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PHS-QUALITY Project

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



POLICY PAPER: THE NETHERLANDS

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This paper related to the action PHS-QUALITY is made by the beneficiaries and it reflects only the author's view. The Commission is not responsible for any use that may be made of the information it contains.

1. Introduction

This paper includes the major findings of the Dutch national report regarding to the EU-funded project entitled Job Quality and Industrial Relations in the Personal and Household Services Sector (PHS-Quality project). 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. Eurofound uses 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.’¹

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.

¹ 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

2. Summary and conclusions

In this report, we have attempted to answer the research question common to all the national studies as it was stated in the introduction: *How can legal regulation, public policy and the social partners' action improve job quality and fight informality in PHS sector?* It was furthermore an aim in the project to describe the PHS sector in each of the countries involved, in this case The Netherlands.

The analyses have consisted of a general overview of the PHS sector in The Netherlands and sector studies of the cleaning and the healthcare sector, respectively. The *main findings* are:

- Research on household services undertaken by the Dutch Committee on Services in the Home 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.
- 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.
- 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.
- The Services in the Home Regulation actually legalised undeclared work because households are not obliged to deduct premiums or pay tax. It's expected that the amount of undeclared work will rise if households have to pay tax and withhold premiums regarding household services. The Services in the Home Regulation did not tackle all the undeclared work. In a sense there is still undeclared work because many workers in the cleaning services do not have a valid residence status and therefore do not declare their earnings. This also applies to workers who are unfamiliar with the tax-system or because they want to prevent the settlement of income with some kind of social security.
- 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.
- In the cleaning sector, the work is mainly done on an informal basis. In the healthcare sector, work is mainly performed on a formal basis, with workers often employed by healthcare companies. More self-employed people working in the healthcare sector than in the cleaning sector.

- The social partners have also developed a series of initiatives to improve social security claims. These initiatives are relevant for PHS-workers in both the cleaning and the healthcare sectors.

2.1 The general overview

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 work. Organising and regulating this market was intended to promote job opportunities and at the same time suppress undeclared work. 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 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 work. 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.

2.2 The sector studies

The chosen sectors show some concurrence. In the past, for example, it was unclear whether domestic work for which a government-provided compensation exists, fell under the scope of the cleaning CLA or CLA that was written for healthcare services. This discussion has since been settled and it has been agreed by the social partners that the public financed form of household services fall under the scope of the CLA for healthcare services.

The research into the sectors covered the following issues: industry data, collective bargaining and the initiatives of social partners. In the cleaning sector, attention has also been paid to the informal part of the market. This aspect does not play a role in the healthcare sector, at least much less. However, for the healthcare sector, part of the work is performed on the basis of The Services in the Home Regulation

and therefore falls outside the scope of the collective labor agreement, while another part is provided by healthcare organizations that use employees which do fall under the scope of the CLA, while in both cases the work is financed with public money. This distinction (and its undesirability) has received attention in our study.

Industry information: main characteristics

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.² This means that rates are under pressure in 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.³ Estimates by CLA parties indicate that there are around 133,000 cleaners working in the industry every day. 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. No concrete figures are available on the extent of cleaning of private households. It is clear that 13% of households use a domestic worker.

The AZW (employment market, attendance and home care) VVT sectoral report from February 2017 confirmed that job opportunities in VVT (nursing, attendance and home care) 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 home care (72.4%) had a fixed job. 1% were self-employed in nursing and the corresponding figure for home care 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.

Generally speaking, services in the home 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.

Collective Labor Agreements

The CLA for cleaning and window cleaning applies in the cleaning industry. The OSB (employers organization), FNV and CNV Vakmensen set up the *Raad voor Arbeidsverhoudingen Schoonmaak- en*

² Rabobank, figures and trends, March 2019.

³ Rabobank, figures and trends, March 2019.

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. 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. 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.

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 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.

Social Partner initiatives

In both sectors 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 the black economy if the Services in the Home Regulation is abolished.

In 2014, the Committee on Services in the Home (advisory Committee) 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.

Specific sector characteristics

Unlike cleaning services, there is no alternative, with care services, of providing the service oneself or of hunting down the black economy 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.