Overview Comparative Report: PHS-QUALITY, Job Quality and Industrial Relations in the Personal and Household Services Sector.

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Overview Comparative Report

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1. Introduction

This report presents the comparative report of the EU-funded project Job Quality and Industrial Relations in the Personal and Household Services Sector (PHS-Quality project), with the project number VP/2017/004/0049, coordinated by AIAS-HSI, University of Amsterdam. From a comparative and multidisciplinary perspective, the PHS- Quality project studies the existing public policies and social partners' strategies towards personal and household services in ten EU countries, namely, Belgium, Denmark, the Netherlands, Spain, Germany, France, Finland, Czech Republic, Slovakia and the UK. Personal and household services (PHS) cover a range of activities that contribute to the well-being at home of families and individuals, including childcare, care for dependent older people and persons with disabilities, housework services (such as cleaning, ironing and gardening), remedial classes, and home repairs.

The project's main research question is: *How can legal regulation, public policy and social partners' action improve job quality and fight informality in the 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, social partner organizations and NGOs. The project research team has applied a mixed/method approach combining the interview data with desk research and analyses of legislation and collective agreements and other relevant documents from social partner organizations and NGOs, national statistics as well as research reports and academic research studies. This final report of the PHS-Quality project is based on the country reports and policy papers of the project PHS-Quality written by the research teams from 10 European countries (See Jaehrling and Weinkopf 2020a and 2020b for Germany; Mailand and Larssen 2020a and 2020b for Denmark; Jansen and N. E. Ramos Martín 2020a and 2020b for the Netherlands; Mercader Uguina, Gómez Abelleira, Muñoz Ruiz and Gimeno Diaz de Atauri 2020a and 2020b for Spain; Howard and Kofman 2020a and 2020b for the UK; Ramos Martín 2020a and 2020b for Belgium; Ledoux and Krupka 2020a and 2020b for France; Van Gerven 2020a and 2020b for Finland; Martišková 2020a and 2020b for the Czech Republic; and Sedláková 2020a and 2020b for Slovakia.)[1]

[1] All country reports and policy papers can be downloaded at the project website: < https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/phs-quality-project.html>

Personal and household services (PHS) in the countries under analysis includes various types of services from elderly and childcare services to hired cleaning and home renovation aid. In many of the countries under study care services are traditionally strongly linked to the public social services while cleaning services at home are mainly provided via private arrangements, mainly informal in most countries and without the intervention of the public authorities/services. In the recent decades, the share of the market options for the PHS sector has grown, especially in the sub-sector or home care for the elderly in all of the countries under study. Today the services that are offered within the PHS sector go far beyond the traditional care and cleaning services, and include a variety of services such as home renovation, remedial teaching, ICT support etc. In this report, the regulation, the public policy interventions and the initiatives of the social partners on the PHS sector in 10 EU countries are described and we addressed the main research question of the PHS Quality project, namely, how regulation, public policy, and social partners' actions can improve job quality and fight informality in the personal and household services sector.

These are the two PHS sub-sectors under analysis in this report:

Household services
Household services (cleaning, ironing, cooking, gardening, etc.) is a broad category of PHS services. It is partly overlapping with eldercare and with childcare, as these services sometimes form part of the same job descriptions.

Eldercare
In many of the studied countries, care for the elderly is publicly subsidized.

The structure of the report is as follows. Chapter 1 includes an introduction to the PHS sector in the countries under study. Chapter 2 provides an overview of international and European legal framework for domestic work. Chapter 3 focuses on the comparative assessment of the national legislation applicable to workers in the PHS sector and its compliance with the international minimum standards. Chapter 4 describes the initiatives of the social partners to improve the labour and social protection of workers in the sector and the collective rights dimension and Chapter 5 includes the general conclusions and policy lessons about the PHS sector from a comparative/European perspective.

1.1 Precariousness in the sector

The aim of the PHS-QUALITY project is to study, from a comparative and multidisciplinary perspective, the existing public policies and social partners' strategies towards personal and household services in ten EU countries. Personal and household services (PHS) cover a range of activities that contribute to the well-being at home of families and individuals, including child-care, care for the elderly and persons with disabilities, and housework services. PHS are provided within the

household, mostly by women, mainly working part time, with relatively low skills and often from a migrant background. It is a rapidly growing sector where a large share of the work is done informally, which often negatively affects both the quality of work and the quality of the services. Improving the quality of work in PHS is high on the policy agenda of the EU and the ILO. The aim of this project is to analyse legislation, public policies, and social partners' actions/campaigns specifically oriented to protect PHS providers.

In recent years, the PHS sector has been rising rapidly. Reasons for this rise include demographic changes (population ageing, increasing life expectancy, and decreasing fertility rates), the increasing female participation in the labour market and the related difficulties for households to reconcile work and family life and increased migration. Often, PHS are provided informally, outside the reach of public policy, legal regulations and social partners. Indeed, in most countries in the world, domestic workers are not covered by regular labour and social security laws.

The ILO estimates that there are at least 53 million domestic workers worldwide, though the number might be much higher, considering that this kind of work is often provided informally and domestic workers are usually not registered in the social security system (2013 ILO Report on 'Domestic Workers Across the World: Global and regional statistics and the extent of legal protection'). In the EU, the European Commission estimates the approximated magnitude of registered employment in PHS to be around 7.5 million people in the EU. However, the Commission has also highlighted that one of the main characteristics of the PHS sector is a prevalence of undeclared work which is difficult to estimate in real figures due to its nature. At the same time, in the context of the growing need for personal and household services it estimates that 5.5 million new jobs could be created in the personal and household services sector across the EU.

Domestic workers in the EU (and elsewhere) are often precarious workers that are treated less favourably than other workers. They tend to have lower wages, fewer benefits, and less or no social protection than regular employees. Furthermore, because they perform their work in the private sphere of people's homes, they are more vulnerable to physical, verbal, or even sexual abuse by their employers. The differences in race, class, and citizenship status (many are illegal immigrants) exacerbate their unequal position and vulnerability. Other risks, which especially live-in domestic workers confront, are greater isolation, longer worker hours, a larger share of remuneration in kind, lack of privacy and, in extreme cases, limitation of mobility through withholding of passports or identification documents by the employer. The precariousness of domestic workers has also an important gender dimension because most of them are women or girls, while many domestic workers belong to vulnerable groups such as migrants.

The precariousness of PHS workers is to an important extent related to the limits and difficulties associated with the regulation of the sector. One major issue here is the invisibility of domestic workers, as they work in private homes and often without any registration of their activities. This is an obstacle to the monitoring of their situation by governments and social partners. Also, PHS workers traditionally suffer from the exclusion of domestic work from labour and social security regulations (protection gaps). In addition, in a number of countries it is almost impossible for migrants to get a working permit to work in the PHS sector, leading them to work informally.

The PHS reports capture the fragmentation of the legal frameworks applicable to workers and the regulatory complexity prevailing in the sector. For analysing the quality of domestic employment, we deem it useful to follow the approach chosen by Jaehrling/Weinkopf (2020a) for the country report on Germany that is drawing on the analytical framework of “protection gaps" as developed by Grimshaw et al. (2016). Taking that analytical framework as a starting point, the PHS project has identified four major gaps in the protection of workers in the sector: employment protection gap, social protection gap, enforcement gap and representation gap.

The representative of one of the main stakeholders in the sector, the EFSI's Director Aurélie Decker, stressed during the activities of dissemination of the project results that the current COVID-19 crisis has highlighted the precariousness of PHS workers, even the ones formally employed. In this regard, the PHS project examines how PHS workers are often exempted from regular labour standards and analyses the drivers and barriers behind the ILO Convention 189 ratification process. From this point of view, policies aimed to strike the right balance between quality of work and affordability of PHS are the best way to adequately fight informality.

The PHS sector (specifically in the subsectors of household services and home care for the elderly and dependents) is a sector with high rate of precarious employment in most countries under study. In some countries it can be considered a dysfunctional sector due to high turnover of workers, insufficient workers in relation to demand, low pay, lack of career trajectory, insufficient training and no proper recognition of the skills/qualifications. The low pay and lack of career trajectory is linked to the fact that the workforce in this sector is predominantly female and work in the sector tends often to be seen as undervalued and unskilled.

1.2 Dimension of the sector – Comparative Perspectives

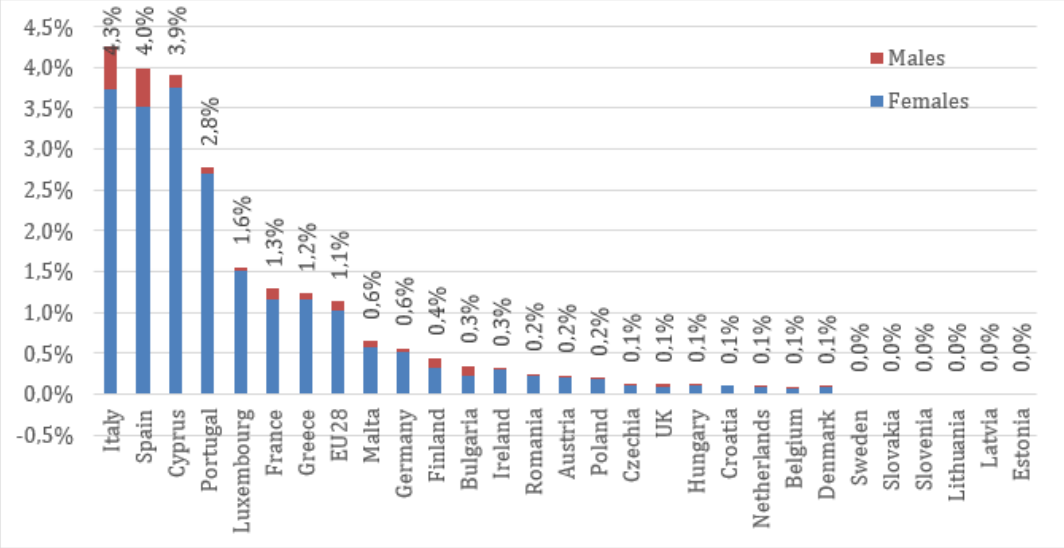
The dimension and structure of labour relations in this sector is not homogenous in all the countries under study. According to the PHS Industry Monitor, (EFSI, 2018), employment in the PHS sector represents almost 8 million jobs in the EU. The figures reveal important differences among EU countries with some countries registering a high number of PHS workers such in the UK (1,8 million workers) France (1,4 million

workers), Spain and Italy (1,2 million) and some others with less than 15.000 workers in the sector (ie. Slovenia). These 8 million jobs amount to almost 4% of total employment in the EU. The Spanish case stands out for an extraordinarily important presence of direct employment in private homes. In other words, in Spain the special employment relationship between the employer, the home-owner, and the worker is the predominant type of employment relationship found in this sector. A simple glance at the graph below reveals that Spain almost quadruples the EU-28 average of people working for households. In many of the countries analyzed in the project (such as Germany, Finland, the Czech Republic, the United Kingdom, the Netherlands, Belgium, Denmark or Slovakia), the proportion of direct domestic employment is much less than 1%, when in Spain it is 4%.

In most EU countries, therefore, the provision of services to the home (in the subsectors of household tasks or home care for dependents or elderly or a combination of both) is institutionally channelled through entities and companies, public or private, which are the ones employing the workers, often with different sort of triangular relationships. Thus, one of the findings of the PHS-Quality project research is that the domestic employment relationship in which the employer is a non-professional natural person is a rarity in the European context. In fact, in many countries this direct relationship belongs to the sphere of the informal economy or self-employment (either bogus or not) and is not often formalized with an employment contract between two private parties.

Of the ten countries which were part of the project, only France exceeds 1 percent of domestic employment. What is surprising about France is that for thirty years this type of employment has had a collective agreement, something unthinkable in the current situation in Spain, the Netherlands or the Eastern European countries analysed in this study. Italy, which was not part of the study, presents a similar situation to the Spanish case. So, according to the available statistics at EU level shown in the graph below, there is a clear division between southern countries (Italy, Spain, Portugal, Greece) and the rest. (See figure 1 below)

Figure 1: Proportion of employment working for households in Europe (average 2016-2018)



Data Source: Eurostat. LFS

In many of the researched countries the term Personal and Household Services is not commonly used and there is no conceptualization of the sector as a whole in relation to employment within the household. In some countries there are some specific policies to develop this sector and to promote and expand employment but in others that is not clearly the case, such as in the UK, NL, Slovakia and Czechia.

The EUROSTAT figures reveal that 91% of workers in the PHS sector are women and that female employment accounts for nearly 7,5% of all female employment in the EU.

A 2016 report from the European Commission reveals that PHS are the third most common identified sector for undeclared work, after the construction sector and hotels, restaurants and catering (European Commission 2016). The data of the Eurobarometer survey on undeclared work in the EU reveals that nearly 12 million EU citizens bought PHS services on the undeclared market in 2013. As the EFSI PHS Industry Monitor illustrates, undeclared work is common in this sector, especially when it comes to household support services where no material is needed and limited technical skills are required. Furthermore, direct employment model relationships can encourage the use of undeclared employment. (EFSI, 2018)

Care at home is a growing employment sector in most of the countries analysed. There has been a tendency to present this sector as a migrant-dominated one but, in most countries, there are clear regional differences (with migrant work concentrating mainly in the big cities) and variations depending of the sub-sectors (domestic cleaning and home care) and often the national average demonstrates quite clearly that this is not always the

case. The British case is quite a good example of that paradox. Although many migrants work in the sector, their geographical distribution is very uneven: on national average 84% of domiciliary care workers were British, 7% had an EU (non-British) nationality and 9% had a non-EU nationality. In London, however, migrants constitute a large proportion of the care workforce. It is also a sector with British-born ethnic minority workers. The proportion of EU nationality workers in this sector has continued to increase over the last years, from 5% in 2012/13 to 8% in 2018/19. However, the influence of Brexit and the proposed, more stringent immigration rules applying to EU citizens after this date, are likely to significantly affect this. Whether the current COVID-19 crisis might lead to pressure on the government to change its hard-line stance towards less skilled EU worker flows remains to be seen.[2]

In Belgium (the EU country with the most advanced regulation of domestic work/PSH services) cleaning services at home are provided through the system of services vouchers. Cleaning services provided in private homes is a large sub-sector in Belgium. According to the data of the National Employment Office (ONEM) 49,782 individual workers were active in the service voucher scheme in 2013.[3] At the end of the same year, 110.878 workers were still under a contract. (Maarten, Romainville, and Valsamis, 2013) Employment within the service vouchers system represented 4.2% of total employment in Belgium.[4] However, the total number of workers in the services voucher system has decreased gradually since 2010 passing from 29.3% (i.e. 40.094 new entrants) to 18.8% (i.e. 28,227) in 2013. The first factor is offset by a peak in the number of service vouchers purchased which shows an increase of working hours per worker. Active companies also decreased between 2012 and 2013 from 10% to 6% respectively. This decrease over a time lapse of a decade shows the stabilization of employment in the system (EFSI et alter, 2015) which can be an important lesson in terms of the effects of extensive regulatory framework for this sector.

A country with extensive regulation but a small size of the PHS sector is Finland. According to the Labour Force Survey data by Statistics Finland (Tilastokeskus), there were 66.000 persons working in the occupation category of cleaners, domestic aids and other cleaning services in 2019 (StatisticsFinland, 2020). The majority of health and care services remain today to be provided by the public sector services and often within established public/private institutions (elderly care, childcare, health care). The PHS sector is, however, changing. The respondents of this research project generally portrayed the transformation of the PHS sector in the 21st century to be led by private providers trying to fill in the gaps that public sector withdrawal leaves behind.

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[2] See Howard and Kofman, 2020a.
[3] ONEM Statistics on services vouchers see: https://www.rva.be/nl/documentatie/statistieken/cijfers/dienstencheques-tot-eind-2015
[4] Ibid.

On the other side of the spectrum in terms of the size of the PHS sector is the Spanish case. The size of domestic work in Spain is disproportionately high (around 4% of the total working population). It is a sector in which the underground economy presents a significant volume, although the regulatory changes of 2011 seem to have had a positive effect on fighting informality in the sector. Nevertheless, according to the data found by the Spanish research team of the PHS-Quality project, in 2019, one third of domestic workers were not registered.[5]

According to the data provided by the Spanish Labour Force Survey in the last decade employment in personal household services has declined slowly but firmly. On average, in 2019 there were 147,791 fewer workers in this sector than in 2010, which represents a loss of almost 20% of the jobs. The reduction in employment has been most intense in the undeclared economy, or at least it has surfaced. In 2010, only 39.8% of domestic work in the Labour Force Survey was reflected in official Social Security records, (the most recent data place it at 67.3%). However, it should be noted that this phenomenon stagnated in 2016, and since then there has been a slight decline. According to the Spanish Labour Force Survey, most of the employees in household services are classified as "domestic employees", personal care workers and childcare workers. Those three occupational groups represent 90% of the people employed by households (and approximately 97% in the case of female workers). In this kind of employment, it is quite common that workers are migrants; for the period 2015-2020, only 44.1% of PHS workers are only Spanish nationals, while 10.5% have dual citizenship.[6] Low-income countries of the European Union (Romania mainly) and Latin American countries represent 80% of the non-Spanish domestic workers.[7]

[5] See Mercader et al. 2020a.

[6] Spain has signed several International Treaties to allow dual citizenship, mostly with Latin American countries. Citizens from these countries (and from the Philippines, Equatorial Guinea, amongst others) only need two years of legal residence to be allowed to apply for the Spanish nationality.

[7] See Mercader et al. 2020a.

2. International and European Dimension

2.1 ILO Conventions and Recommendations and EU legislation

This is the most relevant legislation in the field at international level:

International Conventions

The Domestic Workers ILO Convention No. 189/2011 was adopted by the General Conference of the International Labour Organization in Geneva at its 100th Session on 16 June 2011. The ILO convention 189 regarding domestic work regulates at international level the rights and working conditions of workers in the PHS sector. The ILO Convention No 189 aims to ensure fair and decent conditions for domestic workers by protecting their fundamental labour rights and preventing abuse and violence at work against them. The Convention deals with some minimum requirements related to social policy (health and safety at work, protection of young people at work, maternity protection, working time, etc.), antidiscrimination, freedom of movement of workers and asylum and immigration. Some of these issues are regulated also by EU law.

The ILO Convention No. 189 and its accompanying Recommendation No. 201, consist of a set of international standards aimed at improving the working conditions of domestic workers. This Convention establishes that domestic workers must enjoy the same basic labour rights as other workers, including reasonable hours of work, weekly rest, freedom of association and the right to collective bargaining. Several EU Member States have ratified this ILO Convention, including Finland, Germany and Belgium. This Convention is an important landmark in the protection of domestic workers, also for countries which have not ratified it, as it is influencing the adoption or amendment of national legislation on the protection of domestic workers regarding labour and social security rights. Countries such as Spain and Finland have adopted legal reforms of the laws governing domestic work in line with the ILO Convention standards.

Moreover, improving working conditions in personal services is also an objective of the European Commission, which is encouraging EU countries to implement the ILO Convention and improve the social protection of domestic workers. In 2014, a Council Decision authorising Member States to ratify ILO Convention No. 189 was adopted. The main purpose of this Decision is to promote the ratification of that ILO Convention. The Council Decision allows Member States to ratify those parts of the Convention No 189 falling under the competence conferred upon the Union by the Treaties. Also, in 2012, in the Employment Package, the Commission underlined the role of the implementation of the Domestic Workers Convention in improving working conditions in personal services. In the same year, in the EU Strategy towards the Eradication of Trafficking of Human Beings, the Commission urged

Member States to ratify all relevant international instruments, agreements and legal obligations which can contribute to addressing trafficking in human beings in a more effective, coordinated and coherent manner, including the Domestic Workers Convention. Furthermore, trade unions and non-governmental organisations are running an international campaign to promote the ratification of the Domestic Workers Convention. In this context, several EU Member States have indicated their intention to ratify the ILO Convention. Moreover, in the context of the European Pillar of Social Rights, the Commission has put forward a number of legislative initiatives related to the information workers have to receive when entering into employment, and access to social protection for vulnerable workers. In this setting, the Commission has revised the Written Statement Directive and renamed it as the Directive on Transparent and Predictable Working Conditions. This directive gives employees starting a new job the right to be notified in writing of the essential aspects of their employment relationship. However, it appears that many workers in the EU do not receive a written confirmation of their working conditions, nor all the information they need in a timely manner. This includes most importantly the workers in the domestic work sector.

As explained in the EU Statement related to the ILO Governing Body, 319th session on 16 – 31 October 2013, "*Follow-up to the adoption of the resolution concerning efforts to make decent work a reality for domestic workers worldwide: Progress report*", building and sharing knowledge about domestic workers is particularly important. The EU welcomes new methodologies for assessing the situation of domestic workers in a context of high informal employment and statistical and legal reviews across the EU on that topic.

Another important convention in this context is ILO Convention 94 on labour clauses, which is relevant with regards to public procurement in PHS that are provided by private contractors. The ILO convention 94 stipulates that ‘contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour, which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on’ (ILO Convention 94, article 2).

2.2. Policy options and perspectives of the stakeholders

The overall objective of the PHS-Quality project is to identify good regulatory practices capable of improving both the quality of services and jobs in the sector and ensure greater professionalization of domestic workers. The project research team has analysed the practices in 10 member states (Belgium, Denmark, the Netherlands, Spain, Germany, France, Finland, Czech Republic, Slovakia and the UK). These countries are selected because of the different ways in which they have been dealing with the PHS sector, from which a variety of lessons can be learned.

In some of the selected countries there is legislation regulating the provision of services at home and the quality of PHS work. In many of them, there has been public intervention supporting the use of these services through "vouchers" and/or tax deductions. The cases of Belgium, Denmark, Finland, and France have been selected as examples of successful public intervention measures aimed at improving job quality in the sector. Belgium, Spain, and Germany have adopted extensive labour and social protection legislation for domestic workers, while in the Netherlands, UK, Czech Republic and Slovakia, the legal framework does not fully conform with international labour standards for this type of work.

From the selected countries in this study, only Belgium, Finland and Germany are formally obliged to comply with the obligations of the ILO Domestic Workers Convention, 2011 (No. 189), as ratifying countries. Moreover, in France, despite the non-ratification of the Convention, there is a clear acknowledgment of the need to improve the working conditions of workers in the PHS sector through public intervention measures supporting the use of these services. This kind of public policy measures have been pointed out in 2014 by the Dutch Commission on regulating domestic services, as worthy cases which could inspire policy reform.

Public policy tools such as co-financing schemes facilitating an affordable access of users to personal and household services have proven successful in reducing the share of undeclared work in the PHS sector and are potentially beneficial for the quality of the services and favourable for a better work-life balance, especially of female workers. Without these public support measures, formal employment in the PHS sector is often too costly for a large part of the population and the formal market for PHS remains quite limited.

In the EU countries where public supporting measures and/or legislation protecting domestic workers have been adopted there has been a positive effect on the creation of jobs in the PHS sector. According to the White Book on Personal and Household Services in Ten Member States, published by the European Federation for Services to Individuals (EFSI), more than 150.000 jobs have been created in Belgium, 250.000 jobs in Germany, and 126.000 jobs in Spain. In France, the system of the CESU vouchers (Cheque Emploi Service Universel) and the so-called "Borloo Plan", addressing simultaneously a number of policy issues related to personal and household services such as labour law, social protection legislation, and quality controls, has resulted in the creation of around 500.000 new formal jobs in the sector. The examples range from several instruments adopted in Germany to support creating formal employment in this sector, which enable private households to use a simplified procedure for registering their domestic workers, to the adoption of new legislation protecting domestic workers in Spain. Other cases, such as the combined use of the tax scheme for domestic help and care vouchers in Finland and the childcare voucher in the UK are of interest too. Attention has also been paid to the public policies in the Netherlands, supporting provision of care at home for the elderly and for children, and other support

policies, such as a service vouchers scheme for domestic work. Finally, the regulations of domestic work in Czech Republic and Slovakia are relevant cases illustrating the situation of the PHS sector in Central-Eastern European countries, where the sector still lacks a proper regulatory framework.

According to the opinion of a representative of a large European organisation in the area of PHS, the European Federation for Services to Individuals - EFSI, (representing national associations, employers' organisations, PHS providers and companies involved in the development of personal and household services at EU level) the ILO convention 189 on domestic work led to further reflection on the working conditions and social protection of domestic workers at the national level in some EU countries. The EFSI (European Federation for Services to Individuals) is currently involved in a project dealing with the health and safety standards in the domestic work sector as established in the ILO convention. EFSI is a partner in this project with OSHA, the European Agency for Safety at Work. They have launched a campaign to curb the use of hazardous substances in the workplace. The EFSI is promoting the share of best practices regarding health and safety in the PHS sector. The project includes in the agency's website a database describing best practices and standards in all sectors. In this database, reference is made to ILO Convention 189, in particular, for the safety of domestic workers.

3. Comparative legal framework and impact of the ILO Convention at national level

3.1 National legislation on domestic work and impact of the ILO Convention on domestic work

In the country reports of the PHS-Quality project the research teams have analysed the impact of the international legal framework (ILO Convention 189 and ILO Recommendation) at national level. We have noticed clear differences between those countries which have ratified the ILO Convention and those which did not yet. In any case, there is a widespread perception within the stakeholders interviewed that in all countries under study the ILO convention have steered the debate on the need to increase the labour and social protection needed for domestic workers and have led to further reflection on the working conditions and social protection of domestic workers at the national level in most EU countries.

a) Countries which have ratified the ILO Convention 189

Belgium[8]

[8] The following text about the Belgium case is an excerpt from Ramos Martin 2020a.

Belgium ratified ILO Convention No. 189 on decent work for domestic work in June 2015. Most of the interviewees mentioned that the impact of the ratification of the ILO Convention on domestic work is Belgium has been very limited in terms of improving the working conditions and social protection of the workers in the sector. Some stakeholders mentioned that in Belgium the protection of those workers was relatively high in comparison with neighbour countries in the EU. However, some legal changes in the applicable national legal framework have been noticed. Following the ratification of the Domestic Workers Convention some adjustments of the Belgium law were made, aligning the Belgium domestic legislation with the ILO minimum standards established in Convention 189. Belgium implemented the Royal Decree of the 13th of July 2014 which amended the Belgian legislation to fully comply with the Convention.[9] With the adoption of that Royal Decree domestic workers became "regular" workers, enjoying the same social protection as all the other workers and the same labour rights as set out in the Labour Contract Act.[10]

The main changes introduced by this Royal Decree are:

- The legal definition of 'domestic worker' was modified.
- The specific regulation of the domestic workers is abolished: all domestic workers are subjected to social security;
- The exception on the registration at the social security system of domestic workers in case of a weekly working time of less than 24 hours was abolished. In other words, everyone who performs manual domestic work in the context of an employment contract must be registered at the National Social Security Office, irrespective of the number of working hours per week.
- Only certain non-manual intellectual activities, so called "occasional activities", are still excluded from registration at the social security system, as long as the employee is not exercising these activities professionally or regularly and as long as they do not exceed the limit of 8 hours a week. "Occasional activities" examples include: babysitting, doing groceries, escorting less mobile persons etc.

Moreover, in order to comply with article 13 of the ILO Convention on domestic work, which establishes that domestic workers have the right to a safe and healthy working environment, the Law of the 15th of May 2014 expanded the scope of the Act of 4 August 1996 on the well-being of workers to domestic workers.[11]

The most important legislation regarding the PHS services (domestic work) in Belgium is the services voucher system. The Act of 20 July 2001

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[9] Koninklijk besluit van 13/07/2014 tot opheffing van de artikelen 5 en 18 en tot wijziging van artikel 16 van het koninklijk besluit van 28 november 1969 tot uitvoering van de wet van 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders.

[10] Labour Contracts Act of 3 July 1978.

[11] Wet van 15 mei 2014 tot wijziging van de wet van 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk, wat de dienstboden en het huispersoneel betreft.

on promoting the development of services and proximity employment regulates the services voucher system in Belgium.[12] This system was implemented by the Federal State in 2004. Workers paid with services vouchers have a services vouchers employment contract. This is a normal employment contract with some specific features. The employment contract may be fixed term or open ended, full time or part time. A worker can serve several successive fixed-term employment contracts with the same employer without this leading to an open-ended employment contract. However, this is only possible for a limited period of time, which varies between three and six months. The workers have an employment contract, earn a wage corresponding to legal wage scales, accumulate social security rights and are insured against accidents at work. The user dates and signs the services voucher(s) and hands one voucher per worked hour over to the worker. Only the vouchers can be used to pay for hours worked. The worker passes the services vouchers on to the recognised company, which in turn sends them to the issuing company in charge of refunding the value of the services voucher to the recognized company.

Finland[13]

Following the ratification of the ILO convention on domestic workers by Finland several measures have been adopted to remove exceptions and promote the principles of equality and equal treatment for those workers in the legal regulation and labour law. The main purpose of those measures was to equalise the rights of domestic workers with those of regular employees. In the previous situation, the Act on the employment of Houseworkers (951/1977) had regulated the protection of household workers. The law covered workers who work in and for a household or households. Household workers were also covered by the Employment Contracts Act (55/2001), the regular act that applies to employment contracts.

Prior to the ratification of the ILO Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201), the Finnish level of protection of domestic workers was not in line with the ILO convention. The Act on employment of Houseworkers (951/1977) did not cover all domestic workers and excluded for example those who worked short time (shorter than one month or only one day a week or worked less than three hours a day or those who care for the sick or members of the employer's family who live permanently in the employer's household.)

The process of the ratification was reasonably quick in Finland. The Convention and its Supplementary Recommendation of Convention 189 was adopted 17 December 2012 by letter from the Ministry of Employment and the Economy to the Parliament as required by the ILO Statute. Following the EU Council adopted Decision (2014/51/EU)

[12] Loi coordonnée du 20 juillet 2001 visant à favoriser le développement de services et d'emplois de proximité.

[13] The following text about the Finish case is an excerpt from Van Gerven 2020a.

authorizing the Member States to ratify the European Union in the interests of the decent work of domestic workers, Parliament was consulted in 2013 by a government letter (U 17/2013 VP) on the Commission proposal for a Council decision (ratification ILO Agreement on Household Workers).

In the ratification process, initial statements were requested from the tripartite bodies: from the government (Ministry of Social Affairs and Health, Ministry of the Interior), trade unions (SAK, STTK, AKAVA), employers organisations and business (Finnish Entrepreneurs (Suomen Yrittäjät), Confederation of Finnish Industries (Elinkeinoelämän keskusliitto, EK), State employers (Kunnallinen työmarkkinalaitos), municipal employers (Valtion työmarkkinalaitos). The government's proposal was also discussed both in the board of the Ministry of Economic Affairs and in the Finnish ILO Advisory Board. As regards to required changes in the existing labour law, the proposal was discussed in a tripartite working group chaired by the Ministry of Employment: including the Ministry of Social Affairs and Health, Confederation of Finnish Industries EK, Finnish Federation of Trade Unions SAK Association, STTK Association, AKAVA Association, State employers, Municipal employers, Church Labour Market Association and Finnish Entrepreneurs (Suomen Yrittäjät). On 8 January 2015, the Government of Finland deposited with the ILO the instrument of ratification of the Domestic Workers Convention, 2011 (No. 189) and made Finland the 17th ILO Member State and the fifth European country to ratify this specific instrument.

To ratify the Convention, Finnish government made several amendments to national legislation. The Act on Household workers (156/1977) was repealed and all household workers became covered by the general labour law. In this way, domestic workers were accorded equal status with other workers including working time and annual leave. The repeal of the law meant that protection of working time law would be extended to, except for the members of the family of the employer, to all household workers. The change also made it possible to do night work in nursing at households. The Working Time Act – now covering all domestic workers – set the regular working time to 8 hours a day to all new employment contracts for domestic workers. Under the old law for domestic workers, the regular working time had been longer (9 hours a day). The working time regulation of domestic workers was equalized with the legislation applicable to regular workers.

Germany[14]

Germany was among the first European countries to ratify the ILO convention 189 in 2013. The convention entered into force one year after the ratification, in September 2014. The ratification was welcomed by all political parties, academic observers and NGOs, in particular with a view

[14] The following text about the German case is an excerpt from Jaehrling /Weinkopf 2020a: pp. 13-15.

to its importance for migrant domestic workers. This was against the background of a number of cases of severe violations of basic labour rights and of physical violence that had received media coverage and legal disputes over the previous years – most notably cases of female domestic workers working for diplomats. The adoption of the convention was however not perceived in the first place as a stimulus triggering changes in the legal framework, which would e.g. abolish exemptions for domestic staff and provide for equal rights. As a detailed expert assessment commissioned by the trade union financed *Hans-Böckler-Stiftung* found, the German law already provided for the minimum requirements laid down in the convention (Kocher 2012). There was a broad consensus, thus, that the ratification would not require any legal adjustments in order to provide for equal rights – as stated in the governments' draft for the law implementing the ILO convention.

The policy process accompanying and following the ratification however revealed diverging views regarding the question if and which measures should be taken in order to combat protective gaps resulting from *a weak enforcement* of existing rights or from a lack of other measures ensuring the effective implementation of certain minimum standards laid down in the ILO convention and the accompanying ILO Recommendation 201. The ILO convention 189 in fact requires signatory states not only to implement equal rights, but also to take measures to ensure the effective promotion and protection of domestic workers' rights and to ensure that they enjoy conditions that are not less favourable than those applicable to workers generally.

In the context of the ratification process, however, the government in 2013 concluded that there was no need to take additional measures. The national law implementing the ILO convention spells out in detail not only how domestic workers are principally entitled to the same rights as employees generally. It also specifies which general measures exist to effectively protect workers' rights, and that these measures are no less favourable for domestic workers (Bundesrat 2019). In its statement on the accompanying ILO Recommendation 201, the government also refers to a number of specific measures that are of particular relevance for the mostly female domestic workers, and which had been initiated previously to, and independently of, the Convention. This included for instance the setting up of a national hotline for women affected by domestic violence and other types of violence in 2012; and the governments' support, since 1999, for the networking of NGO's and counselling centres specialized in the field of human trafficking and women who have experienced violence in the migration process ("*Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess",* KOK e.V.).

By contrast, parties from the political opposition and other organisations have called for amendments to the law and additional measures in order to effectively combat existing protective gaps resulting from

a) a weak enforcement of basic rights,
b) low minimum labour standards for workers generally,

c) a lack of specific regulatory measures addressing in particular the situation of migrant domestic workers.

The following points were raised in the debate accompanying the implementation process, as well as later on in the reporting procedure linked to the adoption of the ILO Convention:

- The **low level of wages** for domestic workers across all employment forms. The political position of Social Democrats, Green Party and the Left reiterated their claim to introduce a national minimum wage of € 8.50 – which at the time did not yet exist – or to at least introduce an industry-specific minimum wage by declaring the relevant collective agreements generally binding.
- The **social protection gaps for mini-jobs** which also affect mini-jobs in private households (see several statements in the debate in parliament, Deutscher Bundestag 2013 and Scheiwe et al. 2014).
- A lack of specific regulations and other measures targeting the situation of **migrant domestic workers working for diplomats** who even in case of severe labour exploitation and abuse are protected from legal prosecution by their diplomatic immunity (see Deutscher Bundestag 2013)
- A major point of criticism was that the law implementing the convention neglected to address the specific situation of migrant domestic workers working and living in private households with persons in need of care, the so-called **'live-ins'**, mostly from Eastern European countries. The most controversial issue was that the government did not merely abstain from introducing specific measures targeting this group, but to the contrary contributed to legalize their unequal treatment by making use of the possibility provided by the ILO convention to introduce a clause allowing for exemptions from the national law on working time. This exemption was justified by the specific characteristics of domestic work (Deutscher Bundestag 2013; Kocher 2014; Scheiwe et al. 2014; Scheiwe 2015; DGB 2016).

Many of these points were also raised by the German Confederation of Trade Unions (DGB) in their 'Observation' submitted to the CEACR (ILO committee responsible for supervising the implementation and application of ILO Conventions) in 2015, on the occasion of the first German government report on the application of Convention 189. The CEACR in turn in their response to the Government report took up many of these points and required the German Government to indicate the measures taken to address these points (CEACR 2016).

Some of the points raised above have been addressed by policy measures after 2013, not necessarily as a result of, but in line with, ILO convention 189. One of the most important measures was the introduction of the statutory minimum wage in 2015, as a result of a longstanding lobbying process initiated by service sector trade unions (in particular NGG and Verdi), and later on supported by a broad coalition of trade unions and political parties. In a statement at the occasion of the fifth Anniversary of the Convention 189, the ILO still welcomed this decision as an important

step helping to improve labour conditions of domestic workers in Germany.[15]

While the ratification and implementation of the ILO Conventions 189 in Germany has done little to change the legal situation of migrant domestic workers, it has arguably supported – although not initiated in the first place – a number of initiatives aimed at improving the enforcement of labour standards for domestic workers. This includes efforts of the Federal Foreign Office to inform Diplomats and their prospective domestic workers about their minimum rights. Moreover, a very important organizational infrastructure for domestic workers are counselling services provided by Trade Unions, NGOs and charitable organisations and partly financially supported by the government. These aim to help domestic workers to claim their individual rights and to exit situations of severe labour exploitation. Another example of good practice are non-profit intermediary agencies set up by charities as an alternative to for-profit intermediaries that match supply and demand of 'live-ins' domestic workers.

b) Non-ratifying countries with medium-level compliance on international labour standards on domestic work

UK[16]

The UK has not signed or ratified the ILO Domestic Workers Convention 189. The UK legal framework in relation to labour standards for domestic workers and home care workers, which applies to all four parts of the UK, does not fully conform to the labour and social security minimum standards established in that Convention. During the process of adoption of that Convention at the ILO the UK government opposed the ILO Convention on grounds that this category was already covered by the national legislation. However, it can be said that the legal framework does not adequately recognise paid care work as employment in relation to pay and working time. There is sufficient legislation relating to the protection of workers' rights, minimum wage and rights to social security benefits, but to qualify for these rights one has to be classified as either an employee or a worker, with the former having more rights than the latter. However, establishing whether someone is a worker/employee or a self-employed person is not easy and domiciliary care workers are employed in a number of different ways. Many are engaged on highly individualized contracts and both zero-hours contracts and self-employment are on the rise.

A factor that compounds the difficulty here is that domiciliary care work takes place within the private home and that there is a great reluctance of the government to regulate in this private household domein. Work in the

[15] see https://www.ilo.org/berlin/presseinformationen/WCMS_491326/lang--de/index.htm

[16] The following text about the UK case is an excerpt from Howard and Kofman 2020b.

private space is exempted from certain legislation, for example, the Health and Safety at Work Act 1974. Another factor that complicates issues in this area is the fact that enforcement in labour law can be problematic as it is often based on an individual claimant taking a case to a tribunal. This is aggravated by the fact that many workers are not aware of their employment rights and that enforcement is even more complicated if the employment relationship or employment status is unclear, as it is for many domiciliary care workers.

Denmark[17]

With regards to the legal framework related to the whole of the PHS sector, Denmark has voted for, but not ratified, the ILO convention 189 regarding domestic work. This is partly because Denmark has no tradition for automatic ratifications of ILO conventions and because both the right-wing and the center-left governments along with Local government Denmark found that only a very small number of PHS providers would benefit from the new regulation following a ratification and that the regulation could interfere with existing collective agreements. The main trade unions confederation (LO, now FH) initially supported the ratification, but ended up supporting the other main actors' position. Another PHS-relevant convention is ILO convention 94 on labour clauses, which Denmark has ratified.

Despite the non-ratification of the ILO convention 189, Denmark has an extensive legal framework directly or indirectly relevant for PHS-workers. The reason why that Convention has so far not been ratified is down to the main actors' fear of unnecessary intervention in legislation and the collective agreements. Relevant pieces of legislation applicable to workers in the PHS sector include the Social Services Act (specifying most types of social service provided by the municipalities), the Housing-Job Scheme (tax relief of PHS activities), Holiday Act, Health and Safety Act, the Salaried Employees Act, various parental leave legislation, the House Assistant Law (targeted at PHS services in the agriculture sector) and the Written Statement Act. Also the au pair regulation, which has been tightened twice in recent years and has contributed to a decline in the number of au pairs in Denmark, is part of the legislative framework. On the top of these laws are the rules and regulation laid down in the collective agreements, which in line with the industrial relation tradition of strong collective bargaining in Denmark, display a major role in regulating the rights and working conditions of workers. Thus, the collective agreements provide an important framework for pay and conditions for PHS workers. The social partners have also developed a series of initiatives to improve pay and conditions. These initiatives are relevant for PHS-workers in both the cleaning and the elder care sectors, but are not always limited to these. Several of these initiatives are linked to the collective agreements.

[17] The following text about the case of Denmark is an excerpt from Mailand and Larsen 2020a.

The legal framework and policy initiatives are relevant for both sectors. For cleaning PHS, especially the labour clauses, the Housing-Job Scheme and the Health and Safety Act is important, the latter both because of its regulation of work processes on the ground and because of the loop-holes it includes regarding self-employed. For eldercare PHS the labour clauses should also be emphasized, in that public procurement is used extensively also in this sector. Apart from that, the fundamental change in the Service Act with the introduction of rehabilitation (aiming at making the elderly able to perform parts of the tasks that the home helper previously provided) has had a huge impact on the work of the home helpers as well as for the extent and type of help, the elderly receive.

France[18]

France has not ratified ILO Convention 189 and, until recently, this convention was almost absent from the national debate. The first major mobilisation in France in favour of ratifying C189 was organised on June 17th 2017, when several organisations – an alliance of unions and non-profit associations- called a demonstration on Place du Trocadéro in Paris. On 16 June 2018, the same alliance organised a second gathering. In 2019, a petition was started by the unions to demand ratification of C189, but no further actions have taken place.

In France the level of legal protection for workers in the PHS sector varies widely depending on the legal status of the domestic worker. Different levels of legal protection have been noticed. The research has identified three main groups of workers corresponding to the three collective bargaining branches: the private domestic employees (*salariés du particulier employeur*, SPE), the non-profit home-help branch (*branche de l'aide*, *de l'accompagnement, des soins et des services à domicile* BAD) and the branch of personal service enterprises (*entreprises de services à la personne*, SAP).

PHS personnel employed directly by individuals (SPEs) do not benefit from most of the protective provisions in the Labour Code. Specifically, Article 7221-2 states that *"only applicable"* to these employees are those provisions of the code pertaining to sexual harassment, psychological harassment, the Labour Day public holiday (1 May), paid holiday leave, special leave for family reasons and medical supervision. Case law has extended this list to statutory minimum wage,[19] severance pay[20] concealed work.[21] The jurisdiction of employment tribunals and collective bargaining has also been recognised as applicable to them.

[18] The following text about the French case is an excerpt from Ledoux and Krupka 2020a.
[19] Court of Cassation, Social Division, 31 March 1982: Bulletin civil V, no. 242, p.178 (quoted by Géraldine Laforge 2003).
[20]Court of Cassation, Social Division, judgment no. 10-11.525 of 29 June 2011.
[21] Court of Cassation, Social Division, judgment no. 12-24.053 of 20 November 2013.

Nonetheless, many other areas of general labour law are not applying to SPEs**,** including the provisions concerning employing enterprises and legal persons. Case law has established that all provisions of the Labour Code pertaining to the definition of effective work, working hours, part-time work, night work, overtime, rest periods, health and safety at work and economic redundancy do not apply to SPEs. They are also excluded from any official scrutiny of their working conditions, since the Labour Code states that, when work is performed in *"occupied dwellings, inspectors may enter only with the prior permission of the occupants"*.[22]

However, the collective agreement for SPEs[23] and its codicils introduced employee's rights in a number of areas in which they were exempt from general Labour Code. On some points they even went beyond the statutory provisions of the Labour Code, especially for social protections in the broad sense of the term. But in certain cases, the social partners have neglected to systematically track the evolution of general law and the balance of power between employee and employer representative organisations puts the former at a disadvantage: certain aspects of labour law have not been "picked up" fully in the collective bargaining arena or have even remained far removed from general law[24].

Employees of service providers working in the PHS sector are, in principle, protected by labour and social security law and they are also covered by the applicable collective agreements. However, French collective labour law has seen a series of reforms over the years, which have gradually transformed the hierarchy of standards[25]. Consequently, at present, a company agreement always takes precedence over a branch one except in a limited number of areas[26], namely: hierarchical minimum wages, job classifications, codetermination funds, professional training funds, complementary collective guarantees (mutual and provident funds), the terms and duration of trial periods, workplace gender equality, certain measures pertaining to working hours (minimum part-time hours, overtime premiums, etc.) and the total duration of fixed-term contracts. Nevertheless, the so-called "locking clauses" at branch level can prevent company or organisational agreements less favourable for employees. They could remain in effect after 1 January 2019 insofar as they cover a specific group of domains defined in law (known as "Block 2")[27] and have been confirmed by the social partners.

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[22] Article L611-8, Labour Code.
[23] Adopted in 1999, extended branch-wide in 2000.
[24] For example, the collective agreement still provides for a 40-hour working week, for instance, whereas general law (which is not applying to SPEs) has been moving towards 35 hours.
[25] especially with Labour Act of 8 August 2016 and the so-called Labour Ordinances of 22 September 2017 (also known as the "Macron Ordinances")) for organisations (SPEs are not concerned by this)
[26] listed in Article L2253-1 of the Labour Code
[27] "Ordonnances Macron: l'accord d'entreprise a la primauté" [Macron Ordinances: the company agreement takes precedence"], RF Social 178, October 2017.

One of the main problems in French law is the applicability of working time legislation to the workers in the sector. PHS personnel are subject to a vague definition of the dividing lines between work, non-work and overtime, especially for SPEs. The SPE's agreement still provides for three forms of remuneration below the statutory minimum wage for "attendance" duties without effective performance of work.[28] By contrast, the extended provisions of the two other collective agreements (BAD and SAP) do not include such arrangements.

Regarding social protection, employees in the PHS sector have automatic basic social-security cover for sickness. They are also covered by supplementary sickness insurance, incapacity for work and disability insurance, which have been negotiated by the social partners of the three branches. Unemployment benefits and pensions are still a concern for workers in the PHS sector. An important proportion of SPEs employees fail to validate their entitlement to unemployment benefits. The situation is better for employees of service providers. When it comes to Social Security pension entitlements, the differences between SPEs and staff employed by service-provider organisations are even more significant. However, the social partners in the SPE branch have included provisions for a supplementary pension scheme in their collective agreement[29], but in the average pension paid out under this plan per month is very low[30].

Concerning training, the three applicable collective agreements include professional training policies funded through dedicated levies over and above those provided for by law.

Spain[31]

Spain has not ratified ILO Convention 189 (2011). The Spanish legal framework regarding domestic work is basically consistent with the main provisions of this Convention. However, there are some aspects which should be changed in the national law to adapt to the Convention, and these aspects are the main reasons why Spain has not ratified the Convention yet. These aspects have to do with the social security protection of domestic employees.

Domestic employees have a special scheme of social security which is different from the general regime applicable to employees in general. The main difference between domestic workers and employees in general affects unemployment protection. While employees in general enjoy

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[28] Article 6, Collective Agreement for Private Domestic Employees, extended by decree of 7 March 2016.
[29] Article 27, Collective Agreement for Private Domestic Employees.
[30] IRCEM (2019), *Déclaration de performance extra-financière 2018* [Non-Financial Annual Statement, 2018], p. 12 <https://www.ircem.eu/wp-content/uploads/2019/07/Groupe-IRCEM_Rapport_RSE_2018_DER.pdf> accessed on 5 December 2019.
[31] The following text about the Spanish case is an excerpt from Mercader Uguina, Gómez Abelleira, Muñoz Ruiz, and Gimeno Diaz de Atauri, 2020a.

unemployment protection, domestic workers do not. The extension of unemployment protection to domestic workers would probably entail an increase in the social security contributions paid by the employer and the employee.

The employment relationship of domestic workers is considered a "special employment relationship" by article 2 of the Labour Act[32]. A special employment relationship is an umbrella concept used in the Spanish Employment Law to identify several employment relationships which have a specific statutory regulation, partly different from the common or general regulation of the employment relationship. The specific statutory regulation of the special employment relationship of domestic work is to be found in the Royal Decree 1620/2011 of 14 November.[33]

The fact that this special employment relationship has a specific or ad hoc regulation, different from the general employment regulation is problematic. If certain categories of workers are treated differently, the main problem that arises is one of possible discrimination. According to the case law established by the Constitutional Court, the different treatment is allowed under the Constitution as long as it has an objective and proportionate justification. Thus, if two situations are substantially different, they may be treated differently in the regulation.[34]

Domestic work has an additional important characteristic, which is its feminization. In light of the preponderance of women among domestic workers, the differences in the regulation deserve a closer or stricter scrutiny. Domestic workers get less legal protection when it comes to termination of employment, do not have access to unemployment protection, do not fall under the scope of the protection afforded by the Wage Guarantee Fund ("Fogasa") and are excluded from the scope of the occupational safety and health legislation. In addition to these "statutory" differences, the reality of domestic work practically precludes the exercise of the right to collective representation, the right to collective bargaining and even the right to strike, all of them constitutional rights.

The two main work arrangements for the provision of care and related services in a household are the "domestic employment contract" (DEC), which has a special regulation, and the common or general employment contract. The DEC is the contract that must be used where the natural

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[32] The Labour Act is the "Estatuto de los Trabajadores", approved by Royal Decree Law 2/2015 of 23 October. https://www.boe.es/eli/es/rdlg/2015/10/23/2/con

[33] Full text (in Spanish) can be found here:
https://www.boe.es/eli/es/rd/2011/11/14/1620/con

[34] There are judgments by the Spanish Constitutional Court dealing with the justifying of different treatment among different categories of employment relationships. In its decision 56/1988, the Constitutional Court declared that the existence of different regulations for different categories of workers is in accordance with the Constitution as long as it is justified on the special features of each work. In another case (decision 26/1984), the same Court held that the different regulations are not arbitrary or unreasonable because they are related to the special condition of the workers, the place of work or the kind of tasks or services carried out.

person in the household is the "employer" of the domestic worker. By contrast, if the employer is the recipient of care services provided by a third party, then the domestic worker assigned is an employee of that third party, and the employment relationship between them is a regular one.

The situation with workers working for a natural person who acts as his/her employer is generally worse at least for the following three reasons.

1. There are more chances that the relationship is informal, in the sense that there is no written agreement, no payslips, and no social security registration.
2. The natural person is not a professional employer, which has a great impact in many areas of the work relationship: health and safety, hours, leaves, etc. The administration or management of the relationship is usually poor.
3. There are virtually no collective relations, which entails that there is not a single collective agreement protecting these domestic workers.

c) Non-ratifying countries with low compliance with international labour standards for domestic workers

The Netherlands[35]

The legislation applicable to domestic workers in the Netherlands, the Services in the Home Regulation is not in compliance with ILO Convention no. 189, *Decent work for domestic workers*, among other reasons, because 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 of the Convention that one of the main aims for the adoption of the Convention 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.

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 not in line with the minimum standards established by the ILO Convention. That situation represents an obstacle to ratifying the Convention. A ratification will require a previous adjustment of the current primary and secondary Dutch

[35] The following text about the case of the Netherlands is an excerpt from Jansen and Ramos, 2020a.

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.[36] The Convention has not been ratified, however, because the Services in the Home Regulation is not in compliance with the Convention.

Besides, the Services in the Home Regulation is most likely in breach of the UN Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW (an international convention which has been indeed ratified by the Netherlands). (Bijleveld, L. and Cremers E. 2010) 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 exceptional situation for part-time domestic workers, is applying stereotypical concepts as it keeps on 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. (Bijleveld, L. and Cremers E. 2010) The body that supervises the Convention on Women is the Committee on the Elimination of Discrimination Against Women (CEDAW), and in 2016 the CEDAW Committee instructed the Netherlands to improve its safeguarding of the Convention as regards the legal position of part-time domestic workers.[37] In summary, the CEDAW Committee considers that the exception situation should be abolished. This Committee has therefore recommended an amendment to the Services in the Home Regulation such that domestic workers will gain full social and labour law protection.

It can be argued that the Services at Home Regulation applicable to domestic workers in the Netherlands is also in breach of the EU regulation on equal treatment. 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

[36] Parliamentary Papers II, 2014/15, 29427, no. 100.
[37] The conclusion of the UN Committee on Women's Law in 2016. The Netherlands must safeguard women's rights better, pp. 35-38.

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 in the Services at Home Regulation relating to labour law and social security rules for part-time workers, is that women are treated unequally.[38]

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,[39] but this is a distinction that is objectively justified.

In this regard, the Dutch legislator has provided the following arguments for the exceptions under labour law.[40] 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 relevant 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. (Asscher-Vonk, I. 2006)

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.[41] 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 the black

[38] See also: Parliamentary Papers II, 1986/87, 19810, no. 4.
[39] Parliamentary Papers II, 1986/87, 19810, no. 4.
[40] Parliamentary Papers II, 1986/87, 19810, no. 5.
[41] Parliamentary Papers II, 1985/86, 19261, no. 3.

economy.[42] There is case law at EU level which might support the position of the Dutch government to maintain the exceptions included in the Services at Home Regulation. In *Nolte* and *Megner*[43], - both CJEU judgments 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. (Bijleveld L. & Cremers E., 2010)

Slovakia[44]

In the General Conference of the International Labour Organization in Geneva at its 100th Session on 16 June 2011, the Slovak delegation voted in favour of adoption of the Convention. The Ministry of Labour, specifically its Department of Labour Relations in cooperation with the Department of Foreign Relations, prepared in 2011 a detailed legal analysis of the ILO Convention 189/2011.

Since domestic work shows some special features (e.g. an employee may also be living in the employer's home), in order to regulate rights and obligations of domestic workers, Slovakia would need to define and distinguish domestic work and domestic workers in the Labour Code. Hence, the analysis states that legal regulation in Slovakia is not in accordance with the definition of domestic worker in the ILO Convention.

The analysis states that the legislation is in accordance with Article 3 of the Convention on human rights of domestic workers, because protection of fundamental human rights is guaranteed universally to all persons, i.e. to all employees, through the Constitution and the related legal regulations. Similarly, according to the ministerial analysis, Article 4 (on minimum age of domestic workers) and 5 (on protection against all forms of abuse) is in accordance with already implemented the Slovak legislation.

The most important part regarding the working conditions of domestic workers are defined in the Article 6 of the Convention, which states that "Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy." According to the legal analysis Slovak legislation is not in accordance with this article because it does not

[42] Parliamentary Papers II, 1985/86, 19261, no. 3. Also see CRvB 29 April 1996, RSV 1996/247.
[43] EC CJ 14 December 1995, C-317/93 and EC CJ 14 December 1995, C-444/93.
[44] The following text about the Slovak case is an excerpt from Kahancová and Sedlakova, 2020a.

regulate the issue of decent living conditions of domestic workers' living in the employer's household.

The principle which ensures that domestic workers are informed about terms and conditions of employment (article 7), is in Slovakia ensured for all employees in various parts of the Labour Code.

Migrant domestic workers are regulated in the article 8 of the Convention. It ensures that prior to migration, job offers or employment contract is signed with a worker, which is then enforceable in the hosting country. Migrant domestic workers are, however, not defined or regulated in current Slovak legislation.

Similarly, labour relations in Slovakia do not cover conditions defined in the article 9, i.e in the situation of domestic workers and conditions of residing in the same household. The same holds for the article 10 on working time of domestic workers. The analysis specifically points out as problematic (in terms of compliance with the Labour Code) part two which states that weekly rest shall be at least 24 consecutive hours.

While Article 11 on minimum wage coverage for domestic workers is in accordance with the Slovak legislation and minimum wage is secured for all employees without any difference, article 12 on rules of wage payments, is not. Specific rules on wage payments for domestic work would have to be changed, e.g. that the wage is paid at least once a month or that payments in kind are limited to a certain proportion of wage.

The Slovak legislation is not in accordance with the Articles 13, 14 and 15 of the ILO 189/2011 Convention. The article 13 stipulates the right to a safe and healthy working environment. Compliance with this article is a problem according to the Slovak legislation as a real possibility to ensure control of safe and healthy environment of work performed behind the close doors of households is not foreseen by the current legal framework. Article 14 which calls for equal social security protection for all workers, including maternity, is also problematic in the Slovak context for the same reasons. The same is also valid for the article 15 on operation of private employment agencies in the sector, which calls for "adequate protection for and prevents abuse of domestic workers".

Moreover, access to courts, tribunals and dispute resolutions, as defined in the article 16 of the Convention, is guaranteed in the Slovak legislation for all employees. However, the article 17 of the Convention on complaint mechanisms and labour inspections applicable to domestic workers are not defined in the Slovak legislation.

The Convention also states that each member state should implement its provisions in consultations with social partners. Here, the ministerial analysis claims that if accepted, the convention would need to pass the consultation process with employers and employee representatives.

In its conclusion, the document of the Ministry of Labour on the ratification of the ILO Convention summarizes that the Convention cannot be ratified without changes in existing regulations. The ratification of the agreement would need to 1) define domestic work and 2) domestic employee and consequently, 3) modification of certain provisions to reflect specific characteristics of the domestic work. Consequently, the Government of the Slovak Republic based on the legal analysis discussed above, concluded that the Convention no. 189/2011 is currently not ratifiable by Slovakia.[45]

Czechia[46]

In 2012, the Czech parliament discussed but did not approve ILO convention no. 189/2011 on domestic workers. The main argument was a very limited incidence of domestic work and no evidence about the violation of workers´ rights. The argumentation was based on official statistics, which could not indicate informality in the sector. Until now, no representative study about the sector´s size has been provided; there is no political will to tackle it.

The public PHS sector, regulated and controlled by public institutions is targeted at care services. Both healthcare services and social care services are provided in the vast majority to elderly and disabled people. The private PHS sector encompasses personal and household services provided at home such as childcare, cleaning services and increasingly, care for elderly people on the basis of semi-formal and informal employment relations financed solely from the private resources of those households. While the public part of the sector is larger in terms of clients, formalized in terms of regulation, financed mostly from public resources, the private one is poorly regulated, provided only by private subjects (agencies and individuals), and employees are exposed to far more precarious working conditions.

For the private part of the sector, Czech legislation does not recognize work in households as a specific type of work and is considered to fall under a standard employment relationship and/or under Commercial Code provisions, which paradoxically pushes the majority of domestic workers and their employers (households) outside the scope of legal employment relations.

In the private part of the sector, especially in cleaning and childcare services, we find various forms of semi-formal and informal employment relations. Semi-formality refers to the situation where a domestic worker officially has an employment contract, but this contract underestimates the actual hours worked in the sector and/or encompass a vague or incomplete

[45] All documents submitted to the Government are available in Slovak at: https://www.employment.gov.sk/sk/ministerstvo/medzinarodna-spolupraca/medzinarodne-organizacie/medzinarodna-organizacia-prace-mop/100-zasadnutie-generalnej-konferencie-medzinarodnej-organizacie-prace.html

[46] The following text about the case of Czechia is an excerpt from Martišková, 2020a.

specification of the job tasks. Another form of semi-formality in the sector is the use of self-employment to provide domestic work, mostly used by foreigners to attain justification to stay in the country.

The employers' association in Czechia, which represents social care providers, has in its agenda the introduction of a voucher system in domestic care. Their motivation is primarily led by the economic interest to increase employment and fight informality in the sector. The most discussed model is similar to the one introduced in France or Belgium, encompassing state subsidies into the sector, targeted at decreasing unemployment rates and informality in the sector while increasing the demand for household services. As the representatives of the organization claimed in 2020, despite still being in their agenda, there is a significant lack of will on the government's side to deal with informality in the sector.

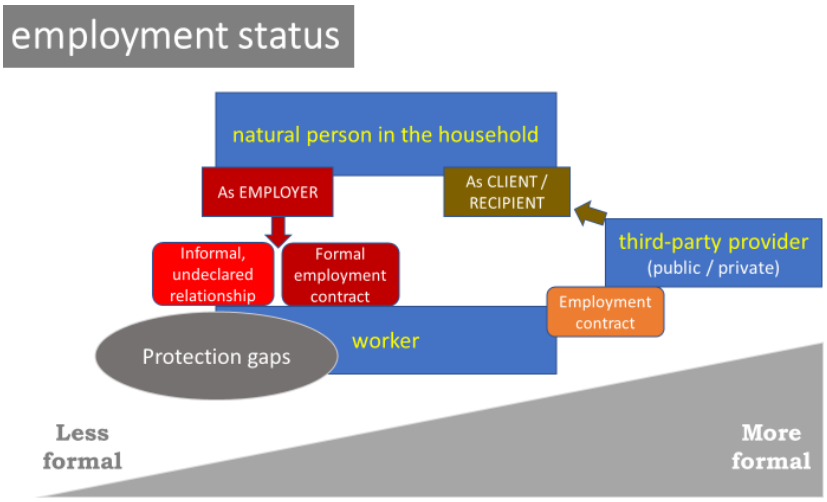
Employers and NGOs seem to be the most vocal actors, addressing informality in the sector. The majority of their initiatives took place in 2013 and 2014, partially to campaign for ILO convention (NGOs), and partially as an effort to decrease unemployment and reduce the grey economy in the post-crisis period (employers and Ministry of Labour). Currently, the lack of interest from the policy makers' side has halved actors' initiatives.

3.2 Comparative legal framework

3.2.1 Employment Status

In the PHS sector and depending on the country, the employment status of the workers in the sector varies widely. We found in the research several types of employment forms: from fully predominant informal work arrangements (Czech Republic) as to a clear 'formalisation of the contract' as in Belgium. In between we found several examples of specific exceptional employment legislation applicable to workers in the domestic work sector, such as in the case of the Netherlands or Spain.

In most countries under study, there are many different forms of contracts and domestic workers are employed in a number of different ways: some are employed directly by public institutions or their contracts are subsidied with public funds (especially in the care for the dependents and elderly sector), although this is less and less the case since in several countries this type of work has been privatized and contracted out to private care providers. Home care workers can thus be employed in several cases through private care companies, trading charities or care cooperatives; they can be employed as personal assistants directly by the person in need of care or their families; and, they can be self-employed. Home care workers and domestic cleaners are also very often not part of unions, as became clear from our interviews.



In the last two decades, in many of the countries under study, it can be observed an increase in developing public policies targeting the domestic service sector in an attempt to respond to an increase in demand for both housekeeping and caring tasks. As Jaehrling and Weinkopf (2020b) point out, these public intervention initiatives were aimed at increasing labour supply in various ways: by incentivising the aid of family members and neighbours in the provision of care for the elderly; by supporting the transformation of undeclared jobs into formal jobs; and by supporting the professionalization of household services. At the same time, in several countries, the policies were also meant to support more general political goals, most importantly combating high rates of unemployment of low skilled workers and increasing the labour market participation of women (the paradigmatic example of that public intervention policy is the services voucher system in Belgium).

Accordingly, as Jaehrling and Weinkopf (2020b) note, this mix of policy goals also meant that policy initiatives at national level did not only contribute to the creation of regular jobs covered by social security contributions. In parallel, it is also observed a growth of new forms of employment (such as platform work) in the sector and other 'atypical' forms of employment, ie. 'Mini-jobs' in Germany, as well as hybrid forms of work between paid formal and unpaid informal work ('paid voluntary work'). Moreover, they tacitly tolerated the growth of the group of 'Live-Ins', thus migrant domestic care workers mostly from Eastern European Countries. The most recent type of atypical work in the household service sector has emerged with specialized platforms which broker contracts between private households and solo-self-employed domestic workers, such as Helpling in Germany and the Netherlands. (EUROFOUND, 2018)

As a result, "work in the domestic service sector in the EU is more often paid formal work than it was 20 years ago. However, in terms of size, the different forms of informal and unpaid work continue to be much more important than jobs in the formal economy, at least in the area of housekeeping services. Moreover, the formalisation of jobs in the domestic

service sector has often been a 'formalisation light' – in the sense that these jobs deviate in various ways from standard forms of employment," (Jaehrling and Weinkopf 2020b:3), and this analysis is not only valid for Germany, but also for the Netherlands and Spain.

Jaehrling and Weinkopf (2020b:3) suggest to distinguish between different sources of these deviations or 'exit options':

- Firstly, they are partly rooted in *general* regulative exemptions and regulative gaps that also exist in other segments of the economy, such as 'Mini-Jobs' in Germany or the Service at home Regulation in the Netherlands. Also the growing self-employment in the sector via platform work allows for users to avoid the applicability of existing labour legislation to domestic workers. These exit options allow households and intermediaries to circumvent labour laws by resorting to self-employment and other freelancers, as in the case of platform-based work. It is necessary to keep in mind, though, that some of the circumvention strategies are consensual, thus correspond to domestic workers' preferences to avoid having to pay taxes and social security contributions; this seems particularly to be the case for mini-jobbers in Germany, for many part-time domestic workers in the Netherlands, for migrant workers without work permit in Finland, and for the cases of the Czech Republic, inter alia.
- Secondly, other exemptions and gaps are justified with the *specific* characteristics of domestic work – for instance the alleged difficulties to distinguish between working and leisure time in the case of 'Live-Ins' in Germany or in France that are referred to in order to justify deviations from the law on working time.

These exemptions often translate into important protective gaps for employees. Several policy measures and other initiatives over the past 10-15 years have sought to close some of these protective gaps. Considerable efforts have also been made in many EU countries, ie. Belgium, Finland, Germany, Spain, France, Denmark, in order to transform informal jobs in the PHS sector into regular jobs covered by labour law and social security. This was done mostly through public subsidies to professional service providers, such as in Belgium or tax subsidies to households, such as in France or through tax and social security exemptions for employees (Mini-jobs in Germany). The latter type of subsidy – while being attractive for many employees in the short run – however also bears the risk of material precariousness in the longer run.

Thus, we can conclude in line with Jaehrling and Weinkopf 2020b:4, that: "The current protective gaps for domestic workers in terms of wages and other working conditions are however not only due to *regulatory gaps* resulting from a lack of collective agreements (in most countries with the exception of the Danish, German, French and Belgium cases, where we find several applicable collective agreements) or legal regulations ('employment protection and social protection gaps') but at least as much due to a lack of mechanisms securing the *enforcement* of minimum rights ('enforcement gaps')." Mini-jobbers in Germany or domestic workers in

the Netherlands, for instance, are entitled to holiday and sick pay, but according to surveys/available studies a large majority of them do not benefit from these rights in practice. Enforcement gaps are also particularly severe in the case of migrant domestic workers in all countries under study. The decentralized nature of service provision and thus their isolated work situation and higher barriers (due to language and knowledge gaps) to use available options for self-enforcement (trade unions, labour courts).

3.2.2 Protection Gaps

3.2.2.1. Employment protection gaps

The employment protection gap is evident in multiple aspects, for example in terms of the rules applicable to the termination of the employment contract. But perhaps the most resounding of the examples is that of occupational risk prevention. In most of the studied countries, with the exception of countries such as Belgium and France, the workers in the domestic work (household services in private homes) are excepted from the protection granted to workers regarding health and safety regulations. A paradigmatic case on this unprotected situation is Article 3.4 of the Law for the Prevention of Occupational Risks in Spain. This provision excludes from its scope the special employment relationship of the family home services. However, the provision says that the owner of the family home is obliged to ensure that the work of its employees is carried out in the proper conditions of safety and hygiene. In practice, this obligation dates back several decades ago. Nowadays, the duty of health and safety refers to standards more typical of the Civil Code than contemporary health and safety risks prevention. This gap can be bridged. For example, regulating the obligation for professional entities in the preventive field to mediate in the special employment relationship of domestic workers that can be projected in risk assessment, information and training, and health surveillance.

3.2.2.2. Social protection gaps

In most of the studied countries there is a clear gap in the social protection of workers in the PHS sector. That gap is deeper regarding home services (household chores services sub-sector) than in the home care sub-sector. Many domestic workers are explicitly excluded from social security protection. The paradigmatic case of this bad practice is the Netherlands. In other countries, like in the Spanish case, they are only partially covered by social security legislation but they are excluded from unemployment benefits, for instance. Other countries have good practices regarding the social protection of domestic workers as it is the case of France and Belgium with the services vouchers system. The Belgium system does not have a dichotomy for social security as in other systems as the Netherlands and Germany. In the Netherlands the social security scheme explicitly

distinguishes two types of workers (employees and workers under the special legislation applicable to domestic workers). The distinction between these two groups can be found in the fact that one group can make full use of the social security benefits associated with a welfare state and the other group has limited access to them. The same is reflected in German labour law, where so-called Mini-jobbers are also not entitled to all social security that German labour law offers. The Belgian system does not have this dichotomy, so it can be highlighted as a best practice regarding the social protection of domestic workers. According to Vandenbroucke, the abovementioned dichotomy is ultimately negative for the society as a whole. (Vandenbroucke, 2015)

Belgium is the clear example of good practice regarding social protection of domestic workers. All workers under the services system are protected by the Belgium social security schemes for the following riks: sickness and maternity benefits, benefits for accidents at work and occupational diseases, disability benefits, old-age benefits, unemployment benefits, and family benefits.

The gap in social protection for the workers in the PHS sector has also become evident in 2020 on the occasion of the Covid-19 crisis. In several EU countries, it has been necessary an urgent normative intervention to articulate the essential social protection that every worker deserves in case of inability to work for reasons beyond their control. One very good example of urgent legal intervention is the extraordinary subsidy for lack of activity of people registered in the Special System of Domestic Employees adopted in Spain due to Covid-19 (art. 30 RDL 11/2020). This Royal Law Decree passed by the Spanish government to protect domestic workers highlights how necessary is the extension of unemployment protection legislation for this group of workers.

3.2.2.3 Enforcement gap

The third gap affects regulatory compliance. It is evident that a domestic worker (with a formal status and legally resident in an EU country) has access to the labour courts, can file complaints with the Labour Inspectorate, etc. However, and apart from the probable low use that domestic workers make of these public resources, the low degree of regulatory compliance with the existing specific or special employment legislation for domestic work is notable in many of the studied countries. This low compliance is largely attributable to the lack of professionalism of the employer. Clear cases of that widespread lack of compliance with the existing legal framework for domestic workers are the cases of Spain and the Netherlands. The difficulties of controlling work performance inside the home are understandable and justified by many of the legal provisions applicable to domestic workers. There are relevant legal constraints affecting the privacy of the private home-workplace, but the lack of professionalism of the employer often leads to multiple informalities and non-compliances that could be rectified, as in the issue of health and safety risk prevention. For example, a feasible good practice

is to incorporate a third agent to the recruitment process and the management of the employment relationship, such is the case of agencies providing home care services. In the Spanish case it has been noticed that the cultural rejection to the use of triangular relations in the domestic work sector (ETTs, employment agencies, etc.) has led us to a comparatively worse situation regarding enforcement of the legislation in comparison with other EU countries.

3.2.2.4 Representation gap

Finally, and closely related to the above, the gap of collective representation. In most of the countries under study in the PHS-Quality project there is scarce unionization of workers in the sector, in most of them there is null presence of collective bargaining. In countries like Spain, Finland, the Netherlands, with high coverage of collective bargaining, the domestic work sector lacks any collective agreements. This is a worrying issue regarding the protection of the labour rights of the workers in the PHS sector. It may be interesting to explore the French experience, where this sector has a collective agreement extended by the Ministry.

The Dutch report highlights the idea that protection gaps - the differences in the normative treatment of the special employment relationships of domestic workers compared to regular employment relationships - can be analyzed from the perspective of indirect discrimination based on sex. Taking into account the high density of female employment in this sector, it is also clear that any difference in the legal treatment of domestic workers must respond to an objective and proportionate justification. As stated in the EU Directives dealing with equality for women and men in employment and occupation, any gap has to be objectively justified according to a legitimate purpose, providing that, in addition, the means to achieve that purpose are necessary and appropriate.

4. Comparative analysis of the initiatives of the social partners and collective rights dimension

Domestic work was never seen as “real” work. Societies, including workers and employers traditionally do not perceive domestic workers as employees, or employers in the domestic sector as real employers; and the home has not been seen traditionally as a regular workplace, subject to labour laws or social security relations. Domestic workers are particularly vulnerable to exploitation by their employers because domestic work is invisible. In this sense, the collective right dimension is largely non-existent for workers when they want to defend their demands. In other words, without having the collective power behind him/her, the individual usually has little power in relation to the employer.

Collective employment relations between employers’ and workers’ organisations are fundamental to the regulation of employment and

industrial relations in all EU Member States and at EU level. Collective employment relations may take place at many levels: establishment, company, local, regional, sectoral, national, EU and international levels. And such relations are exercised in different forms: tripartite concertation; social dialogue; collective bargaining; information and consultation; employee participation of various kinds. The PHS-Quality country reports of ten European countries have pointed out that a very high percentage of domestic workers are not covered by the collective agreements. Danish social partners estimate that less than 20% of the subsector is covered by collective agreements, which is somewhat lower than the overall collective agreement coverage for the Danish cleaning sector, which is estimated to be around 40-50%. That means that those domestic workers are covered only by the minimum working conditions established by the public regulation.[47] In the same sense, in Spain the domestic employment relationship may in theory be governed by collective agreements. In practice, however, there is no actual collective bargaining for this type of employees.[48]

The traditional function of the collective agreements is to improve the working conditions regulated by the public labour law regulation. For example, to reduce the maximum working time or to increase the legal minimum wage. In the case of domestic workers, the collective agreement may assume new functions. Firstly, the country reports have mentioned that the application of employment law to domestic workers is not complete because there are many exceptions in the case of private households. Thus, the collective agreements may extend the application of employment law to domestic workers. Secondly, standards developed through collective bargaining benefit from the expertise developed by social partners and have the potential to adapt the legal framework to the specificities of workers in the PHS sector.

4.1. Examples of the lack of collective protection of domestic workers

The research has found different ways of the lack of collective protection of domestic workers. Many of them illustrate the need of public intervention to remove the obstacles which hindrance the negotiation of collective agreements for domestic workers.

a) The domestic workers are considered as self-employed

It is clear that independent contractors are not covered by collective agreements. The majority of collective agreements in this sector are negotiated in order to improve or to adjust the working conditions of the employees. In some cases, the domestic workers are considered as self-employed. Therefore, they are not protected by those collective norms. The main issue may be if they shall be considered employees (qualifications

[47] See Mailand and Larsen 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html
[48] See Mercader et al. 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html

issues). Although the research has not noticed clear indicators of a high incidence of bogus self-employed, when there are doubts on the legal status of a domestic worker, an assessment of the criteria applicable to the employee legal status should be performed, namely, to investigate if there is subordination, wages, personal performance and business risk.

For example, in the Danish report it is mentioned that cleaners working as freelancers or self-employed without employees are not protected by Danish labour law and collective agreements since such rules and regulations only cover cleaners who are considered employees. The same applies to most platform workers in all studies EU countries as they are often registered with the cleaning platform as self-employed rather than as employees[49]. In the United Kingdom, in the case of domestic cleaners working for agencies, the agencies often insist that they are self-employed. However, there is a high incidence of bogus self-employment in those cases.[50]

b) The domestic workers are part of the informal economy

More dramatic is the situation of informal domestic workers. Individuals who are themselves under economic pressure and may resort to informal employment arrangements including undeclared work because they cannot afford services on the formal labour market. The country reports have identified different levels of informality. The first one is the precarious situation when there is no employment relationship between the user and the domestic worker. The second one is when there is an employment relationship but the domestic employee carries out more working time than the one agreed in the contract. This problem is noted in most of the country reports, and it is especially problematic in the French case.

There is a significant percentage of informal domestic workers in most countries under study. However, it is difficult to give a specific figure. In Germany, in terms of size, the different forms of informal and unpaid work continue to be much more important than jobs in the formal economy, at least in the sub-sector of housekeeping services. Moreover, the formalisation of jobs in the domestic services sector has often been what Jaehrling/Weinkopf (2020b) call a 'formalisation light' – in the sense that these jobs deviate in various ways from standard forms of employment.[51] In Spain, given the high degree of informality within this productive sector, it is highly likely that the actual percentage of workers who provide domestic services is underestimated. Domestic workers often do not have a formal contract, nor are registered under the social security system.[52] The consequences of that situation for domestic workers are very negative

[49] See Mailand and Larsen 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html
[50] See Howard and Kofman 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html
[51] See Jaehrling and Weinkopf 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html
[52] See Mercader et al. 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html

because they are not covered by employment protection legislation neither by collective agreements.

c) The domestic workers are employees but there is a lack of collective agreements

The research points out that there is a lack of collective agreements for domestic workers, especially in the cleaning activities. It seems clear that there are more employees covered by collective agreements in the home care activities. For example, in Spain social dialogue regularly takes place in the home care sub-sector, and there is a collective agreement at state level applicable to workers in that sector (*VII Convenio colectivo marco estatal de servicios de atención a las personas dependientes y desarrollo de la promoción de la autonomía personal - residencias privadas de personas mayores y del servicio de ayuda a domicilio*). The existence of workers' representatives and a professional employer allows for better access to the protection of labour rights. In practice, therefore, the home care sector presents fewer specific problems than domestic employment in the cleaning at home subsector. In Slovakia social care workers are included and covered by the sector-level collective agreement for public workers. Company-level collective agreements in facilities of social care are also concluded. A similar situation we find in the Netherlands. In most of the countries analysed, the PHS workers in household support activities, such as cleaners or gardeners, lack any form of collective representation.[53]

Furthermore, the difficulties arise when the employer side in domestic work are generally private households, and individuals. No collective action can be taken up here according to several of the PHS-Quality countries reports (Finland, Spain). To sum up, the research has pointed out that there are broad differences between the domestic workers hired by enterprises and private households. In general, only the first ones are covered by collective agreements.

4.2. The difficulties to negotiate collective agreements

The PHS-Quality research has confirmed that there are serious difficulties in order to negotiate collective agreements in the PHS sector. Firstly, trade union density is lower in the case of domestic workers than in the case of other employees and the structure of the collective bargaining is very fragmented. Secondly, there is a lack of professional associations which may negotiate collective agreements with the trade unions. That problem is more common when the domestic worker has been hired by a private household. The country reports have mentioned that the different forms of employment relationships in the sector is a relevant factor hindering collective bargaining. In other words, an employment contract might exist between the worker and the household owner or between the worker and

[53] See Kahancova and Sedlakova 2020a at: https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html

an agency. In the last case, it is more likely that a collective agreement would apply to the domestic worker.

a) The low union density and fragmented structure

One of the main difficulties blocking collective bargaining is the low union density of domestic workers, even in the countries with very high low union density. For example, 58% of Danish cleaners were union members in 2015, where the union density was 77% in the public sector and 50% in private sector, but estimated by the interviewees to be considerably lower in the parts of the sector that takes place in private household.[54]

It seems that the position of the trade unions is not very strong due to the fragmented structure of the domestic work sector. In this context, there are important differences between the care at home activities and the cleaning activities. The domestic workers are totally decentralized, usually with only one domestic worker working for one, two, or several employers. Organizing possibilities are even more limited for live-in domestic workers, and for migrant domestic workers with an irregular legal status whose freedom of movement is limited either *de facto* or *de jure*.

In Czech Republic trade unions are weak in the care sector in general and their ability to reach domestic workers is particularly limited. This is related to their strategic focus with formally employed workers and is explained in the literature by their post-socialist legacy associated with their lack of organizing activities and weak outreach to non-standard workers. The trade unions remain less vocal in dealing with the specific problems of foreigners in the PHS sector in Czechia. In addition, the PHS sector is hard to organize, because of its fragmented structure, tight relationships between household and employee and the special trust character of their work. A low number of employees in one workplace in the formal part of the sector does not contribute to organizing workers in this part of the sector either.[55]

The conclusion is that, due to the informal character of the sector in many countries and the isolated and invisible nature of the work, it is difficult for domestic workers to get organised, or for trade unions to reach domestic workers.

b) The lack of employers' associations

The domestic employment relationship may in theory be governed by collective agreements. In practice, however, there is often no actual collective bargaining for this type of employees. As explained in the country reports, the main obstacle to collective bargaining for domestic

[54] See Mailand and Larsen 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html
[55] See Martišková 2020a at:
https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html

workers is the lack of employer representatives, an obstacle which is not properly addressed by the current regulation in most countries.

Collective bargaining does not exist at all for domestic work in many of the case studies. The main reason for this is the lack of bargaining agents as there is no association of employers in the sector. In addition, the domestic workers have a low level of union membership. The collective activity of domestic workers is more common through a number of associations, usually of a local nature, different from the typical labour unions. Nevertheless, one can describe a "domestic work movement" in which non labour associations and labour unions participate with more or less the same goals, which are the improvement of the living and working conditions of these workers.

The main demand of the domestic work movement has nothing to do with collective bargaining. It is mainly addressed to the government, not to employers who in most cases do not have an organizational face (with the exception of the home care sector in some of the studies cases and with the exception of France and Belgium where employers' associations do exist).

In brief, in most of the studied countries domestic work is characterized for an almost complete lack of real industrial relations, at least in the sense of a relationship between employers and employees. There is no collective bargaining, no industrial action as such against employers and low labour unions activity.

4.3. Some exceptions: the French and Belgian examples

The research indicates that there are some exceptions. In France and Italy collective agreements have been negotiated between the national trade unions and the domestic employers' associations for decades. Thus, the most successful example of collective bargaining so far is found in France, where the Fédération des particuliers employeurs (FEPEM) was founded in 1948, followed by the Syndicat des Particuliers Employeurs in the 1970s. Italy (a country not covered by the PHS-Quality research project) as well saw the formation of an association of employers of domestic workers (DOMICILIO) long before domestic workers began organizing into trade unions. The first National Collective Agreement on domestic work in Italy dates back to 1974. It introduced three occupational levels, according to professional skills and specific tasks performed by the workers; set maximum working time in 11 hours per day and 66 hours per week, and minimum wages. Since then, the collective agreement for the domestic sector has been renewed several times.

In particular, the French case seems a good practice in this sense. In France, different collective agreements exist depending on the particular status of the employment relationship between the domestic worker and the employer. In France, there are employers' organisations which may negotiate collective agreements for domestic workers.

In the SPE branch, the social partners, although not very representative, have managed to sign a set of accords making it possible to include a set of rights in the collective agreement and its codicils from which these workers were excluded in the Labour Code. This "catch-up" remains incomplete, however. In all areas related to the definition and regulation of effective work and working hours, in particular, boundaries are still quite porous and remote from those found in general law. Advances in social protection are easier to adopt since they are based indirectly upon a form of socialisation, thanks to all the existing benefits available (first and foremost reduced taxation). By contrast, the regulation of actual work seems much more difficult to negotiate because the employers' federation remains committed to preserving what it calls "the specifics" of employment by households.

In France, the declared employment of salaried workers by households is very dependent upon social fiscal expenditure and the social partners pay particular attention to the efforts being made to establish what they call a dynamic of "professionalisation".

However, the collective agreement for SPEs and its codicils are formulated in favour of the employee in a number of areas in which they are exempt from the general labour Code. On some points they even go beyond the statutory provisions, in fact, by conferring specific additional rights. In the event of absence through sickness or accident, for instance, an invalidity allowance supplementary to the beneficiary's social security entitlement is provided for. In these cases domestic workers are guaranteed a basic monthly income equal to 76% of their capped gross monthly salary. An additional levy of 0.20% for professional training is included in the collective agreement, supplementing the 15% provided for by the specific law applicable to "employees of the private domestic employer". A social fund has been created to provide individual or collective assistance for employees in financial difficulties, and agreement has also been reached to set up an occupational health service and to provide individual and collective preventive health monitoring. We can therefore conclude that collective bargaining has been remarkably effective in establishing social protections in the broad sense of the term – more so than it has in regulating actual working conditions.

In Belgium, working conditions and remuneration are fixed in Parity Committees (CPs) at sector level. These are the main bargaining settings between unions and employers' associations to conclude collective agreements. There are also Parity Sub-committees, which are subdivisions of the Parity Committees established for a region or a specific business sector. Each Parity Committee concludes its own agreements on remuneration and working conditions (annual leave, year-end bonus, other benefits...) as well as training opportunities. These are interesting examples of joint cooperation of the social partners, for example in the area of training. The employers' obligations regarding training are very tight in this PHS sub-

sector in Belgium. Training hours are strongly regulated. For a very long-time social partners have had to submit training plans to the authorities.[56]

4.4. Initiatives of the social partners

The PHS-quality study has shown that trade unions and domestic workers organisations employ a range of strategies, including organising activities, offering specific advisory services as well as room for social and political activities, and targeted information materials and training for domestic workers.

In Denmark, the social partners have also developed a series of initiatives to improve pay and conditions. These initiatives are relevant for PHS-workers in both the cleaning and the elder care sectors but are not always limited to these subsectors. Several of these initiatives are linked to the negotiation of collective agreements. In the platform-work cleaning sector in the EU the first case of successful collective bargaining can be found in Denmark. In the case of Denmark a collective agreement has been signed by the Danish owned cleaning platform Hilfr and the Danish trade union 3F in 2017.

A Danish trade union, 3F, signed this collective bargaining agreement with Hilfr.dk, a platform providing domestic work such as cleaning services in private households. The agreement introduces within the company a new category of worker, with employment status, in parallel with the existing freelance arrangements. Freelancers can apply to become employees of the platform and be covered by the collective agreement. After 100 hours of work, workers are considered to be employees covered by the collective agreement, unless they actively opt out from this status.

This agreement debunks many myths about platform work, the first one being that it is not compatible with existing forms of labour protection such as employment rights and collective bargaining. Secondly, it shows that labour protection is not necessarily an alternative to autonomy – the workers who, for whatever reason, want to remain freelancers are still able to do so, just by opting out.

The collective agreement provides for significant protection. It grants an hourly minimum wage of 141 DKK (c. 19 Euro or 21,5 USD), payment of unemployment benefits in case of sickness, and protection against dismissal. The right to holidays and working time protection are also granted, in accordance with Danish law. Most importantly, the agreement also provides rules on the cancellation of shifts, a pivotal protection for casual and platform workers – if a job is cancelled less than 36 hours before the start, the customer is bound to pay 50% of the agreed wage.

[56] See Ramos Martín 2020a at: https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html

Finally, the agreement also includes a provision for data protection, which may serve as a blueprint for future collective bargaining, regardless of the sector. Firstly, the consent of the workers is needed to post their data on the platform, and this consent should be specific and informed.

Moreover, workers 'may, at any time, request that derogatory, false and offensive comments, pictures or characters be removed from [their] profile and other places on the platform that can be associated- and clearly attributed to [them].' This kind of request 'cannot adversely affect the employee's conditions of employment'. This is crucial protection to ensure that workers are not penalised by negative or biased comments or feedback received by customers or other parties, something that can be extremely detrimental for workers, particularly when algorithms are applied to decide whether other jobs will be offered.

In Czech Republic there is no social dialogue in the sector specifically targeted at domestic workers. Both social partners mostly address problems associated with the functioning of the public part of the sector (financing, quality of services and sustainability), while the informality and working conditions in the informal part of the sector are rarely revealed. Despite this, trade unions supported the adoption of the ILO convention on domestic workers in a legislation process in 2012. However, their activity in the sector is otherwise limited. The trade union in healthcare and social care is trying to conclude a collective agreement at the sector level which would cover employees in social services employed in the public part of the sector, including those providing homecare services. Nevertheless, most of their effort is targeted on the increasing protection of social workers in residential care services, while other subsectors in the care sector, including the PHS sector, are less represented. Low rates of unionization in the PHS sector partially explain this issue.[57]

In the Netherlands there has also been negotiations between employers in the sector and platforms to conclude this type of collective agreements. The action of the trade unions has been very relevant in some cases. For example, in the Netherlands, Helpling is an online platform that brings together supply and demand in the private household cleaning market. Helpling operates in several countries and states that it is the largest 'online marketplace' for domestic support services in Europe. Helpling states that it is not a cleaning firm but rather a platform which 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 Helpling on its website. This company states that domestic helpers are employed directly by the private household and that their work is covered by the Services in the Home Regulation. Trade union FNV and a cleaner initiated proceedings against Helpling because they considered that

[57] Most extensively see Martišková 2020a at: https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html

Helpling was an ordinary cleaning firm, that it employed the cleaners and that it must therefore observe the collective agreement applicable in the cleaning sector. The claim entailed that Helpling was an employment agency and must abide by the rules on employment agency work. In a judgment dated 1 July 2019, the Amsterdam District Court held that Helpling is not a cleaning firm and that the cleaners are not employed by it. According to the Court, there is no control relationship between Helpling and the cleaners and there cannot therefore be an employment contract within the meaning of Article 7:610 of the Dutch Civil Code. The Court also felt that Helpling was much more than an online notice board and that it played an active part in the "agency" process. Because there was an employment agency, the Allocation of Workers by Agencies Act ("Waadi") applied to this case and Helpling could not charge any commission to the cleaners. As far as currently known, the union FNV has not filed an appeal against this judgment.[58]

4.5. The new players

The low trade union density of domestic workers is compensated by other players in the sector. In most of the country reports it is mentioned a trend to emerging civil society organizations active in the sector. Some of them are much consolidated civil society organizations. The social dialogue is made between the consolidated civil society organizations and the government. The main demands for improvement in this area are related to the access of domestic workers to social security benefits.

The European Federation for Services to Individuals (EFSI) is the voice of the Personal and Household Services industry at European level, representing national associations, employers' organisations, PHS providers and companies involved in the development of personal and household services, and currently operating in 21 EU Member States. The personal and household services sector (PHS) includes a broad range of activities mainly carried out in households and related to personal assistance (early childhood and education care, childcare, long-term care in situations of dependence, disability, invalidity, etc.), broadly identified as "care-related services", and to activities of daily living (cleaning, ironing, gardening, small DIY, maintenance, remedial classes, etc.) united under the term of "household support services". Established in 2006, EFSI is a membership-based organisation whose mission is to shape a more favourable environment for the PHS industry in Europe, especially by improving the image and perception of the PHS sector and promoting adequate policies in support of its development. EFSI offers unique access to and engagement with European policymakers and stakeholders (trade unions, academic world, think tanks, NGOs).

[58] See Jansen and Ramos Martín 2020a at: https://aias-hsi.uva.nl/en/projects-a-z/phs-quality/country-reports/country-reports.html

In addition, the research has identified national organisations. In Czech Republic, the missing engagement of the trade unions in the informal part of the sector and towards foreigners is replaced by the activities of civil society organizations (CSOs). Active CSOs mostly point at the improvement of working conditions of migrant workers in the sector, while Czech citizens providing home care services are mostly out of the scope of their activities. The most vocal organization, Sdružení pro integraci a migraci (Association for integration and migration - SIMI), conducted a campaign in 2014, which included lobbying, research and PR activities to draw the attention of politicians and the public to the ILO convention and to the labour rights of foreign workers.

In Slovakia, several other civic society organisations have entered into the dialogue about the PHS sector and its sub-sectors. One example is a non-governmental organisation SOCIA- Social Reform Foundation (*SOCIA-Nadácia na podporu sociálnych zmien*), active mainly in social services sub-sector, which aims to promote changes in the social system for the benefit of vulnerable social groups of the population.

In Denmark, new players in terms of digital platforms have gained foothold within the sector in the last few years. The digital cleaning platforms primarily target their services to private households, whilst public procurement and outsourcing of cleaning services involves both private companies and public authorities, including local government departments responsible for home help services. However, so far these cleaning platforms only take up a small fraction of the market, whilst public procured cleaning services are becoming more widespread, although some Danish local governments have also for various reasons decided to insource or keep such cleaning services in-house.

In fact, digital platform work is an emerging employment form within the cleaning sector in most of studied EU countries and it is expected to become more widespread as digital cleaning platforms have seen rapid growth rates in recent years.

5. Conclusions

In general, domestic work is an important economic sector in the European countries included in this study. Moreover, it is likely that the demand for domestic workers will continue or even increase as European populations become older, while public provision of services is reduced. Domestic work should therefore be (more widely) recognised as a significant sector for employment and the regulation of the sector needs to be improved by public institutions at European and national level.

A conclusion deferred from the case studies is that it is useful for improving the quality of work and services in the sector to establish the intervention of third parties in the employment relationship. In these cases, the private household is the user of the service provided by the domestic

worker and not the employer. Then the role of the employer is provided by a company or a public institution. In these cases, employment law and social security regulations may be applied to the domestic workers without exceptions or special regulations. Therefore, it could be considered a good policy that the Governments may impose that a third party (a company or agency) is mandatory in these types of contracts. The professionalisation of domestic workers may improve and it would facilitate the monitoring of the working conditions of domestic workers. One of the main issues on the quality of domestic work is the difficulty to monitor the application of labour law and social security legislation to domestic workers as many of the PHS-Quality country reports have mentioned. For example, the Labour Inspectorate may monitor the working conditions of the domestic workers at the private households if the domestic workers have been hired by a company or agency.

In this sense in Belgium the introduction of the services vouchers in 2004 has been a great success in terms of improved quality of services and jobs in the sector. Indeed, this experience shows that the number of vouchers bought and the number of registered companies increase every year. The figures clearly show an increase in the number of jobs and less unemployment and thus less undeclared work. In addition, this is a way to increase the number of people on the labour market and therefore reduce the unemployment rate. The voucher system aims to create employment for unskilled workers, to fight undeclared work and promote regular employment in economic sectors where undeclared work is common; to offer certain categories of unemployed people who perform service jobs for local employment agency agencies the opportunity to move towards a regular employee status; and to improve the work–life balance of service users by making it easier to hire a domestic worker.

The risk of the Belgian system is that a high public subsidy will go to costs and profits of the intermediary companies and that as a result too little money will end up as salary of the employee. However, a company as an intermediary offers benefits to the consumer. For example, in the event of employee illness, a company can arrange for a replacement. This guarantees the continuity of the service. Many administrative tasks will also be left to the consumer if there is no intermediary. It is also better to prevent fraud when you use intermediaries.

The exclusion of the domestic workers of the health and safety regulation should be revised by the European institutions. The EU and national regulation on this issue have excluded domestic workers due to the difficulties to apply the duty of prevention and the specific obligations (risk assessment, providing personal protective equipment, professional training, medical test, etc) if the employer is a family and not a company. It is true that the employers do not have the human resources management skills or tools of a company. However, the consequences of this exclusion are that domestic workers assume their health and safety risks such as they were self-employed.

The country reports point out to serious accidents and even deaths of several domestic workers in the worst cases. It seems clear that there is an absence of fairness in balancing the interests at stake: the health and safety of the household employee and the onus on the employer. In addition, the judicial cases examined point out that there is an empty and programmatic duty of safety in these cases. In these cases there is an undervaluation of the most important fundamental rights of workers: the right to life. At the end of the day, it seems that there is an unequal treatment of domestic workers directly hired by an individual homeowner in comparison with domestic workers who perform the same tasks but have been hired by companies.

It seems clear that in many of the national cases studied the legislator may have adopted a more suitable approach to the regulation of health at safety of domestic workers. For example, the legislator could approve a special regulation for them taking into account the particular circumstances of the domestic workers (the place where they carry out the job and the privacy of the family home). There are some guides on health and safety of domestic workers which have been prepared by the public institutions. The mentioned guides include the preventive measures applicable to domestic workers and special measures for COVID-19. However, those documents are not mandatory. In addition, the EFSI (European Federation for Services to Individuals) is involved in a project dealing with the health and safety standards in the domestic work sector as established in the ILO convention. EFSI is a partner in this project with OSHA, the European Agency for Safety at Work. They have launched a campaign to curb the use of hazardous substances in the workplace. The EFSI is promoting the share of best practices regarding health and safety in the PHS sector. The project includes in the agency's website a database describing best practices and standards in all sectors. In this database, reference is made to ILO Convention 189, in particular for the safety of domestic workers.

The difficulties of the households to comply with health and safety at work standards could be resolved if the public administration would develop some tools to provide professional training for domestic workers and families. On the one hand, the public administration could provide a training and qualification card for domestic workers. The training on health and safety may be provided by the Public Administration (National y/or Autonomous Institutes of Occupational Safety and Health). The training should be mandatory for all domestic workers and shall include information and training on the main risks and preventive measures. In addition, some obligations of prevention may be adapted taking into account the characteristics of the workplace (the family home) and the trustworthy character of the relationship.

In particular the COVID crisis has pointed out that it is necessary that the PHS workers get access to appropriate personal protective equipment (PPE), such as masks, gloves, sanitizing gel, etc., given the risks of infection in care and support provided in private homes. Adequate training on how to properly use these PPE should be provided, as well as on

COVID-19 and infection disease prevention. PHS workers working as home care workers are part of the general health system and must enjoy the same protective measures as other workers in the health-sector. They should be given priority access to COVID-19 tests as workers need to know if they themselves are contagious[59].

Another issue is that in some of the studied countries the specific regulation of domestic workers may be discriminatory in terms of gender inequality, because most of them are women. An example of this problem is the case of the Netherlands. The Dutch regulation contains a number of exceptions to regular employment law and social security legislation for part-time domestic staff. 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 the reason why the ILO Convention 189 has not been ratified by the Netherlands. The Netherlands has ratified the UN Convention on the Elimination of All forms of Discrimination Against 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 is in breach of the Convention.

Following the previous argument, in many of the EU countries with specific special regulation of the domestic work sector, it would be necessary a revision of the public regulation using the proportionality principle (as established by the EU Directives on equal treatment for men and women in employment and occupation and in social security). Many of the PHS-Quality country reports have pointed out that there are several exceptions to the applicability of regular social law in the case of domestic workers. Some of them may not be justified if the proportionality principle is strictly applied. For example, special rules in the case of the termination of the employment relationship or the exclusion of the unemployment benefits in some countries may be revised according to the proportionality principle.

[59] EFFAT – EFFE – EFSI – UNI-Europa Joint Statement on the COVID-19 Pandemic in Personal and Household Services, 2020.

The PHS-Quality country reports have shown that in some of the cases there are specific problems with live-in domestic workers. Live-in workers are a particularly vulnerable group. In most cases, the legislation merely indicates the need to make the agreement explicit in the employment contract (overnight pact) but does not provide for any further particularities. Apart from the social isolation that this form of working and professional life entails, aspects such as privacy and the right to use one's own home are perceived as very important by the social agents consulted. From a strictly legal perspective, it is necessary to delimit the remuneration of the time of availability, as well as the obligations that the worker has during that time. The absence of specific health and safety obligations is in this case a direct attack on the dignity of the worker.

In some countries good practices have been identified on social security benefits. In particular, the unemployment benefit has been a pending issue for domestic workers when they work for an individual household. In many of the studied countries, domestic workers are not entitled to receive a social security benefit when the employment contract has been terminated. The exclusion of the unemployment benefit has meant a relevant gap for them because their vulnerability is higher than the rest of the employees. The lack of protection of these workers has been evident, in a dramatic way, during the Covid-19 crisis. This situation has been corrected in some countries such as the Spanish case through the Royal Decree 11/2020 of 31 March 2020, approved during the COVID-19 crisis. However, this measure is temporary. The scope of the new Spanish regulation has covered two conditions: i) The domestic workers have either been subject to the suspension of their employment relationship or, in the case of a multiple employment scheme, have reduced their activity in one, several or all of the different homes in which they provided their services; or ii) Those who have been subject to the termination of their employment relationship, as a result of the COVID-19 health crisis, for any of the reasons established in the applicable regulations. The amount of this extraordinary unemployment benefit due to lack of activity will be calculated by applying a percentage of 70% to the regulatory base corresponding to the activity that can no longer be performed. It would be a good policy that more EU countries extend social security protection to those domestic workers in the case of unemployment beyond the special circumstances of the COVID-19. The mentioned recommendation may contribute to a proper application of the principle of equal treatment for all workers, including the domestic workers.

Another good practice can be found in Finland, where the household deduction model was one of the long-term initiatives of the government's plan to fight informality and 'grey' labour. The Tax (deduction) scheme for domestic help (kotitalousvähennys) was introduced in 2001 and it made it possible for individuals to deduct a proportion of the costs of domestic services through their income tax. This tax deduction can be used to purchase a wide range of services such as cleaning, gardening, home renovation, eldercare or even child home care (which for a long time is seen to be covered by the public services). In 2029, the amount of

deduction could be up to 50% of the expenses from their income tax. Furthermore, 20% of the wage paid, including social contributions, can be deducted if the client directly employs a worker.

The popularity of this tax deduction has grown throughout the years. Whereas in 2006, 243,00 persons made use of the deduction, the number of users has grown to 406,500 in 2016 (MIN in research report Finland). The total amount of the tax deduction amounted to 393 million in 2016. The figures further show that, from all tax deductions, 80 per cent was used for home renovations, 17 per cent to cleaning and only 3 pro cent in care. According to the Finnish Tax Administration and scholars, the tax reduction on household services is predominantly claimed by the highest-income households. This inherent inequality of the system is the reason that the new Rinne/Marin governments are seeking to modify the system to bring the low and mid-incomes earners under the scope of the tax deduction system.

Another important problem highlighted by the PHS-Quality research project is that an intervention from the legislator is necessary to remove the obstacles which hinder collective bargaining for domestic workers hired by households. The main problem is the lack of employers' associations which may negotiate with the trade unions. It would be necessary to create new types of legal capacity to negotiate collective agreements for this special sector. For example, the more representative professional associations may be entitled to participate in the collective bargaining. The best solution would be sectoral collective agreements which may set general rules for all domestic workers. The strategies of trade unions may be extended in the sense of negotiating not only improvement on social security but also of working conditions. In addition, a broader collaboration between the trade unions and new actors in industrial relations, such as private associations of domestic workers is necessary.

The PHS-Quality research shows that visits by inspectors in a private household are extremely rare. The controlling by the labour inspection in a private household is considered in many cases to be incompatible to the fundamental rights to personal and family privacy and the inviolability of the household. Labour inspections have no power to enter a home, except with the consent of the owner of the house or through a court order in most cases. Labour inspections usually act only in response to a complaint and/or can only check external actions, for which no entry is required in the home.

In order to enhance the monitoring of the working conditions, it would be necessary to ensure PHS workers' access to clear information about their labour rights. The only way to reduce their current vulnerability and precariousness is to grant them wider access to social protection, including paid sick leave, hazard pay and health services. In the event of dismissal, PHS workers must be paid their wages and all other entitlements according to their contracts, collective agreements, and law. Particular attention

should be given to the situation of migrant PHS workers and in this regard, Member States could for instance grant an extension of resident rights in case of job loss, if permits are linked to employment or specific employers. Information must be provided in languages that migrant PHS workers can understand. In the case of undocumented migrant PHS workers, Member States should consider putting in place a supplementary welfare allowance, which is accessible for undocumented migrant workers in case that they lose their jobs. Finally, in terms of reduction of protection gaps, a good policy could be that the migrant legal status should not be affected if a migrant worker applies for social welfare allowances in this period.

The COVID-19 pandemic has had a particularly dire impact on domestic workers around the world. While domestic workers have suffered many kinds of impacts resulting from the pandemic, one of the main consequences of COVID-19 has been a reduction of working hours and, in some cases, a loss of jobs, resulting from fear and restricted mobility associated with confinement measures. Live-in domestic workers may not have lost their jobs, but they are suffering an important negative impact nonetheless. Although live-in domestic workers have mostly continued to work, in confinement with their employers, reports from the field indicate they too have suffered important impacts. Many worked longer hours, due to school closures, and more demanding cleaning tasks. In other cases, employers have stopped paying their live-in domestic workers, due to their own financial circumstances. In many countries, live-in domestic workers are predominantly migrants who rely on their pay to support their families in their countries of origin. Non-payment of wages and the closure of remittance services have therefore also left the families of migrant domestic workers at risk of poverty and hunger. Some domestic workers have also been found in the streets, after their employers dismissed them for fear of catching the virus, putting them at risk of trafficking.[60]

The COVID-19 crisis has shown the high vulnerability and precarious employment situation of workers in the PHS sector and the urgent need to better regulate their access to social protection in many of the EU countries studied within the PHS-Quality project.

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All links to on-line materials/reports have been acceded, updated and checked by 30.06.2020.