

TOWARDS THE INCLUSION OF MIGRANT DOMESTIC WORKERS – RENEWING EFFORTS TOWARDS RATIFICATION OF ILO CONVENTION NO. 189

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SUMMARY

This policy brief provides a snapshot of efforts to promote ratification of ILO Convention No. 189 in the EU. It also discusses the limitations of the recently adopted EU Care Strategy and some lessons learned from the experience of ILO Convention No. 189 ratification in different Member States. The policy brief concludes by making a number of short-term and long-term recommendations to improve the conditions of paid domestic workers, as well as the provision of care in the EU.

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1. INTRODUCTION

Care is central to every society. Whether it be giving birth to and raising children, meeting the needs of the sick and disabled, providing training and education, or keeping our surroundings clean and safe, reproducing and sustaining life requires a multitude of care activities. Despite their fundamental role, care and carers are undervalued, underpaid or even not paid at all. The Covid-19 pandemic made us painfully aware not only of how important care is in keeping our families, communities and economies running, but also of the many gaps in care provision across the EU.

In the EU27, needs for long-term care are on the rise and expected to increase in the coming decades. According to available estimates, by 2030 there will be 33.7 million people in need of long-term care in the EU, while by 2050 the number will rise to 38.1 million (European Commission and Economic Policy Committee, 2021). The contraction of the welfare state and associated chronic lack of adequate public investment in affordable care services has led to overreliance on private solutions. Today many families and individuals rely on privately hired live-in or live-out domestic workers for their direct and indirect care needs.¹ The growing sector of Personal and Household Services (PHS), which includes different types of domestic work, accounts for 5 per cent of total employment in the EU27.² Very often those needing home-based care have limited purchasing power, which means that domestic work is structurally low paid and precarious, delegated mainly

¹ In this policy brief, 'domestic worker' and 'care worker' are used interchangeably to refer to anyone who works for or in a private household in the context of an employment relationship. See, Article 1, ILO Convention C189 on Decent Work for Domestic Workers for the definition of domestic worker. The term 'care worker' is commonly associated with providing direct care (for example, bathing or feeding a person, helping them use the toilet, babysitting), while 'domestic worker' is associated with indirect care (for example, cleaning, cooking, household maintenance). In practice, direct and indirect care often overlap so that a sharp distinction between the two is not possible or necessarily desirable.

² PHS is the term commonly used in EU policy to group together a wide range of activities that support households.

to working class women who are often migrants. Estimates unsurprisingly show high levels of feminisation, with women making up anywhere between 81.2 and 89.2 per cent of the sector in all European states (ILO, 2021). When it comes to live-in employment, women's share is higher than 90 per cent (Kocher, 2024). Domestic workers hold a variety of migration statuses, from temporary third-country national to different types of intra-EU migrants (Equinet, 2021). Informality is also extensive, a phenomenon that significantly impacts carers' working conditions and life more generally. According to a recent study there are 6.8 million undeclared workers providing direct and indirect care to private households, representing 50 per cent of the sector's workforce (European Labour Authority, 2021).

The way in which we are currently outsourcing our increasing needs in Europe is a 'care fix', in other words, a temporary solution to a structural problem that displaces the social and economic costs of care onto the most vulnerable sectors of society (Dowling, 2018: 334). Those needing care do not receive the quality service they deserve, while domestic workers are denied decent working conditions, with long and unregulated hours, low wages, instant dismissal, lack of collective representation, no adequate social protection, as well as various obstacles to enforcing their rights (EFFAT et al., 2024). Migration law rules and restrictions compound the problems faced by migrant domestic workers (Pavlou, 2021). ILO Convention No. 189 on Decent Work for Domestic Workers addresses many of these problems by providing minimum standards for the regulation of paid domestic work in private households. Yet, more than a decade after adoption, few EU Member States have ratified it.

This policy brief gives a snapshot of past efforts to promote the ratification of ILO C189, and discusses the limitations of the recently adopted EU Care Strategy and some lessons learned from the experience of ratification in different Member States. It concludes by providing a number of recommendations to improve paid domestic work in the EU.

2. PAST EFFORTS AT THE EU LEVEL TOWARDS RATIFICATION OF ILO CONVENTION NO. 189

In early 2014 the Council of the European Union issued Decision 2014/51/EU encouraging EU Member States to ratify C189. While EU Member States do not need formal authorisation from the EU to ratify ILO Conventions, the Decision signaled the EU's interest in the issue of paid domestic work, as well as the assumption that EU law already met the Convention's minimum requirements (Recital (2), Preamble of Council Decision 2014/51, 2014). Two years later, the European Parliament adopted a wide-ranging resolution calling for ratification, the effective inclusion of all domestic workers in national labour and welfare legislation, as well as public investment, including through EU funding, in high-quality care jobs (European Parliament, 2016). The backdrop to this resolution, an initiative led by the EP's Women and Gender Equality Committee, shows a comprehensive understanding of the multifaceted problems

faced by domestic workers and a clear commitment to address them through EU action (European Parliament, 2016). While the commitment seemed strong, there were no concrete legal or policy changes. Most recommendations put forward in the resolution were not taken up by either the Commission or the Member States, which indicates that, despite the momentum, paid domestic work was not a political priority. There seemed to be no clear understanding of how EU law might contribute to domestic workers' decent work deficit and could therefore also become part of the solution. For instance, even until today domestic workers continue to be excluded from the personal scope of the EU Health and Safety Directive (Art. 3(a) Council Directive 89/391, 1989).

3. THE EU CARE STRATEGY AND DOMESTIC WORKERS

Two years into the pandemic, the Commission published the EU Care Strategy, setting out its vision for the future of care in the EU (European Commission, 2022). The EU Care Strategy, characterised as "groundbreaking" (Caracciolo di Torella, 2023), includes many commendable elements. There is, for instance, recognition that high-quality care services require decent working conditions for care workers, such as adequate wages, collective bargaining and work-life balance. EU Member States are encouraged to ratify C189 and to close any gaps in the implementation of the EU labour law *acquis* in relation to domestic workers.

Nonetheless, there are limitations, especially with regard to migrant workers' rights. Much emphasis is placed on skills development and training, as well as on attracting migrants and refugees to meet labour shortages. Such an approach, however, seems to miss the point that labour shortages reflect low-quality working conditions and not necessarily a mismatch or lack of appropriate skills (Zwysen, 2023). The suggestion that those fleeing war or prosecution could fill labour shortages in care "essentialises" migrants and asylum seekers of certain ethnic origins. While we must acknowledge migrants' potential role in meeting Europe's care needs, the EU and its Member States should not instrumentalise nor take advantage of people's need to move for work. Migration regimes targeting migrant domestic workers can be highly problematic, for example, causing care drains in migrants' countries of origin (Pavlou, 2023). At the same time, restrictions on acquiring long-term residence, bringing in dependents, changing sectors of employment or even employer – all commonly found in the migration law regimes of EU Member States – structure migrant domestic workers' vulnerability to exploitation at work (Pavlou, 2021). In the absence of an EU migration law instrument on migrant domestic workers, EU Member States enjoy wide discretion in designing migration regimes that may not effectively protect non-EU domestic workers' rights.

4. RATIFYING C189 – WHAT HAS WORKED AND WHAT HAS NOT

To date, C189 has been ratified by only nine EU Member States.³ Ratification is an important first step for the protection of domestic workers' rights. Ratification initiates a dialogue with ILO supervisory mechanisms, while also creating a forum for local actors to engage and raise issues at national and international levels. Ratification on its own, however, is not enough. Italy and Germany were the first EU Member States to ratify C189, but research shows limited positive impact because of their lack of commitment to implementation; what is more, unintended chilling effects were also reported (Cherubini, Garofalo Geymonat and Marchetti, 2018; Trebilcock, 2018). To be transformative, therefore, ratification must be accompanied by a policy committed to implementation and legal reform. At the same, local actors such as trade unions and other civil society organisations must be able and willing to advocate for change.

Alongside C189, the transformative possibilities offered by EU law should also be taken up as part of a toolkit to improve domestic workers' rights. The importance of EU law in the fight against domestic workers' exploitation is illustrated by the case of Spain. Spain ratified C189 in 2023 following a CJEU ruling that domestic workers' exemption from unemployment benefits in Spanish social security law constituted prohibited indirect sex discrimination (CJEU, 2022). While ratifying C189 was a key demand of domestic workers' associations in Spain for over a decade, the issue of unemployment benefits was seen as an important political obstacle. The CJEU's judgment obliged Spain to amend national social security legislation and paved the way for the ratification (Rodríguez Fernández, 2022). Compliance with EU law was a catalyst for change that moved the legal and political debates forward and stimulated further positive changes, such as bringing domestic workers' protection against unfair dismissal on a par with that of other workers and more recently, improving health and safety protections (Royal Decree 893/2024). Importantly, trade unions and other civil society organisations actively and consistently mobilised for domestic workers' rights over several years, which ensured that the opportunity for legislative change was seized and used effectively.

5. FUTURE POLICY DIRECTIONS AND RECOMMENDATIONS:

Tackling the care crisis facing our societies requires that decent working conditions be ensured for all those working in home-based care, migrant and national workers alike. In the short term, efforts should focus on lifting exclusions and equalising the rights of all domestic workers with those of other workers. At the same time, we should be working long-term towards

creating egalitarian and socially sustainable models for care provision that do not perpetuate social dumping at either local or global level. This final section calls on the EU and other actors to take both short-term and long-term action.

Short-term recommendations

- ILO C189 is a good first step to improve conditions in domestic work. To encourage its ratification, the EU should first ensure that EU law complies with C189's minimum requirements. In this context, the revision of the Health and Safety Directive to end domestic workers' exclusion is imperative.
- The EU Commission must be proactive in the enforcement of EU law. It is necessary to examine whether Member States exclude types of domestic workers from the implementation of the EU social *acquis*, for instance in relation to the Adequate Minimum Wages and the Work/Life Balance Directives. The EU Commission must require Member States to consider implementation of the EU social *acquis* explicitly in relation to domestic workers. Additionally, the EU Commission should use its existing networks of experts, such as the European Equality Law Network and the European Centre of Expertise, to identify any enforcement gaps of the EU *acquis* in relation to domestic workers. Member States must be held accountable and required to lift any exclusions, as well as work to close enforcement gaps.
- The EU Care Strategy should be implemented with due regard to the specific challenges and rights of migrant domestic workers. The EU should conduct an implementation strategy that ensures that the requirements of both EU law and ILO C189 are met. EU institutions should facilitate the exchange of good practices among Member States and support the development of national initiatives that deliver decent work for all domestic workers, regardless of immigration status.
- Social partners have a key role to play in ensuring decent work for domestic workers, including through social dialogue and collective bargaining. However, in most EU Member States, domestic workers are not effectively represented in social dialogue. The EU Commission must support and strengthen social partners' efforts to further develop social dialogue and collective bargaining for domestic workers at both EU and national levels.
- Trade unions must be committed to organising domestic workers and joining forces with other civil society organisations to mobilise for their rights at the national and EU levels. Migrant workers, regardless of migration status, must be meaningfully included in these efforts; this entails campaigning for both workplace and migration status-related reforms.

³ These are Belgium (10 June 2015), Finland (8 January 2015), Germany (20 September 2013), Ireland (28 August 2014), Italy (22 January 2013), Malta (14 May 2021), Portugal (17 July 2015), Sweden (4 April 2019) and Spain (28 February 2023).

Long-term recommendations

- Decent working conditions in domestic work, especially pay, require adequately funded care services. High quality and accessible care services require public investment. EU institutions and Member States should explore possibilities for EU financing in care services.
- A dialogue should start at the EU level about the possibility of adopting an EU instrument on the conditions of entry, stay and work of third-country national domestic workers. Such an instrument should guarantee that non-EU domestic workers have rights to family reunification, paths to long-term residence, rights to change employers and equality of treatment for labour and social rights. Migrant workers can play an important role in creating socially sustainable and egalitarian models for home-based care. This, however, is conditional on migrants being admitted on conditions that do not exacerbate their vulnerability to exploitation.

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REFERENCES

Caracciolo di Torella, Eugenia. 2023. Re-thinking care after the pandemic: a European Care Strategy for Caregivers and Care Receivers. *ERA Forum* 24: 55–67.

Cherubini, Daniela, Garofalo Geymonat, Giulia and Marchetti, Sabrina. 2018. Global Rights and Local Struggles. The Case of the ILO Convention N.189 on Domestic Work. *The Open Journal of Sociopolitical Studies* 11(3): 717–742.

Council Decision 2014/51/EU of 28 January 2014 authorising Member States to ratify, in the interests of the European Union, the Convention concerning decent work for domestic workers, 2011, of the International Labour Organisation (Convention No 189).

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Court of Justice of the EU (CJEU). C-389/20 *CJ v Tesorería General de la Seguridad Social (TGSS)*. 24 February 2022. ECLI:EU:C:2022:120.

Dowling, Emma. 2018. Confronting capital's care fix: Care through the lens of democracy. *Equality, Diversity and Inclusion: An International Journal* 37(4): 332–346.

EFFAT, EFFE, EFSI, UNI-Europa. 2024. Personal & Household Services Employment Monitor: Towards a sustainable and equitable future for care and help at home. May 2024. Available at: <https://effat.org/wp-content/uploads/2024/05/PHS-Employment-Monitor-Report-Final-170524.pdf>

European Commission. 2022. A European Care Strategy for Caregivers and Care Receivers, COM(2022) 440 final.

European Commission and Economic Policy Committee. 2021. The 2021 Ageing Report – Economic and Budgetary Projections for the EU Member States (2019–2070). May 2021. Available at: https://economy-finance.ec.europa.eu/publications/2021-ageing-report-economic-and-budgetary-projections-eu-member-states-2019-2070_en

European Parliament. 2016. Resolution of 28 April 2016 on women domestic workers and carers in the EU (2015/2094(INI)).

European Labour Authority. 2021. Tackling undeclared work in the personal and household services sector, September 2021. Available at: https://www.ela.europa.eu/sites/default/files/2022-03/Study-report-on-personal-and-household-sector.2021_EN.pdf

International Labour Law Office. 2021. Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189). Geneva: ILO.

Kocher, Eva. 2024. "Legal certainty" for live-in work in Germany: A strategy for formalization? *International Labour Review* 163(3).

Pavlou, Vera. 2023. Sustainability, social reproduction and the future of labour law. In: Géa, F. and Palli, B. (eds) *L'avenir du droit du travail: Perspectives internationale et comparée*. Larcier, pp. 667–686.

Pavlou, Vera. 2021. *Migrant Domestic Workers in Europe. Law and the construction of vulnerability*. Hart Publishing.

Rodríguez Fernández, María Luz. 2022. El trabajo doméstico en España logra un importante avance. *En Positivo*. 20 August. Available at: <https://www.enpositivo.com/2022/08/20/proteccion-social-sobre-el-trabajo-domestico-maria-luz-rodriguez-fernandez/>

Royal Decree 893/2024 of 10 September, for the regulation of health and safety in domestic work.

Trebilcock, Anne. 2018. Challenges in Germany's Implementation of the ILO Decent Work for Domestic Workers Convention. *International Journal of Comparative Labour Law and Industrial Relations* 34(2): 149–176.

Zwysen, Wouter. 2023. Labour shortages—turning away from bad jobs. ETUI Policy Brief. 6 April 2023. Available at: <https://www.etui.org/publications/labour-shortages-turning-away-bad-jobs>