committee on the Regulation of Employment, on a commission from the Ministry of Social Affairs and Employment, issued advice on the future of the Dutch employment market and its regulation.<sup>49</sup> While the Committee made a large number of recommendations for reducing the distinctions between groups of workers in the employment market, it made no specific recommendations in relation to domestic workers.

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<sup>48</sup> *A working combination. Advice on combining work, life and care in the future* [in Dutch] (advice dated October 2016, SER 2016/08), The Hague: SER 2016, p. 154

<sup>49</sup> Committee on the Regulation of Employment: What sort of country do you want to work in? Towards a new design for the regulation of employment [in Dutch], 23 January 2020.

## 4. Investigation at the sectoral level: cleaning and care

### 4.1 Introduction

This investigation of the legal position of – if we summarise – domestic helpers and of government and social partner initiatives involved a closer examination of the cleaning and care sectors. For each of these two sectors, we discuss the results of a literature review, an investigation of case law and specific legislation as well as interviews with experts.

### 4.2 Cleaning

#### 4.2.1 Industry information

While the cleaning industry in the Netherlands is a fairly young sector, it is one of the largest in the country as regards job opportunities and value added to the national income. In 2011, gross turnover for the industry was around EUR 4 billion, equivalent to 1% of GDP and with around 11,000 suppliers offering cleaning services. By 2018, the turnover of the ten largest cleaning companies had risen to EUR 1.75 billion.<sup>50</sup>

The cleaning industry has several sub-sectors. In addition to normal cleaning in offices, schools and hospitals, the industry also covers window cleaning and specialist cleaning services. The main activity for 60% of the 11,000 suppliers was interior cleaning. The main activity for 30% of the firms was window cleaning and the remaining 10% dealt with specialist cleaning (disaster clean-ups, cleaning rolling stock and so on). The ratios between interior cleaning, window cleaning and specialist cleaning were 70:20:10. Growth in the economy has a positive impact on demand for cleaning services and growth is anticipated in both the long and short term.

Out of the 11,000 suppliers, there are 3,300 firms with employees on their books. In terms of the size of these firms, the industry is very diverse with 5 major national cleaning firms having over 10,000 employees, a group of medium-sized businesses operating regionally and a large proportion of SMEs operating locally. Almost 90% of the cleaning firms employ fewer than 5 workers. Access thresholds for new businesses are low (with no huge investments) so that competition is fierce. Points to note are the pricing competition and shorter contract terms.<sup>51</sup> This means that rates are under pressure in

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<sup>50</sup> Market research, Service Management, 2018.

<sup>51</sup> Rabobank, figures and trends, March 2019.

tendering situations. The cleaning industry is finding that the shortage of personnel is an increasing problem. Recruiting and keeping staff are difficult issues. One side-effect is that the low investment requirement is leading to a rise in one-man businesses.<sup>52</sup> Estimates by CLA parties indicate that there are around 133,000 cleaners working in the industry every day.

The largest employee organisation in the cleaning industry is the OSB [*Ondernemingsorganisatie Schoonmaak- en Bedrijfsdiensten*], the Cleaning and Business Services Organisation. The member companies of the OSB represent about 70% of turnover and 70% of the actual jobs. Cleaning private households is a difficult market in which to gain a foothold for the cleaning firms, due to the relatively high cost price of cleaning on the one hand and on the other hand the options that households have of doing the work themselves and/or using the supply of cleaners who are not employed by a cleaning firm and who can therefore offer lower prices than those firms.

#### **4.2.2 CLA for the cleaning and window cleaning business**

The CLA for cleaning and window cleaning applies in the cleaning industry. The most recent version of the CLA runs from 1 January 2019 to 1 July 2021 and was concluded by the OSB, FNV and CNV Vakmensen. The Minister of Social Affairs & Employment issued an order on 21 November 2018 (published in the Government Gazette on 23 November 2018), declaring the CLA to be binding for the period from 1 January 2019 up to 1 January 2020. This binding order means that the CLA applies to all companies (or business activities) that are covered by the ambit of the CLA, irrespective of membership of the OSB. The OSB, FNC and CNV Vakmensen set up the *Raad voor Arbeidsverhoudingen Schoonmaak- en Glazenwassersbranche (RAS)* [Council for Employment Relationships in the Cleaning and Window Cleaning Industry] in 1991. The most important job of the RAS is to act in an advisory capacity to the industry and supervise compliance of the CLA.

The CLA defines a cleaning firm or a window cleaning business as follows: every business whose main or ancillary activity is cleaning at a location specified by the customer, either regularly or on a single occasion, or else window cleaning in, on, of or at buildings, houses, streets/roads, (domestic) waste containers, premises and/or vehicles, all in the broadest sense of the terms. The CLA contains a general section applicable to all cleaning firms, a B section applying only to employers and employees in the specialist cleaning sector and a C section that is written for administrative, support and managerial positions in the industry.

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<sup>52</sup> Rabobank, figures and trends, March 2019.

A cleaning firm that undertakes the cleaning of houses is covered by the ambit of the CLA and should apply it and comply with it. The CLA does not apply if a private householder concludes an employment contract with a cleaner. If a cleaner takes on work in an independent capacity for a private household, he or she will be covered by the ambit of the CLA and may be compelled to comply with certain obligations under it. Because an independent contractor does not have any employees on his books, these obligations have no effect as regards terms of employment, but the independent contractor may be compelled at some point to contribute to a training fund in the industry. They are not obliged to do this at the moment, because the rules of the fund do not include any peremptory contribution. Interviews with experts tell us that the employer's charges for a cleaning firm mean that the cost price of an hour of cleaning is around EUR 22. Since very few households are prepared to pay that amount for having their house cleaned, cleaning firms tend not to focus on the private market, giving this section of the market an 'informal nature'. This informality is characteristic of how supply and demand meet up and how arrangements about the work are made.

#### **4.2.3 The informal part of the sector and initiatives from the market**

In 2011, Botman argued that the majority of domestic workers and employers found each other informally, in an institutionalised way, without intervention from a business or the government.<sup>53</sup> She describes the strategies that domestic workers (cleaners) use to find enough employers. One classic method is placing an advert in a newspaper or on a notice board. Nowadays there are many free advertising opportunities (supermarkets, the internet, etc.) that are used. A second method involves agencies, where a third party makes the connection between the hopeful domestic worker and potential household customers. An agency either has access to or is part of the network of employers. Agencies connect networks of workers with networks of customers. Employment agency is in fact regulated in the Allocation of Workers and Brokers Act, which I will discuss in more detail below. A third strategy is passing on work addresses, and the workers' own network plays an important part here. This last strategy is a snowball method, where work is found via a household that the worker has found previously.

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<sup>53</sup> S.J. Botman, *Gewoon schoonmaken: de troebele arbeidsrelaties in betaald huishoudelijk werk* [Ordinary cleaning: the murky employment relationships in paid domestic work] (diss.), Amsterdam 2011.

#### 4.2.4 Helping<sup>54</sup>

Helping is an online platform that brings together supply and demand in the private household cleaning market. Helping operates in several countries and states that it is the largest 'online marketplace' for domestic support services in Europe. Helping states that it is not a cleaning firm but rather a platform that matches private cleaners with households. 'All of the helpers have a profile with customer ratings, their experience and the price they are asking for. The notice board with cards in the supermarket is no longer needed; from now on, you can easily find the best private helper on the basis of thousands of ratings', according to Helping on its website. The firm states that domestic helpers are employed directly by the private household and that their work is covered by the Services in the Home Regulation.

It also states that the rates for which its cleaners work comply with the applicable rules. This means that the rate has the current minimum wage as its starting point. Helping has capitalised additional rights, such as the right to holidays and continued payment of wages during sickness, and the minimum wage has this capitalised amount added on. A domestic helper cannot register a rate on the platform if it is less than this total figure. According to Helping, domestic helpers are of course allowed to ask for a higher amount, but this often happens in dialogue with Helping so as to harmonise supply and demand as closely as possible. Helping arranges the administration for the domestic helper, simplifying income tax returns, and it also collects the fee from the private household.

Helping keeps part of the fee paid by the household to the helper via Helping to cover the helper's use of the services it provides. This 'commission' runs to between 23% and 32%. Helping states that domestic helpers often work for short periods and part-time via the platform. The majority use the platform for no more than six months, for a couple of hours a week. Only a small percentage of them work regularly and full-time via the platform. The population of workers varies. They are often less well-educated women from a migrant background, although there are also students who look on cleaning as a job on the side. Helping told us that it was keen to do something for the workers in relation to insurances against sickness and employment disability, but felt it was constrained in this by legislation and regulations. Helping fears that it might be regarded as a cleaning firm if it does much more for the platform workers than it is obliged to do by law. Finally, Helping stated that it cannot be regarded as a competitor of ordinary cleaning firms, but as a competitor of the informal economy. According to the firm, it is making a contribution towards improving the position of workers by making

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<sup>54</sup> Information on the working methods of Helping was obtained in part through an interview with Helping for the purposes of this study paper.

the supply side more accessible to them, creating greater certainty as regards the extent of the work and thus greater certainty on the workers' income status.

### *Helping case*

Trade union FNV and a cleaner initiated proceedings against Helping because they felt that Helping was an ordinary cleaning firm, that it employed the cleaners and that it must therefore observe the CLA. The claim entailed that Helping was an employment agency and must abide by the rules on employment agency work. In a judgment dated 1 July 2019, Amsterdam District Court held that Helping is not a cleaning firm and that the cleaners are not employed by it. According to the Court, there is no control relationship between Helping and the cleaners and there cannot therefore be an employment contract within the meaning of Article 7:610, DCC. The Court also felt that Helping was much more than an online notice board and that it played an active part in the "agency" process. Because there was employment agency, the Allocation of Workers by Agencies Act ("Waadi") applied and Helping could not charge any commission to the cleaners.<sup>55</sup> Employment agency is defined thus in the Waadi:

*the provision of a service in the exercise of a business or profession for an employer, a job-seeker or both, entailing the provision of assistance in seeking workers or job opportunities, with the intent that an employment contract should be created under civil law or that there should be an official appointment.*

As far as currently known, FNV has not filed an appeal against this judgment.

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<sup>55</sup> Amsterdam District Court, 1 July 2019, ECLI:NL:RBAMS:2019:4546.

#### 4.2.5 Initiatives by social partners

The OSB and the FNV and CNV trades unions have joined forces since 2012, advocating the same employment rights for all cleaners, as well as access to social security, in the Domestic Work (*Huishoudelijk Werk*) working group they have set up. The working group's actual aim is to assist in improving legislation and the organisation of domestic and personal services in the Netherlands.

In 2012, the working group carried out research into various options for improving the positions of domestic workers and their employers, along with the practical implementation of improved legislation. A vision document was produced in 2013, in which the working group reported on the research and the conclusions that could be drawn from it.<sup>56</sup> The research described how the position of domestic workers was regulated in countries bordering the Netherlands. This comparison of rights was then used as the point of departure for a closer scrutiny of a number of variants that might replace the Services in the Home Regulation. The variants that were examined were the service cheque, a tax variant and a combination of the two. The group's examination showed that formalising the market for domestic work was not a simple matter and could not be achieved without major financial incentives. The working group concluded that any shift from the current system to a system of full protection of rights would have to be gradual, due to the consequences for households, and would have to be accompanied by government stimulus. The report also indicated that the Regulation could quickly be abolished for care because there was a satisfactory alternative, namely waged employment subject to the CLA in the sector. The costs of abolishing the Regulation for this sector would be around EUR 150-200 million. Nowadays, for care, one can only work via the Regulation if a personal care budget is in place and is used. Abolition of the Regulation for present-day practice should therefore be less expensive, but there are no hard and fast figures available for this. The Employment Foundation [*Stichting voor de Arbeid*] agreed with the results of the vision document and the conclusions it drew, but this has not led to any legislative proposal or advice.

The OSB, FNV and CNV set out their vision to a committee of the Lower House of the Dutch Parliament in a round table discussion on 16 November 2017 about the platform economy. In a joint report on that discussion, the OSB and the trades unions took as their starting point that the Services in the Home Regulation created an undersirable, uneven playing field. As far as protecting domestic helpers was concerned, the exclusion from social security for them was also classified as being undesirable and

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<sup>56</sup> *Rechtspositie huishoudelijke werkers. Visie van FNV-OSB en de ratificatie van ILO-verdrag 189*, (Legal position of domestic workers. The vision of FNV-OSB and ratification of ILO Convention 189), Vision document of 18 December 2013.

unjustified. The OSB, FNV and CNV referred on this to ILO Convention 189, which guarantees the same entitlement to social security for domestic workers as 'conventional' employees have. The Services in the Home Regulation is incompatible with this ILO Convention 189, which is why the latter has not been ratified by the Netherlands. Social partners in the cleaning industry are lobbying for ratification of the Convention and replacement of the Services in the Home Regulation. Recently FNV asked the Dutch Parliament to take care of domestic workers that lost their jobs because of the coronavirus outbreak.

## 4.3 Care

### 4.3.1 Industry information

Nursing, attendance and home care (the sub-sectors on which this study paper focuses) are all parts of the healthcare sector. The Dutch population will continue to age markedly in the next few years. People even talk of a double ageing scenario, meaning that the proportion of the elderly is going up, and so is their average age. This ageing trend in the Netherlands will lead to an increasing demand for care, and associated increased costs, up to 2040.<sup>57</sup> In order to keep care affordable, people will have to increase their own contributions to care, which also means that people will have an increasing say in what care they choose. For businesses, this development means they will have to pay greater attention to quality and service. The importance of general carers (family, neighbours, volunteers) is also increasing with the government being as "hands-off" as it is. Taking the load off general carers is a new market for businesses in the market for nursing, attendance and homecare.<sup>58</sup>

The AZW (employment market, attendance and home care) VVT sectoral report from February 2017 confirmed that job opportunities in VVT (nursing, attendance and homecare) had diminished up to and including 2015. The sector witnessed a shrinkage of 13.2% (from 426,592 to 364,120) between 2012 and 2015. The majority of workers in both nursing and attendance (79.4%) and homecare (72.4%) had a fixed job. 1% were self-employed in nursing and the corresponding figure for homecare was nearly 5%. The largest employers' organisation in this sector is ActiZ. ActiZ itself reports that it has 400 care providing organisations affiliated to it, with a total of around 380,000 employees.

### 4.3.2 The Social Support Act (Wmo) and domestic help

Care has long been strictly regulated and its budgets are regulated via legislation and regulations. The three most important statutes in this regard are the Social Support Act, the Healthcare Insurance Act and the Long-term Care Act. The Social Support Act sets out that municipal authorities offer support so that people can keep living at home for as long as possible. Municipalities are responsible for supporting people who cannot live on their own. This involves matters such as assistance and day-care as well as support for general carers. Each municipal authority organises access to this support in its own way. The Healthcare Insurance Act makes basic insurance compulsory. The healthcare insurers

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<sup>57</sup> Rabobank, 'Verpleging, verzorging en thuiszorg' [Nursing, attendance and homecare], January 2019.

<sup>58</sup> Rabobank, 'Verpleging, verzorging en thuiszorg' [Nursing, attendance and homecare], January 2019.

are responsible for implementing this Act. The Healthcare Insurance Act is funded in a number of ways, the most important of which are the premium and the income-dependent contribution. The basic insurance covers a covers a large number of health risks. There is also the Long-term Care Act, which is also implemented by healthcare insurers and deals with care while staying in an institution, which might be a nursing or care home or a home for the handicapped.

The Social Support Act (**Wmo**) has decentralised social support, meaning that municipal authorities are responsible for this. The aim of this Act is let people participate in society independently for as long as possible. Local authorities can deploy a range of resources for this, including domestic workers. They are even free to make their own policy, within the framework of the Wmo, and this has led to discrepancies in, for instance, the amount spent on people and the ways in which they are helped.

If someone is no longer able to do housework (through sickness, accident or age), then there can be a right to get support under the Wmo for a domestic worker. The municipal authority then assesses whether domestic help is actually needed, and if so how much. If someone qualifies for support under the Wmo for domestic help, there is then a choice between a personal care budget (**PCB**) and care in kind. Payment of care in kind means that the local authority lets the person choose from among a number of care providers who will provide the assistance. The local authority looks after the administrative burden. With a PCB, the individual has a budget for personally employing a domestic worker (or home help). The person can also use the budget to engage a family member or approach a care provider that the local authority had not suggested for the domestic work. A person who buys the service personally will pay for the assistance from the personal care budget. In principle, the Services in the Home Regulation governs the working relationship between the budget holder and the helper.

If someone opts for care in kind, the help is provided by or on behalf of the local authority. The municipal authorities have concluded contracts with care provider firms for this and it is their employees who are used. The least expensive way of providing help in the home is by using home helps, because they work under the Services in the Home Regulation. Before 2015, the Wmo prescribed that people should not be faced with any employers' or principals' obligations if they used care in kind. This meant that if someone opted for care in kind, that care could not be provided by a home help.<sup>59</sup> The Wmo was replaced by the Wmo 2015, with effect from 1 January 2015, and the new Act does not state explicitly that someone cannot be faced with employers' and principals' obligations

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<sup>59</sup> On working with home helps before 2015, see for instance L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, Chapter 5.

for care in kind; this led to debate on whether home helps could be allowed for care in kind and also the use of home helps by care providers.

This lack of clarity surrounding the engagement of home helps led to a legislative bill 'banning home helps'. The bill's explanatory note contains a comment by the government that municipal authorities were using the Services in the Home Regulation by offering help in the form of home helps rather than help in the home offered by a contractor engaged by the local authority.<sup>60</sup> By doing so, municipal authorities were deriving a financial benefit from the Services in the Home Regulation at the expense of the legal position of home helps, and it appears that the Wmo 2015 was not intended for this.<sup>61</sup> The government stressed in the explanatory note that the legislative bill's aim was that the Services in the Home Regulation could only be used for private individuals when they had a PCB, had personally made a deliberate choice to organise the care and support and were in a position to bear the associated responsibilities. The bill was in part a response to the advice from the Services in the Home Committee, already discussed (in section 3.6), where the committee advised that the Services in the Home Regulation should no longer be allowed to be used for services that were publicly funded. One consequence of the bill is that the use of home helps would be banned for care in kind, but would still be permitted via the PCB structure, so that the Services in the Home Regulation could still be used. The government did not therefore follow the committee's advice that the Services in the Home regulation should no longer be used at all for implementing the Wmo. One possible consequence of still allowing the Services in the Home Regulation for PCBs could be that local authorities will move towards providing care via the personal care budgets in order to keep costs down. In the bill's explanatory note, the government commented on this that issuing more personal care budgets in order to keep costs down was not appropriate, because the Wmo 2015 states that the client must deliberately opt for a PCB and must also justify why a PCB should be awarded rather than a tailored solution. This argument was not explored any further, or supported by any figures. On the other hand, Bijleveld and Cremers pointed out in their study in 2010 that municipal authorities could organise the care somewhat less expensively using the home help structure and that these savings were achieved mainly through using workers whose work was done on less favourable terms of employment.<sup>62</sup> As long as local authorities are subject to cost pressures through limited budgets or increasing demands for care, it really is wishful

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<sup>60</sup> See the Advice from the Council of State on the Act amending the Social Support Act 2015 in connection with not allowing provisions whose aim is that a client should enter into an employment relationship as defined in Section 5 (1) and (2) of the Wages Tax Act 1964, Government Gazette 2018, no. 37695.

<sup>61</sup> The government commented, in the explanatory note to the bill 'banning home helps', that this ban was also of relevance for the government's emancipation targets. According to the government, the workers were after all largely less well-educated women and a normal legal position would make a greater contribution to their economic independence than if they were working via the Regulation.

<sup>62</sup> L. Bijleveld & E. Cremers, *Een baan als alle andere?! De rechtspositie van deeltijd huishoudelijk personeel*, Leiden: Clara Wichman Association for Women and Law, 2010, p. 74.

thinking to imagine that this will have no impact on how they arrange for care to be provided (and make a shift in the appropriate direction) if this entails a budgetary differential.

In a ruling of 18 May 2016 (CAC 18 May 2016, ECLI:NL:CRVB:2016:1404), the Central Administrative Council gave a more detailed interpretation of the system under the Wmo 2015 and adopted the position that the municipal authority was not making a provision within the meaning of the Act if there was merely a contract between the client and the home help. If a council merely makes a contribution or payment for social support, other than a PCB, or refers someone to the private market, a local authority is not making a provision as defined in the Wmo 2015. In other words, the CAC confirmed the government's position in the bill. The Council of State Department then inferred from this ruling that the bill was no longer necessary. According to the Department, the Wmo 2015, as further interpreted by the CAC, meant that municipal authorities could not in fact offer general facilities in terms of the Wmo 2015 in this form. The government agreed with the advice from the Council of State, notifying the Lower House in a letter of 26 June 2018 that the bill was being withdrawn.<sup>63</sup>

The holder of a PCB can himself decide how he buys in his care and that purchase is relevant for the relationship between the budget holder and the worker. Broadly speaking, there are four possibilities. First of all, a PCB holder can enter into a contract with a care provider firm, which will arrange for the care to be provided by a worker. The domestic worker is then employed by the care provider firm and that employment is generally subject to the VVT CLA, which is discussed below. It is also possible for a PCB holder to be connected with a home help via a care agency. The home help is not employed by the agency but starts employment with the PCB holder. This triangular relationship is classed as employment agency within the meaning of the Waadi. Helping uses this structure in relation to cleaning services (see section 4.2.4). The Services in the Home Regulation may apply to the employment contract between the PCB holder and the home help. That is also the position if a PCB holder approaches a home help directly, i.e. without an agency being involved. In that case, the PCB holder and the home help conclude an employment contract without the involvement of a third party and the Services in the Home Regulation can apply to that contract. In this last case, where the PCB holder and the home help contract with each other directly, they may also enter into a contract for

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<sup>63</sup> Parliamentary Papers II, 2017/18, 29538, no. 264.

services. This will be the case if the home help does her work on a self-employed basis. In that case, the Services in the Home Regulation does not apply.<sup>64</sup>

### 4.3.3 VVT CLA

The VVT CLA applies in the sector of nursing, attendance and homecare. The most recent version of the CLA ran from 1 April 2018 to 1 July 2019 and was concluded between ActiZ, BTN, FNV and CNV Care & Welfare, Nu'91 and FBZ. The parties are discussing a new CLA that should come into force with retrospective effect from 1 July 2019. If the 2018-2019 CLA is not formally terminated, which we do not know, it is tacitly extended in terms of the Collective Labour Agreements Act. The Minister of Social Affairs and Employment declared the 2018-2019 CLA to be binding, on 1 October 2018, for the period from 4 October 2018 to 1 July 2019. This binding order means that the CLA applies to all companies (or business activities) that are covered by the ambit of the CLA, irrespective of membership of ActiZ or BTN.

The CLA distinguishes between a nursing or care home on the one hand and a homecare organisation on the other hand. An employer, as defined in the CLA, is a business that maintains a nursing and/or care home or a homecare organisation (or a combination of the two). An employee within the meaning of the CLA works on the basis of an employment contract with one of these defined employers.

Every homecare organisation is covered by the ambit of the CLA and must apply it and comply with it. The VVT CLA does not apply where a private household enters into an employment contract with a home help (implementing a PCB). If a home help accepts care duties as a care business, he or she may be classed as an employer within the meaning of the VVT CLA if (s)he uses staff that (s)he employs in order to carry out the care duties.

### 4.3.4 Initiatives by social partners

A number of care providers, municipal authorities and trades unions adopted the *Code Verantwoordelijk Marktgedrag Thuiszorgonderneming* (Code on Responsible Market Conduct in the Homecare Sector) in 2015.<sup>65</sup> The Code notes that the changes in relation to homecare and the

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<sup>64</sup> See the Advice from the Council of State on the Act amending the Social Support Act 2015 in connection with not allowing provisions whose aim is that a client should enter into an employment relationship as defined in Sections 5(1) and 5(2) of the Wages Tax Act 1964, Government Gazette 2018, no. 37695.

<sup>65</sup> Social Domain Transition Committee, Code on Responsible Market Conduct in the Homecare Sector, August 2015.

decentralisation and shifted responsibilities are having consequences for the job opportunities of domestic workers. In this regard, the parties consider it a joint duty, based on their responsibility within the chain of care provision, to assist in ensuring that these changes are on the right track. The Code points out in relation to the labour market that the parties stand for a healthy labour market and that workers should be able to claim an adequate package of terms of employment. Providers are obliged to apply the CLAs that are effective in their areas of work and to remunerate the workers in line with those terms. In their calculations of cost price, the principals take account of a realistic division between workers holding long- and short-term positions. The principle of a realistic cost price is applied here.

Because the Code was not being adequately observed in practice, the Minister issued a General Administrative Order on 10 July 2017, setting out more detailed rules to safeguard a satisfactory relationship between the price of supplying a provision and the requirements that the quality of that provision had to meet, as well as the continuity of the help between the client and the helper.<sup>66</sup> In 2018, the parties to the VVT CLA, along with the Ministry of Public Health, Welfare & Sport, drew the attention of local authorities and care providers to the consequence of indexation arrangements in CLAs for existing contractual arrangements. The local authorities adopted the stance that the law did not impose any obligation on them to adjust the tariffs at an interim stage in response to new CLA arrangements unless this had been contractually agreed with the suppliers.

In the summer of 2019, the FNV union sent a letter to the Lower House in which it drew attention to a growing disparity in the implementation of the Wmo by local authorities and the 'race to the bottom' as regards terms of employment. Local authorities were not apparently observing arrangements on realistic rates.<sup>67</sup> After the Wmo was introduced in 2015, according to FNV, domestic workers were faced with steep reductions in salaries, uncertain contracts and reduced contractual hours. Local authorities' methods of tendering and procurement at the lowest price resulted in pressure on the terms of employment for workers in the sector. FNV stated that more than 50,000 workers were losing their jobs through this and that workers were also losing their fixed jobs in exchange for temporary jobs on poorer terms of employment.<sup>68</sup> This led to the arrangements on realistic rates, discussed above. Referring to a study done by Berenschot in February 2019, FNV pointed out that only 100 of the 355 local authorities were complying with the arrangements regarding a realistic price. The FNV's

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<sup>66</sup> State Bulletin of Acts & Decrees 2017/55.

<sup>67</sup> Letter of 17 June 2019 from FNV to the standing committee on Health, Welfare & Sport.

<sup>68</sup> Letter of 17 June 2019 from FNV to the standing committee on Health, Welfare & Sport.

letter asked the Minister to comply with the law and to highlight their responsibilities to the municipal authorities.

## 5. Summary of findings

Regulation of the market for domestic and personal services gained political attention in the 1990s with a view to increasing job opportunities for the lower end of the labour market and to counteracting undeclared. Organising and regulating this market was intended to promote job opportunities and at the same time suppress undeclared. The 'white charlady' regulation that was drafted in this context provided for subsidising the employment of the long-term unemployed. Diminishing returns led to the regulation being replaced in 2007 by the Services in the Home Regulation. The government did not take up the advice from the RWI to introduce a dual tax system, which would stimulate household services through tax breaks and also prevent undeclared work. The Services in the Home Regulation actually legalised undeclared work because it failed to compel private households to deduct premiums and taxes. However, this form of regulation was at the expense of the workers' legal position because part-time domestic workers were excluded from social security. At the same time, normal employment law for part-time domestic workers made exceptions in order to keep down the administrative burdens for private individual employers. Lower burdens (both financial and administrative) and risks (e.g. dismissal and wage payment during sickness) for private households were intended to prevent this type of service from being subsumed into undeclared. In more recent times, some attention has been paid to the position of those who use these services when the government has been looking at regulation of the market. The idea is that if the market for domestic and personal services works satisfactorily, it will not only make a major contribution to job opportunities at the lower end of the labour market, but might also contribute towards job flexibility at the upper end of the labour market because services become more readily accessible for this group. This additional target has not yet resulted in changes to the regulation of this type of service.

The Services in the Home Regulation contains a number of exceptions to normal employment law and social security for part-time domestic staff. In summary, these exceptions mean that payment of wages during sickness is limited, protection against dismissal is minimal and there is no entitlement to the safety net of the Sickness Benefits Act, the Unemployment Act or the Work and Income (Capacity for Work) Act. Bearing in mind the fact that it is mostly women who work in the personal and domestic service sector, the main impact of these exceptions is on women. The result is that intrinsically neutral regulations end up making distinctions, and this is indirectly discriminatory in a legal sense. Indirect

discrimination can be justified objectively, provided that the discriminatory regulation serves a legitimate aim and is appropriate and necessary. The Dutch legislature considers that there is an objective justification for the indirect discrimination, but the literature casts doubts on this. Dutch legislation is incompatible with ILO Convention 189 and the UN Convention on Women, due to the exclusion of part-time domestic workers from social security. This is why ILO Convention 189 has not been ratified by the Netherlands. The Netherlands has ratified the UN Convention on Women and should respect the arrangements it sets out. In 2016, the body that supervises that Convention recommended that the Netherlands should amend the Services in the Home Regulation as it was in conflict with the Convention.

In 2014, the Committee on Services in the Home issued advice and made recommendations in relation to the Services in the Home Regulation. The committee concluded that the legal position of domestic workers could not be brought up to par without additional measures in the areas of subsidies or tax. The committee estimated the cost of these measures at EUR 1 billion and, according to the committee, the regulation of household services was in fact all about who would pay the price for normalising the legal position of domestic workers. The Committee on Services in the Home actually made an important recommendation in relation to the use of the Services in the Home Regulation in the care sector. The committee advised abolition of the use of the Services in the Home Regulation in this sector because there was no justification for its use. Unlike cleaning services, there is no alternative, with care services, of providing the service oneself or of hunting down undeclared if the burdens on the private individual increase. It is now clear that the Regulation cannot be used for 'care in kind', but it can certainly still be used by holders of a personal care budget. The government asserts that abolishing the Regulation for PCB holders would lead to an undesirable increase in the administrative burden and charges for households, which is why there has been no ban across the board. The question is, however, whether the government is correct in this assumption. A private individual is free to use the PCB to buy in care from a professional institution that provides care and, if he does so, he will not face any extra administrative employer charges. A PCB holder is therefore only now faced with an increase in charges if he personally opts to be an employer by taking on a home help directly as an employee. That increase is not inherently undesirable, because a private individual is making his own choice for this and is also free to make a different choice. On the other hand, abolishing the use of the Regulation by PCB holders would improve the legal position of around 60,000 PCB workers. Abolition would not result in increased costs for the PCB holder either, because the care is financed by government and the level of the PCB is related to the price of care in kind. If care in kind and the PCB were evened out, in the sense that the Regulation could no longer be used at all, across the board, price discrepancies in the provision of the service as a result of differences in legal positions would disappear, so that the

incentive to opt for a PCB (more care at a lower price) would also disappear. For private individuals, this would remove the undesirable possibility of buying in more care from a PCB worker than the worker should be expected to do, at a low care price, at the expense of the PCB worker's legal position.

As well as the care sector, the cleaning sector is another one where the Services in the Home Regulation is used extensively. Social partners have hitherto looked in vain for a different form of regulation. Trades unions have made efforts to get the terms of employment for domestic workers improved but, for the firms in this sector, the importance of a different form of regulation is mainly commercial. Cleaning firms are obliged to comply with the CLA and this means that the minimum cost price of cleaning is around EUR 22. Households are not prepared to pay this cost price and therefore use workers whose work is done under the Services in the Home Regulation. That form of work is cheaper, so that cleaning firms are not serving a proportion of the market. Normalising the legal position of domestic workers should be accompanied by some form of subsidy or tax break, to prevent a resurgence of undeclared if the Services in the Home Regulation is abolished.

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**Overview of respondents**

1. AWWN (Algemene werkgeversvereniging Nederland), (1 legal advisor and 1 policymaker), 2018, Den Haag.
2. OSB (Ondernemersorganisatie Schoonmaak- en Bedrijfsdiensten), (Head departement employment conditions and 1 policymaker, oct 2018, 's-Hertogenbosch.
3. ABU (Algemene Bond Uitzendondernemingen), (Deputy Director), sept 2018, Lijnden
4. ActiZ (Branchevereniging voor zorgondernemingen, (Senior policymaker), nov 2018, Utrecht
5. Helpling, (Head of Communications), nov 2018, Amsterdam
6. FNV Migrant Domestic Workers (Director Trade Union), april 2020, by phone
7. Eva Cremes, expert, april 2020, by phone
8. SER (Social and Economic Council), (2 policymakers), june 2019, Den Haag
9. FNV Zorg & Welzijn (Director Trade Union), feb 2019, Utrecht
10. Clara Wichmann (2 representatives), sept 2019, Amsterdam