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Comparative Study on Health and Safety at Work in the Personal and Household Services Sector

Fair Work and Equality Law Clinic

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Executive Summary

Subject Matter

This report provides a comparative study on health and safety at work in the personal and household services (PHS) sector in Belgium, Italy and the Netherlands.

Purpose of the Report:

To provide a comprehensive study of the health and safety at work in the PHS sector in Belgium, the Netherlands and Italy, four main questions were asked in this report:

1. How is health and safety at work in the Personal and Household Services sector regulated in the cases of Belgium, the Netherlands and Italy?
2. Are there any gaps in the protection of workers in the Personal and Household Services sector regarding health and safety at work in the three countries under study?
3. Can we identify and describe “best practises”/“innovative initiatives” in these three countries aimed to improve the protection of workers in this sector concerning health and safety at work?
4. What has been the situation of workers in the Personal and Household Services sector regarding health and safety at work during the COVID-19 pandemic?

To effectively approach these questions, the report first examines the definition of personal and household services (PHS), followed by an investigation of the intrinsic characteristics of this sector of employment. The comparative study analyses international and domestic legislation, as well as policy measures and initiatives introduced and implemented in each country studied to protect the health and safety of workers in the PHS sector. The report also investigates how the ratification of the ILO Domestic Workers Convention, 2011 (No. 189)¹, or lack thereof, contributes to safer working conditions for PHS workers.

Results:

1. Regarding the health and safety regulation of domestic workers in Belgium, Italy, and the Netherlands:

The scope of domestic work, despite it constituting a significant proportion of the national workforce, has been persistently undervalued and under regulated. The ILO Domestic Workers Convention, 2011 (No.189) was created to enhance the work conditions attributed to domestic workers. Accordingly, the Convention, alongside various other instruments, contributes to the preservation of fair and just working conditions, as well as the elimination of discrimination; an area which is relevant to domestic workers due to the majority being of immigrant status. In

¹ International Labour Organisation (ILO) Convention Concerning Decent Work for Domestic Workers [2011] C189.

addition, within this line of work, numerous risks may arise, consisting of, but not limited to, hazardous exposures and psychosocial risks—those of which may remain unaddressed.

Belgium ratified the ILO Convention No.189 in 2015, wherein Article 13 of the Convention (right to a safe and healthy environment) expanded the scope of the Well-Being Act to apply to domestic workers. Moreover, the Labour Contracts Act of July 3rd 1978, and the Well-Being Act of 4 August 1996 display measures to guarantee health and safety in the work sphere; demonstrating more advanced and sufficient regulatory procedures in relation to the other countries under study. The introduction of the National Strategy on Well-Being at Work 2016-2020 in Belgium has allowed to further address health and safety concerns whilst, simultaneously, acknowledging certain issues faced by domestic workers, such as language barriers.

Italy ratified the ILO Convention No.189 in 2013 which has raised awareness for domestic workers' rights and guided the employer's organisations, such as DOMINA², to contribute to the health and safety of the domestic workers.

The Netherlands has not ratified the ILO Convention No. 189 due to the obligations laid out in the Convention in opposition with their domestic legislation, namely the 'Regeling Dienstverlening Aan Huis' (RDAH)³. Health insurance, training possibilities and/or risk mitigation are, most of the time, not available. The employment relationship is often informal between domestic workers and their employer. As a result, domestic workers are exposed to exploitation as they are highly dependent on their employers. The RDAH lacks incentive to ensure health and safety in comparison to the other countries under study.

2. Regarding the gaps in legislation of the protection of workers in the PHS sector in Belgium, Italy, and the Netherlands:

Employees within the PHS sector are prone to encounter more dilemmas than regular employees due to the informality of the sector. Even in countries where there are sufficient safeguards to health and safety in the workplace, or who have ratified the ILO Domestic Workers Convention, 2011 (No.189), inevitable gaps still arise. Indeed, the countries under study have demonstrated certain similarities in the matter, such as the inability to conduct inspections and monitoring on the premise (being that of private households). Regarding the attribution of liability, it remains of a rather ambiguous nature; establishing a negligent criterion when injuries ensue would raise complexities in each jurisdiction. Similarly, case-law is rather absent in this field, which may be the result of domestic workers being disincentivized from bringing forth claims. In addition, other gaps have been addressed for each country.

Belgium has revealed its significant competence in sufficiently regulating the PHS sector through the implementation of the Service voucher system. However, the monitoring of the health and safety working conditions for domestic workers is limited by the Royal Decree failing to

² National Association of Families as Employers of Domestic Workers, a signing body of the National Collective Labour Agreement (CCNL) on Domestic Work.

³ Regeling Dienstverlening Aan Huis, 30-09-2015.

recognise the circumstances of domestic workers, such as having numerous workplaces. The National Employment Office (NEO) asked employers to be well informed on the specific health and safety risks of domestic workers.

In Italy, as the National Collective Labour Agreement on Domestic Work (CCNL)⁴ is not applicable to undeclared workers it has left a huge gap in the legislation. If the CCNL does apply to domestic workers there is still insufficient protection for ‘live in’-domestic workers, as it leaves them vulnerable to exploitation in terms of working too many hours.

In the Netherlands, a lack of recognition of domestic workers as ‘real workers’ and their situations not being considered in domestic legislation, such as the RDAH and the Law on Working Condition (Arbowet)⁵, caused these ruptures in the system and leaving workers exposed to exploitation and other hardships especially in times like the Covid-19 pandemic.

3. Regarding the “best practices”/innovative initiatives aimed to improve the protection of workers in this sector concerning health and safety at work in Belgium, Italy, and the Netherlands:

When attempting to improve the legal protection of domestic workers through the Service voucher system, Belgium made a significant development, especially regarding issues such as discrimination occurring in the PHS sector. Allocating payment and social security contributions, as well as ascertaining health and safety in the workplace fall under the scope of obligations of the service voucher company. Tax reduction is another benefit service users can receive which has been one of the most successful inducements for Belgium’s PHS sector to stay regularised. Another mandatory feature in Belgium’s domestic legal framework is training consisting of, for instance, technical training, soft-skill training, and motivational factors. Awareness campaigns on the complexities and risks associated with the work are undertaken to encourage domestic workers to take pride in their employment, which could, altogether, enhance their work abilities.

In Italy, EBINCOLF- the National Bilateral Agency of the Section of Employers and Family Collaborators-, is a bipartite authority created in the framework of the National Collective Agreement on Domestic Work⁶. Training is provided, in a manner as to strengthen the workers’ abilities to combat potential risks arising from their employment and the awareness of their particular role for the care recipients and society. Organisations in Italy, simultaneously, have an obligation to inform employers on the legal obligations, regularisations and formalisation of the employment relationship, whilst providing domestic workers with relevant information. Also, organisations in Italy advise employers on how to fulfil their legal obligations, regularisation, and formalisation of the employment relationship. Information has been published regarding inspection of labour and social legislation through the report – updated in 2019 – of the statistical

⁴ National Labour Collective Agreement of 2001 (CCNL).

⁵ Arbeidsomstandighedenwet 1-07-2021.

⁶ Ad-PHS - Advancing Personal and Household Services, ‘Country Report – Italy’ (2020), 8.

archives by the National Labour Inspectorate, which has been very beneficial in protecting domestic workers.

The ILO Domestic Workers Convention, 2011 (No.189) has not been ratified in the Netherlands as their domestic legal framework does not comply with the Convention. Therefore, the Dutch government has currently not adopted any innovative approach ensuring health and safety of domestic workers. Awareness campaigns initiated by the central government do however exist, consisting of information on the RDAH. The website of the central government provides useful data regarding the obligations employers have like providing insurance and contracts to domestic workers.

4. Regarding the situation of workers in the PHS sector on health and safety at work during the COVID-19 pandemic in Belgium, Italy and the Netherlands:

Upon the emergence of the COVID-19 pandemic, numerous restrictions arose limiting the ability for employment to be pursued in a regular manner. That is to say, alongside the lockdowns, employment was generally put to a halt, or transferred to an online capacity. For domestic workers, an online nature was inevitably unfeasible, and contracting the virus in their work environment was an increasing concern and risk. This raised questions in numerous countries on whether domestic workers should be recognized as “essential workers”. Simultaneously, the unregulated nature of part of the workforce complicated the matter in terms of ensuring health and safety.

In Belgium, domestic workers were classified as essential workers, and were therefore compelled to continue their employment obligations in personal households. However, pursuant to health and safety concerns related to the risks posed by the virus, unemployment benefits were temporarily offered by the Belgian Federal Government. Furthermore, PPE equipment was distributed to workers in the PHS sector. Lastly, domestic workers during the beginning of the pandemic could receive their full salary when refusing a job if they had health concerns.

Italy suffered the highest amount of coronavirus loss in the entire European Union. Domestic work was explicitly excluded from the ‘Cura Italia’ Decree No. 18 (2020) implemented at the start of the pandemic which consisted of the wage guarantee fund and the ban on dismissals. Thus, domestic workers were susceptible to potentially being dismissed from their employment. Emergency income support measures improved the situation of domestic workers slightly.

Both undocumented and documented workers were impacted by COVID-19 in the Netherlands. The little legal protection given by the Dutch legislation (the RDAH) to domestic workers like being exempted from receiving social security benefits, meant that, many of them were left empty handed during the pandemic. The health crisis, however elucidated the situation of domestic workers in the country, creating potential for improvements for the current situation of the PHS sector.

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List of Abbreviations

ALE	Agence Locale pour l'Emploi
BW	Dutch Civil Code
CASSACOLF	Informazioni e servizi per datori di lavoro e lavoratori del settore domestico
CCNL	Italian National Collective Labour Agreement on Domestic Work
CEDAW	International Convention on All Forms of Discrimination against Women
CFREU	Charter of Fundamental Rights of the European Union
DCFR	Draft Common Frame of Reference
DOMINA	Italian National Association of Families as Employers of Domestic Workers
EBINCOLF	Italian National Bipartite Agency of the Section of Employers and Family Collaborators
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EU	European Union
EU-OSHA	European Union Agency for Occupational Safety and Health
FEB	Federation of Belgian Enterprises
FIDALDO	Italian Federation of Domestic Employers
FPS	Belgian Federal Public Service
ILO	International Labour Organisation
INAIL	Italian National Institute for Insurance against Accidents at Work
INPS	Italian National Institute of Social Security
ISS	Italian National Institute of Health
ISTAT	Italian National Institute of Statistics
NEO	Belgian National Employment Office

NGO	Non-Governmental Organisations
OSH	Occupational Safety and Health
OSS	Operatore Socio Sanitario
PETL	Principles of European Tort Law
PHS	Personal and Household Services
PPE	Personal Protective Equipment
RDAH	Regeling Dienstverlening Aan Huis (Services in the Home Regulation)
RIE	Risico Inventarisatie en Evaluatie
SZW	Sociale Zaken en Werkgelegenheid
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UNI	Italian National Entity for Standardisation
UWV	Uitvoeringsinstituut Werknemersverzekeringen
VBO	Federation of Belgian Enterprises
WHO	World Health Organisation
WIA	Dutch Work and Income Act

1. Introduction

Personal and Household Services (PHS) - in a broad sense - describe a wide range of activities taking place in households contributing to the well-being of families and individuals. This includes childcare, care provided for older people and persons with disabilities, housework services, remedial classes, and home repairs⁷.

Personal and Household Services (PHS) is an important part of the employment sector. According to the European Union, there are currently 9.5 million domestic workers, representing around 4% of total employment in the EU⁸. Among this number, 6.3 million are declared workers whereas an estimated 3.1 million are working undeclared⁹. However, these figures are likely higher as it is difficult to calculate the precise number of undeclared workers in the field. Nonetheless, PHS is a sector of the employment market that is expected to increase significantly in the years to come. A growing number of older people in Europe is resulting in rising demands for home and care support. Additionally, a shrinking working age population is calling for an expansion of the workforce by facilitating a better work-life balance. That will help to provide, for instance, more possibilities for women in employment. A surge in employment in the PHS sector is, therefore, expected to adapt to these new demographics¹⁰. Nevertheless, PHS work is still amongst the most precarious areas of employment and if not monitored closely, workers could be unable to make ends meet and lack effective social security coverage¹¹. The long-lasting exclusion of domestic workers from formal employment protections, the common denial that home can be an unsafe space and the complexity of employment relations, all contribute to the sensitive and singular nature of PHS¹². These factors cultivate an environment where PHS workers are easily exposed to a number of health and safety risks at their workplace. Moreover, a large contribution of PHS work is conducted by women, immigrants, and low-skilled persons who are already amongst the most vulnerable groups in society. In light of the foregoing, it is clear that safeguarding the health and safety of PHS workers at work is imperative.

This report seeks to provide a comprehensive analysis of the health and safety at work in the personal and household services sector in Belgium, the Netherlands and Italy. This comparative study will investigate international and domestic legislation, policy measures, and initiatives introduced and implemented in each respective country to protect and safeguard workers in the PHS sector. The report will also examine how the ratification, or lack thereof, of the ILO Domestic

⁷ Nuria Ramos Martin and Ana Belen Munoz Ruiz, 'Overview Comparative Report - Job Quality and Industrial Relations in the Personal and Household Services Sector' (2018) VS/2018/0041, 3.

⁸ European Commission, 'Personal and Household Services' (European Commission) <<https://ec.europa.eu/social/main.jsp?catId=1427&langId=en>> accessed 21 January 2022.

⁹ C189 European Alliance, 'Step Up Efforts towards Decent Work for Domestic Workers in the EU: 10th Anniversary of ILO Domestic Workers Convention, 2011 (No.189)' (2021) 8.

¹⁰ Enikö Baga, Rachel Cylus, Sigrid Rand and Verena Rossow, 'Personal and Household Services (PHS- Policies and Instruments: State of Play in the 21 EU Member States' (Advancing Personal and Household Services, 2020), 2.

¹¹ C189 European Alliance (n9) 9.

¹² Nik Theodore, Beth Gutelius and Linda Burnham, 'Workplace Health and Safety Hazards Faced by Informally Employed Domestic Workers in the United States' (2018) 67(1) Sage Journals 9, 10.

Workers Convention, 2011 (No. 189) has contributed to safer working conditions for PHS workers.

1.1 Research Questions

As part of the Fair Work and Equality Law Clinic, our goals embody the production of a Report on a comparative study concerning Health and Safety at Work in the Personal and Household Services Sector. To effectively approach such a report, four questions have been put forwards:

1. How is health and safety at work in the Personal and Household Services sector regulated in the cases of Belgium, the Netherlands and Italy?
2. Are there any gaps in the protection of workers in the Personal and Household Services sector regarding health and safety at work in the three countries under study?
3. Can we identify and describe “best practises”/ “innovative initiatives” in these three countries aimed to improve the protection of workers in this sector concerning health and safety at work?
4. What has been the situation of workers in the Personal and Household Services sector regarding health and safety at work during the COVID-19 pandemic?

1.2 Methodology

To extensively examine the questions at hand, the methodology which has been of predominant use is that of a qualitative approach. The aim of the research is to analyse the situation of Personal and Household Services (PHS) regarding health and safety at work in Belgium, Italy and the Netherlands, via a comparative and multidisciplinary perspective. As students from the Fair Work and Equality Law Clinic, it has been vital for us to apply our legal knowledge in the report to the best of our abilities. This was accomplished through close scrutiny of legislative material, at the EU and national level, whilst retrieving relevant case-law to corroborate our argumentation. Reports and academic articles were considered to augment our knowledge on the topic and effectively administer it throughout the report itself. A hybrid seminar was conducted with experts in the field, wherein the preliminary findings of the report were presented, and additional information was gathered, which has been implemented in the research. Lastly, interviews were conducted with representatives in the three countries, to gather further information and grasp the functioning of the different systems from internal perspectives.

1.3 Outline of the Report

The research questions above-mentioned are answered through a structured outline consisting of eight chapters. Chapter 1 introduces the personal and household services sector and explains the purpose and outline of this report. Chapter 2 examines the proposed definitions of the PHS sector and discusses the intrinsic characteristics of this precarious type of work. Chapter 3 explores the relevant international and European legislation. Chapter 4 studies the domestic legal

framework in Belgium, the Netherlands and Italy, how it seeks to protect PHS workers and analyses the impact of the ILO Convention ratification, or lack thereof, in these respective countries. Chapter 5 investigates the existence of any gaps in the current legislative framework of each country and examines who is liable where damage or injury occurs and the workplace. Chapter 6 outlines innovative approaches identified in each country of the study and reviews the training mechanisms developed. It also explores domestic training mechanisms available to PHS workers and their clients. Chapter 7 studies how COVID-19 has impacted the PHS sector in Belgium, the Netherlands and Italy. Finally, Chapter 8 offers a general overview of each section discussed in the report and provides a rigorous and comprehensive answer to each question of the study.

2. Personal and Household Services

2.1 Definition

The ILO Convention on Domestic Workers refers to PHS as “domestic work”. According to its Article 1, domestic work is defined as “*work performed in or for a household or households*”. This provision also specifies that “*a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker*”. According to this definition, two elements define the nature of PHS: the place where it takes place (in an individual’s home) and the type of worker covered by the definition. This definition, however, is not representative of the regulatory framework at European level considering that only eight EU Member States have ratified the Convention to date¹³.

The European Union has not always been clear when defining PHS. In 2001, the European Foundation for the improvement of living and working conditions (Eurofound) defined “employment in household services” as “*all those services provided by public or private organisations, or by the third sector, which substitute paid work (in the form of a job or self-employment) for work which was formerly performed unwaged within the household. Therefore, all services provided inside and outside the home of the user are included, as long as they maintain and support members of a private household*”¹⁴. This definition covers a wide range of activities and acknowledges the changing nature of such employment as it went from activities previously performed by family members free of charge, to activities provided by salaried trained workers. Whereas in a Note on Personal Services published in 2011, the European Commission defined “personal services” as “*regrouping all services which contribute to the greater well-being at home of the citizen: care services (childcare, home help, care of elderly people, etc.), cleaning, remedial class, home repairs (electricity, gardening, etc.) and maintenance (administrative and technology assistance)*”¹⁵. Finally, in 2012, the European Commission published a Staff Working Document where it defined PHS as covering “*a broad range of activities that contribute to well-being at home of families and individuals: childcare, long term care for the elderly and for persons with disabilities, cleaning, remedial classes, home repairs, gardening, ICT support, etc.*”¹⁶. The latter definition is currently used at EU-level to define PHS. Moreover, such characterisation encompasses direct care and indirect care work. Important to note here is that all the definitions used by the European Union frame PHS as belonging to the formal labour market.

All in all, it is fair to say that the definition of the PHS sector is unclear as it has multiple aspects and can cover a myriad of services. In fact, the complexity of the definition of PHS also lies in the different objectives pursued by public policies and instruments developed by the

¹³ Only Belgium, Finland, Germany, Ireland, Italy, Malta, Portugal, and Sweden have ratified the ILO Convention C189 on Domestic Workers.

¹⁴ Alessandra Cancedda, ‘Employment in household services’ (Eurofound, 2001) 8.

¹⁵ European Commission, DG Employment, ‘Note on Personal Services’ (2011).

¹⁶ European Commission, ‘Commission Staff Working Document on Exploiting the Employment Potential of the Personal and Household Services’, SWD (2012) 95 final, 4.

respective Member State. Indeed, some of these policies and instruments may focus on housework on the one hand, and care policies on the other hand, or even both at the same time¹⁷. This explains why it is important to look at how Member States define PHS in their national legislation.

In Belgium, there is no legal definition of PHS work. Activities relating to the personal care and household services are often referred to as “proximity services”¹⁸. This term encompasses multiple services such as household activities, childcare, and personal care services taking place in private homes. There is a clear distinction between direct care and indirect care work and these two categories of PHS are composed of different policy instruments.

In Italy, the PHS sector is legally defined as domestic work. Law no. 339/58 defines the domestic work as employment that provides services to a family and focuses on regulating the employment relationship, while, also, serving as a basis for the definition of domestic workers: *“employment relationships concerning employees of domestic services who perform their work, continuous and prevalent, of at least 4 hours a day with the same employer, with remuneration in cash or in kind. Employees of domestic personal services are defined as workers of both sexes who work for the functioning of family life in any capacity, whether they are specifically qualified personnel or personnel assigned to general tasks”*. Apart from this, the definition of domestic work is found in the first National Collective Labour Agreement (CCNL) for the Domestic Sector. According to the agreement, *“the contract applies to employees, including those of non-Italian nationality or stateless persons, however remunerated, employed in the functioning of family life and family relationships structured, taking into account some fundamental characteristics of the relationship”*. The CCNL makes a distinction between workers providing mostly indirect care services – domestic-assistants (colf) and those providing mostly direct care services – care-assistants (badanti).

In the Netherlands, PHS are not precisely defined by the government, as it is not considered a separate sector in the Netherlands. There are a variety of functions that can therefore be seen as PHS work ranging from household services such as cleaning to caretaking services and from dog walking to being a ‘professional organiser’. The Netherlands follows the framework provided by Eurofound¹⁹ and implemented this definition by interpreting it through their own standards by, for example, approaching occupations relating to healthcare with completely different priorities than occupations that are not related to health care.²⁰

¹⁷ Nicolas Farvaque, ‘Developing personal and household services in the EU - A focus on housework activities’ (Orseu, 2013) VT/2012/026, 12.

¹⁸ Nuria Ramos Martin, ‘Country Report: Belgium - Job Quality and Industrial Relations in the Personal and Household Services Sector’ (PHS-QUALITY, 2020) 3.

¹⁹ See paragraph 2, section 2.1 of this report.

²⁰ Ad-hoccommissie Werken en Leven in de Toekomst (WLT), “Markt voor persoonlijke dienstverlening in internationaal perspectief Varianten en denkrichtingen”, Sociaal - Economische Raad (SER), June 2020.

2.2 Two Categories of PHS Work: Direct and Indirect Care

The PHS sector includes two categories of work: direct care and indirect care. The former encompasses care and support services provided by a caregiver to a person with special needs. This includes care and support services for the elderly, children and dependent persons. The latter, however, comprises services that are generally centred around an object and support the maintenance or preparation of a space or object²¹. An example of an indirect activity is household services. Nevertheless, these two categories of PHS work are not always distinct from one another. In some cases, there can be an overlap between direct and indirect care services²². For instance, cleaning a home can be considered part of the overall care provided to a dependent person, yet it can also be a convenience service provided to a non-dependent person. The key to differentiating between these two types of services is the state of health and dependence of the client. In most countries, direct care services belong to public social services whereas indirect care services are mainly provided via private arrangements. In some countries, these arrangements are informal and do not entail any government interference²³.

2.3 Precarious Nature of PHS Work

PHS is characterised by a number of elements which make it a precarious employment sector. Firstly, there are often legislative and regulative gaps in countries' economic and social protection of PHS workers. As a result, they often enjoy less employment rights, social protection, and representation as compared to workers in other sectors of the economy²⁴. Secondly, the sector is characterised by different employment relationships and work arrangements. PHS workers can be employed through placement agencies or provider organisations, but they can also be directly employed through a contractual relationship with private individuals or operate as self-employed workers. They also face multiple working arrangements of work be it part-time or full-time and work for one or multiple employers. These different employment relationships mean that workers often work by themselves and lack social contact at the workplace increasing the instability and unreliability of PHS work. Thirdly, PHS take place behind closed doors, exposing the workers to a great number of risks ranging from isolation, sexual exploitation, prolonged working hours, forced labour and lack of privacy. In extreme cases, this extends to limitation of mobility through withholding of passports or identification documents by the employer. Domestic workers face a high risk of injury at work as they can be exposed to dangerous chemicals when cleaning and perform physically demanding tasks such as lifting heavy objects. The fact that PHS work occurs in individuals' homes also means that their workplace cannot be subject to prior monitoring or examination by health and safety authorities for any risk exposure. Finally, the PHS sector is characterised by a power imbalance between the worker and the client, exposing the former to

²¹ Enikö Baga, Rachel Cylus, Sigrid Rand and Verena Rossow (n10) 13.

²² Nicolas Farvaque (n17) 11.

²³ Nuria Ramos Martin and Ana Belen Munoz Ruiz (n7) 4.

²⁴ C189 European Alliance (n9) 11.

discrimination, violence and harassment at work especially for women and migrant workers²⁵. This imbalance of power also feeds the wrongful assumption that domestic work is a low-skilled job and not a profession. All these elements contribute to the precarious nature of PHS work.

²⁵ C189 European Alliance (n9) 13.

3. International and European Legal Framework

3.1 ILO Convention

The ILO Domestic Workers Convention, 2011 (No.189) states, in its Preamble, the significance of the contribution of domestic workers, and highlights that this work remains undervalued and particularly invisible. The majority of the work persists to be conducted by women, many of whom may be migrants, and/or part of disadvantaged communities. Hence, they remain vulnerable to abuses of human rights and inherent discrimination. These issues ought to be addressed, thereby, the Convention enables solid grounds to enhance the protection of these workers. Article 3 of the said convention indicates that Member States should ensure the protection of the human rights of domestic workers *vis-à-vis* freedom of association, elimination of forced labour, abolition of child labour and elimination of discrimination. The following Articles 5 and 6 encourage Member States to adopt measures to enhance protection against abuse, harassment, violence, and ensure that domestic workers enjoy decent working conditions.

Upon ratification of such Convention, the Member States would be inclined to treat domestic workers as ‘regular’ workers and ascertain equal treatment, as embedded in Article 10, and this would be of binding nature, as per Article 21. Given the nature of the working environment (someone’s personal household), there remains ambiguity on whether safety and health are adequately addressed. Article 13 establishes that Member States must ensure that domestic workers are safe within their employment. However, measures ensuring the right to health and security at work is a shortcoming of this Convention. Indeed, very little to no monitoring of health and safety in personal households is prescribed by it.

The inability to enter private households and conduct inspections creates imminent downfalls in the system which inherently will be a nearly impossible task to ever conclude that safety and health is sufficiently addressed in the countries which have ratified the Convention. Article 17(2) mentions that Member States should incorporate measures of labour inspection and penalties. Lastly, Articles 16-17 of the Convention set that dispute resolution and complaint mechanisms should be available for the domestic workers²⁶.

Despite the benefits derived from the provisions in the ILO Domestic Workers Convention, 2011 (No.189), only eight EU Member States have ratified it. The ILO C189 Alliance, composed of European stakeholders either directly or indirectly involved in the domestic work sector, aimed to encourage other Member States to enhance the situation of PHS workers. This was accomplished in a two-day conference on the 10th anniversary of the ILO Domestic Workers Convention, 2011 (No.189). The partner organisations included: the European Association of Service Providers for Persons with Disabilities (EASPD), European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), UNI Europa, International Domestic Workers Federation (IDWF), Platform for International Cooperation on Undocumented Migrants (PICUM),

²⁶ ILO Convention C189 (n1).

European Federation for Family Employment and Homecare (EFFE), European Federation for Services to Individuals (EFSI), European Commission, and the ILO Office for the European Union and the Benelux countries²⁷.

3.2 Occupational Safety and Health

The aim of the Framework Health and Safety Directive 89/391/EEC - OSH “Framework Directive”²⁸ is the introduction of measures to encourage improvements in the safety and health of workers at their workplace. This “Framework Directive” is a safety and health legal act consisting of general principles on the prevention and protection of workers against occupational accidents, diseases, and basic obligations for employers and workers. Nevertheless, the obligations of the workers shall not affect the principle of the responsibility of the employer. The prevention, assessment, and elimination of risk as well as the protection of safety and health, accident factor, informing, consultation, balanced participation and training of workers and their representatives are paramount. Hence, these fundamental dimensions are embedded in the Framework Directive.

It is important to note that according to Article 14 of the “Framework Directive”, health surveillance should be provided for workers according to national systems.

Occupational safety and health have been at the heart of the European project from the start with the creation of the European Coal and Steel Community. In the early 1990s, right after the Framework Directive (89/391/EEC) was published in 1989, there were over 4 million workplace accidents every year in Europe—8,000 of those were fatal. The European Commission declared 1992 the ‘European Year of Safety and Health at Work’ and in 1994 the European Union information agency for occupational safety and health commonly known as EU-OSHA was founded. The aim of the agency is to promote a culture of risk prevention to improve working conditions in Europe. The agency works to make European workplaces safer, healthier, and more productive for the benefit of employees, businesses, and governments. EU-OSHA provides guidelines and tools. Together with similar, national, internet-based tools, it is providing sector-specific information targeted at small and medium-sized enterprises as they employ the majority of the workers in the EU, and often face higher obstacles to ensure occupational health and safety and guide employers through all steps of the risk-assessment process²⁹.

The Framework Directive excludes domestic workers explicitly from the personal scope, since it establishes in Article 3(a) as “*any person employed by an employer, including trainees and*

²⁷ European Commission, ‘European alliance calls on EU governments to implement convention on domestic workers’ (European Commission, 26 June 2021) <<https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=10037>> accessed 7 February.

²⁸ Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC).

²⁹ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU strategic framework on health and safety at work 2021-2027 Occupational safety and health in a changing world of work’ COM (2021) 323 final.

apprentices but excluding domestic servants”³⁰. While this exclusion was not part of the first draft of the Commission’s proposal of 1988³¹, it was introduced into the final text due to pressure of some Member States. The removal of Article 3(a) Directive 89/391/EEC has been asked by the European Parliament³², but it is still in the text. It is important to highlight that ‘domestic servants’ only refer to domestic workers employed by end-users. Due to the difficulties to apply the specific obligations, such as duty of prevention including risk assessment, provision of personal protective equipment, professional training, and medical test, the EU and national regulations on this issue have excluded domestic workers from the regulation, if the employer is a family and not a company. However, if the workers are hired by intermediary organisations such as in triangular employments like in Belgium, the Framework directive does not allow the exclusion of such workers.

The ‘Framework Directive’ does not oblige Member States to include such domestic workers into their legislation and only half of them do so. Nevertheless, Member States are encouraged by the Commission to ensure a broad coverage of health and safety policies, and domestic workers are explicitly mentioned as a relevant group³³. The Commission argues that this shall help Member States to ratify the ILO Domestic Workers Convention and comply with their international duties³⁴. In light of the adoption of an international law –the ILO Convention regulating minimum standards for domestic work- European institutions should revise such exclusion of domestic workers from the regulations of health and safety. It is true that in some countries like Italy, where the domestic workers are hired directly by the families, 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 if they were self-employed³⁵. The serious accidents that are not new in relation to the sector make it 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.³⁶

³⁰ Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC).

³¹ European Commission, ‘Proposal for a Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at the workplace’ COM (1988) 73 final.

³² European Parliament, Committee on Employment and Social Affairs and Committee on Women’s Rights and Gender Equality, ‘European Parliament Resolution of 28 April 2016 on Women Domestic Workers and Carers in the EU (2015/2094(INI))’ [2016] OJ C66/30.

³³ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy’ COM (2017) 12 final, 15.

³⁴ Kirsten Scheiwe, ‘Domestic Workers, EU Working Time Law and Implementation Deficits in National Law - Change in Sight?’ (2021) 2021/03 EUI Working Paper Law 1, 6.

³⁵ Nuria Ramos Martin and Ana Belen Munoz Ruiz (n7) 48.

³⁶ Ibid 49.

3.3 Working Time Directive

The Working Time Directive 2003/88/EC has been adopted by the European Parliament and the Council to further ascertain workers' safety and health vis-à-vis the hours of work, rest periods and paid annual leave. Given that this Directive is a minimum harmonisation legal instrument, it introduces a threshold in which national laws ought to implement yet have the capacity to derogate insofar that it is not to the detriment of certain individuals – in this particular case, to the workers. Accordingly, Article 6 establishes that Member States must ensure that the average working time, with the inclusion of overtime, does not exceed 48 hours per week. A derogation is set forth in Article 17, for those cases when the working time may not be measured, such as for circumstances when the working hours are determined by the workers themselves. Taking into account such provision, it remains rather questionable whether this would apply for domestic workers; in most cases their working hours may not be measured or are pre-determined by the workers themselves. Article 17 sets forth additional examples which inherently would be subjected to derogations: managing executives or other persons with autonomous decision-taking powers, family workers or workers officiating at religious ceremonies in churches and religious communities³⁷. In respect to the OECD, the definition of a family worker is one in which a relative living in the same household aids to the operation of an establishment³⁸. Hereinafter, it may be deduced that domestic workers are not classified as family workers due to the nature of their work, thereby would not be included within the scope of these derogations.

In essence, the adoption of the Working Time Directive 2003/88/EEC was founded upon the Framework Health and Safety Directive 89/391/EEC, which has seemingly excluded domestic workers from the scope of its application. Contrary to the Directive 89/391/EEC, the Working Time Directive does not specifically mention the definition of a 'worker' with an exclusionary aspect for domestic workers. An interesting case in this regard from 2010, is the *Isère* case³⁹, which disputed the fact that the Working Time Directive was in line with Article 3(a) of Directive 89/391/EEC as there was no explicit reference to that provision. Despite the aforementioned case not dealing with domestic work specifically, the ECJ deemed that the argument would extend its application for domestic workers alike⁴⁰. Nevertheless, certain countries attain less favourable working time rules within their national regulations than embedded in the Working Time Directive. Take, for instance, Italy, where 'live-in' domestic workers could have 54 hours per week, whereas regular domestic workers have a maximum of 40 hours working week.⁴¹

³⁷ Council Directive (EC) 2003/88 concerning certain aspects of the organisation of working time [2003] OJ L299/9 (Working Time Directive).

³⁸ OECD, 'Contributing Family Worker' (*OECD Glossary of Statistical Terms*) <<https://stats.oecd.org/glossary/detail.asp?ID=443>> accessed 10 December 2021.

³⁹ CJEU Case C-428/09 *Union Syndicale Solidaires Isère* [2010] ECR I-09961.

⁴⁰ Kirsten Scheiwe (n33) 5-6.

⁴¹ *Ibid* 11.

3.4 Human Rights

The Universal Declaration of Human Rights states that “*human beings are born free and equal in dignity and rights*”⁴², and the Charter of Fundamental Rights of the European Union reaffirms that “*human dignity is inviolable. It must be respected and protected*”⁴³. Most national constitutions do not acknowledge human dignity as a binding right yet consider it most-commonly as an underlying principle. Nevertheless, it ought to be acknowledged –in respect to domestic workers- that their employment is deemed undervalued and in contradiction to the underlying principle of human dignity as it is not effectively regulated and PHS workers are insufficiently protected. They often encounter direct or indirect discrimination due to their status. Direct discrimination may be portrayed where an employer does not treat equally a certain age group, or ethnicity, for instance. Indirect discrimination may occur when certain workers are granted further compensation in the form of bonuses, whereas others may not, especially when that disadvantaged group is composed mainly by individuals with certain characteristics (mainly female employees in the case of domestic workers)⁴⁴. Furthermore, due to the employment being in private households, it exposes domestic workers to numerous forms of violence which may range from threats and shouting to physical abuse directly from the clients. These factors, prevalent in the context of domestic work, need to be addressed, yet that is easier said than done. Taking into account the fact that domestic work, in its entirety, is considered to be undervalued as previously mentioned, this creates a largely negative impact on the mental health of the workers, ranging from lack of motivation to aspects of anxiety. Article 8 of the European Convention on Human Rights enshrines that “*everyone has the right to respect for his private and family life, his home and his correspondence*”. In the case of *Niemietz v Germany*⁴⁵, the Court declared that Article 8 may extend its protection of private life to those of a professional or business capacity⁴⁶.

In addition to the right to human dignity, the Charter of Fundamental Rights of the European Union (CFREU) sets out numerous provisions relevant to ensuring the rights of individuals, those of which essentially extend to domestic workers. To demonstrate, Article 15 (freedom to choose an occupation and right to engage in work), Article 21 (non-discrimination), Article 22 (cultural, religious and linguistic diversity), and Article 31 (fair and just working conditions) are set out by the Charter⁴⁷. This instrument not only embeds a list of fundamental rights, – which ought to be guaranteed within the EU- but also acts as a mechanism to safeguard

⁴² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), art 1.

⁴³ Charter of Fundamental Rights of the European Union [2016] OJ C326/391, art 1.

⁴⁴ Labour Administration and Labour Inspection and Occupational Safety and Health Branch, ‘Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide’ (2015) International Labour Office 1, 7-8.

⁴⁵ *Niemietz v Germany* no 13710/88 (ECtHR, 16 December 1992).

⁴⁶ Cees van Dam, *European Tort Law* (Oxford University Press, 2nd edn, 2013) 190.

⁴⁷ EU Charter (n40).

and promote individuals' rights and freedoms in respect to the constantly evolving nature of society⁴⁸.

The European Convention on Human Rights (ECHR) grants protection in respect to human rights in all countries belonging to the Council of Europe. Key provisions to consider in relation to the matter at hand, consist of Article 13 (the right to an effective remedy) and Article 14 (prohibition of discrimination). The role of the ECHR is to protect against the interference towards human rights by the State or against their lack of interference, therein. The interrelation of the ECHR and tort law is of relevance, as it attributes an obligation for Member States to grant proper remedies vis-à-vis violations, those of which are promulgated in national tort law⁴⁹. The ECHR has simultaneously been expanding its presence within horizontal relationships; the European Court of Justice (ECJ) has acknowledged that the fundamental rights listed in the ECHR constitute general principles of EU law and could thereby be applicable for private individuals⁵⁰.

Thus, an individual has the capacity to bring forth an action against another as a result of a breach in EU law. Within the case of *Defrenne v Sabena*⁵¹ -which concerned a Belgian flight attendant who alleged that the wages were lower than the male colleagues with the same job position- the ECJ held that Article 157 of the TFEU (infringement of equal treatment) would be actionable against other individuals. The court highlighted that the prohibition of discrimination between genders would be applicable, not only on an action against public authorities, but also towards all agreements regulating paid labour collectively and contracts between individuals⁵². In the *Defrenne* case, the Court ruled about the direct effect (horizontal and vertical).⁵³ This means that individuals can bring forth a claim before a national Court relying on the direct effect of the right to equality, such as recognised in the Treaties. On the other hand, however, directive provisions do not have the ability to enjoy direct horizontal effect. In this context, an interpretative obligation striving from Article 4(3) TEU to ensure compatibility of national law with EU law may arise, recognised as an indirect horizontal effect⁵⁴. In either circumstance, the prospects demonstrate the mechanisms available for domestic workers to bring forth a claim on the basis of a possible discrimination case. Even in circumstances to which national law permits discrimination to a certain extent, due to, for instance, a lack of adoption of a Directive, the scope of non-discrimination as a general principle could overlook the former. In the case of *Mangold*⁵⁵, it was determined that the principle of non-discrimination in terms of age would be considered as a general principle, thereby national courts would have the obligation to set aside domestic laws

⁴⁸ European Commission, 'Why do we need the Charter', (*European Commission*) <https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en> accessed 20 January 2022.

⁴⁹ Cees van Dam (n42) 23.

⁵⁰ Ibid 26 and 32.

⁵¹ CJEU Case 43/75 *Defrenne v Sabena* [1976] ECR 455.

⁵² Cees van Dam (n42) 36.

⁵³ CJEU Case 43/75 *Defrenne v Sabena* [1976] ECR 455.

⁵⁴ Ibid 37-38.

⁵⁵ CJEU Case C-144/04 *Werner Mangold v Rüdiger Helm* [2005] ECR I-9981.

conflicting with the Directive, even if the period for implementation has not expired⁵⁶. This represents that in countries such as Belgium, the Netherlands and Italy, it would be possible for domestic workers to initiate proceedings on the basis of a general principle.

In their line of work, domestic workforce is subjected to various chemicals for the cleaning process. Service voucher companies in Belgium, for instance, attain training possibilities to ascertain that the workers are aware of the risks of the chemicals, and which would be deemed too hazardous to use. In the general spectrum of domestic work, however, -and given the lack of proper inspection mechanisms- it is vastly complex to consistently validate that the right materials are being used to uphold the necessary safety measures and the right to physical health. It may be the case that the clients are persistent on a particular cleaning product, and in such cases, it is entirely left to the domestic workers to either speak up or abide by the given orders. Article 10:202(1) PETL refers to 'bodily health' which ought to be protected, and despite the evident importance to guarantee such right, proper protection in line with tort law is dependent on a matter of causation regarding negligent conduct and damage, which may be complex to prove. To illustrate, the English case of *Fairchild*⁵⁷ is a good example. It dealt with an individual who had been exposed to asbestos, that of which correlates to an increased chance of suffering severe illnesses. Determining where and when that particular individual had inhaled the asbestos is a highly difficult task; especially when the burden of proof typically lies on the claimant. In this case, the Courts relaxed the burden of proof to assure that the claimant has reasonable protection vis-à-vis his right to health⁵⁸. Albeit this being a common law approach, there is definitely potential for courts to attribute leniency in their line of judgement to retrieve the utmost protection for domestic workers if they have been exposed to highly hazardous materials.

⁵⁶ 'Mangold v Helm [2006] IRLR 143, ECJ.' (*Croner-i*, 1 March 2006) <<https://app.croneri.co.uk/law-and-guidance/case-reports/mangold-v-helm-2006-irlr-143-ecj?product=132>> accessed 16 January 2022.

⁵⁷ *Fairchild v Glenhaven Funeral Services Ltd & Others* [2002] 3 All ER 305.

⁵⁸ Cees van Dam (n42) 172-173.

4. Country Overview

4.1 Belgium

4.1.1 Domestic Legal Framework

4.1.1.1 *The Service Voucher System*

The Belgian Federal Government inaugurated the service voucher system by adopting the Act of the 20th of July 2001, –also known as the service voucher law - to promote the development of services and proximity employment⁵⁹. This law was implemented by the Federal State in 2004 and its main objectives were to establish possibilities for unskilled workers, eliminate undeclared work, satisfy needs that were imperfectly met and support economic growth. On the 1st of January 2016, decentralisation became a prominent factor, wherein the three regions of Belgium –namely Wallonia, Flanders, and Brussels- proceeded to invoke diverging mechanisms and regulations for domestic work. Nevertheless, labour law regulations are a federal prerogative. Hence, the collective bargaining agreement for the service voucher systems is negotiated at a federal level, and the regions have the capacity to adopt different approach mechanisms. As the system was created under federal law, the companies function throughout the entirety of Belgium, yet each company may be subjected to dissimilar rules⁶⁰. For instance, this may be demonstrated through the tax reductions for the purchasing of vouchers; prior to the decentralisation, individuals would benefit from a tax reduction of 30%, and currently, the region of Wallonia has limited such to 10%⁶¹. Principally, as of its commencement, the system has presented great success in enhancing the rights of domestic workers., However, it is not imperceptible to inherent challenges alongside the different regions. Albeit the effectiveness prevalent in the system, the decentralisation remains a rather questionable aspect, hence the VBO/FEB (Verbond van Belgische Ondernemingen/Fédération des Entreprises de Belgique) has suggested to refederate the service voucher system; this would be a vastly beneficial prospect given that it would grant consistency within the regions, as well as limit the embedded complexities⁶².

In Belgium, the employment conditions for the service voucher system are regulated by the Royal Decree of 2009. This highlights that service voucher workers are entitled to acquire contracts of an unlimited duration pursuant to being employed for three months. Concerning working time, there is a minimum quota of three hours per assignment, and the contracts have to be a minimum of ten hours per week⁶³. Alongside the implementation of such a Decree, domestic workers shifted their status and became recognised and categorised as regular workers, hence benefiting equal social protections as other employees.⁶⁴

⁵⁹ Law of 20 July 2001 promoting neighbourhood services and jobs.

⁶⁰ Interview with Peter Van de Veire, Director of Form TS (Online, 3 November 2021).

⁶¹ Nicolas Farvaque, (n17) 23.

⁶² Interview with Nico Daenens, CEO of Group Daenens (Online, 2 December 2021).

⁶³ Sarah Mousaid, Kelly Huegaerts, Kim Bosmans, Mireia Julià, Joan Benach and Christophe Vanroelen, ‘The quality of work in the Belgian Service Voucher System.’ (2016) 47(1) *International Journal of Health Services* 40, 48.

⁶⁴ Nuria Ramos Martin (n17) 13.

4.1.1.2 Royal Decree of the 13th July 2014

Following the ratification of the ILO Domestic Workers Convention 2011 (No.189), Belgium adopted the Royal Decree of the 13th July 2014 bringing important changes to Belgian law. For instance, it establishes that all domestic workers will be covered by social security legislation⁶⁵. This law maintains that only occasional work is to be excluded from social security coverage. Secondly, it modifies the definition of a ‘domestic worker’ to exclude persons who perform household activities only occasionally or sporadically and not professionally. Indeed, the Royal Decree adjusted the definition of ‘occasional work’ to mean “*any activity or activities carried out for the benefit of households of the employer or their family, with the exception of manual household activities to the extent that the employer does not exercise these occasional activities within that household professionally and regularly and provided the activities do not amount to over eight hours a week for one or more employers*”⁶⁶. As such, domestic work, irrespective of the number of working hours performed, does not fall within the definition of occasional work and thereby is not precluded from social security coverage. This new definition mainly targets activities such as babysitting, keeping company to the elderly or doing groceries for physically disabled persons.

In essence, with the adoption of the Royal Decree, domestic workers are now considered as “regular” workers under Belgian law⁶⁷. Thereby, domestic workers have to register at the National Social Security Office and their employment contracts are subject to the general provisions and Title V of the Labour Contracts Act⁶⁸.

4.1.2 Importance of Health and Safety in the Workplace

4.1.2.1 Act of 4 August 1996

Health and safety obligations are typically laid down in Belgium amid the Labour Contracts Act of July 3rd, 1978, as well as the Workers Well-Being Act of August 4, 1996. Within the former, Article 20.2 indicates that the employer has an obligation to ensure that work is conducted whilst upholding health and safety measures, and for first aid to be provided in case of accidents. The latter is applicable to all employers that employ at least one worker, which is then pertinent within the private and public sector alike. Since 2014, the Well-Being Act applies to domestic workers alike following the implementation of the Law of the 15th May 2014. The purpose of the Act is transposing the Framework Directive 89/391/EEC and construes the concepts of safety and health in the workplace, as well as psychosocial risks. Article 5 of the Well-Being Act shows that employers must promote the well-being of their employees, and that they are essentially responsible in case of accidents or occupational diseases arising at work. Thereby, if such is the case, the employer can, by law, prohibit the employees from performing their work—as was the case during the Covid-19 pandemic. The burden of responsibility, however, is not solely left upon the employer. Employees, similarly, have duties to refrain from performance of which could lead

⁶⁵ Royal Decree of the 13 July 2014, art. 1 and 2.

⁶⁶ Royal Decree of the 13 July 2014, art. 1.

⁶⁷ Nuria Ramos Martin (n17) 13.

⁶⁸ Labour Contracts Act of 3 July 1978.

to the detriment of their own safety or the safety of their co-workers, employers or third parties^{69,70}. To elaborate, Article 6 states that every worker ought to ensure their safety and health in conjunction with the training and instructions which were given to them by their employers. This coincides with matters, such as, making correct use of the tools given to them and the personal protective equipment. Taking such circumstances into account, if a client were to demand the domestic worker to use a specific hazardous product, it is in the workers responsibility to deny such request to avert dangerous circumstances which could result in damage to their own safety, or the safety of their client.

Article 32/1 of the Act refers to the general definition of psychosocial risks at work, in that they constitute a worker suffering psychosocial damage as a result of their work environment, working conditions and/or interpersonal relationships at work. The employer has a duty to identify and assess the risks transposed in the work environment; thereby to acknowledge that certain situations may lead to either stress, violence, harassment, and sexual harassment in the line of work⁷¹—an aspect which is a core risk in personal households, and essentially in an unregulated environment. The employer must guarantee that necessary preventive measures are ascertained to avert the increasing prevalence of psychosocial risks at work and to mitigate the risks associated, this can be accomplished via a risk analysis⁷².

If a worker were to endure acts of violence during their work performance, the employer must provide suitable psychological support, and would also bear the costs of such measures, as embedded in Article 32 quinquies of the Act. In addition, if an individual has a legitimate interest to initiate proceedings before the Labour Court to claim damages, to compensate for either material or moral damage caused by acts of violence, harassment or sexual harassment within the work sphere, the perpetrator has an obligation to cover those damages. The scope of those damages is left at the discretion of the victim, as embedded in Article 32decies, wherein they may either refer to the actual damage that was suffered by the victim, insofar that there is sufficient proof on the extent of the damage or may demand for a lump sum which is equivalent to three months of their gross salary. Accordingly, the gross month salary of a self-employed worker is to be calculated based on their gross taxable income found within their recent earning sheet of income tax, and subsequently divided by twelve. The quantity may also reach six months of their gross salary if the behaviour is linked to discrimination; the perpetrator is in an authoritative position; or on the basis of the gravity of the circumstance. Overall, these are merely a few provisions within the Act which demonstrate the strong possibilities for workers to attain protection regarding health and safety, and the opportunities to bring forth claims in severe and necessary circumstances.

⁶⁹ Labour Contracts Act of 3 July 1978, art 17.4.

⁷⁰ Frank Hendrickx, Simon Taes, & Mathias Wouters. 'Covid-19 and labour law in Belgium.' (2020) 11(3) European Labour Law Journal 276, 277-278.

⁷¹ Workers Well-Being Act of 4 August 1996, art 32/2 section 1.

⁷²Ibid art 32quater.

4.1.2.2 National Strategy on Wellbeing at Work 2016-2020

A European strategy recognised as ‘Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work’ was launched in February 2007. It aimed to reduce the quantity of occupational accidents within the EU, wherein Belgium strongly emphasised upon its adoption. In 2006, the Fund for Occupational Accidents documented that there was a total of 185,039 occupational accidents listed within the private sector. Upon the drafting of the National Strategy on Wellbeing at Work 2008-2012, which had as an aim to enhance risk prevention and surveillance mechanisms, it was evaluated in 2012 that the number of occupational accidents had been reduced to 157,131⁷³.

The Belgian National Strategy for Wellbeing at Work 2016-2020 strives for policy consideration on the Federal Public Service (FPS) Employment, Labour and Social Dialogue from the Minister of Work, as well as strategic and operational objectives of the stakeholders involved. This document enshrined an employment policy which is wholly concentrated on high protection for individuals, whilst improving health and safety on a day-to-day basis. There are numerous aspects correlated to the implementation of this strategy, and in particular dealing with enhancing the well-being at work. Predominantly, the right to work is deemed to be a human right; a healthy and safe working environment is considered essential, not only to protect workers, but to ensure an increased level of motivation. The promotion of well-being at work creates added value in relation to companies, as it would enhance productivity in the sector and avert the probability of encountering work dismissals or even bankruptcies. To provide an effective mechanism towards realising well-being at work, numerous authorities ought to be involved in this general approach, including the Federal Minister for Employment, Federal Minister of Social Affairs and Public Health, the Communities, as well as the Regions—all of which must be seriously involved in persistent consultation⁷⁴.

Within the strategy itself, four strategic objectives are highlighted in terms of the importance of safety and health.

1. Safe and healthy work: the presence of occupational accidents and diseases are excessive, and although the statistics designate a reduced amount pursuant to the introduction of the Strategy, additional efforts must be established. Primary prevention to combat potential risks, such as psychosocial risks leading to potential burnout and mental illness, and musculoskeletal disorders is needed. This prevention mechanism would require cooperation by employers, workers, federations, accident insurers and inspectorates—wherein attribution of responsibility should be allocated accordingly⁷⁵.
2. Strengthening participation in the labour market: ensuring proper integration of individuals, such as younger people, older workers and those suffering from a physical or

⁷³ The Belgian National Strategy for Wellbeing at work 2016-2020 as proposed by the Minister of Employment: Strategic and Operational Objectives 3-5.

⁷⁴ Ibid 8.

⁷⁵ Ibid 9-10.

mental disability. All of which must have sufficient comprehension of risks entailed in the workplace, and mechanisms to address those risks⁷⁶.

3. Strengthening prevention: all stakeholders have a responsibility to adopt prevention policies within their companies. This has a rather two-fold effect—the employer should be advised on how to approach the policy, and the employees are expected to contribute by reporting consistent issues. Governments also have a key role in this process, as they must adopt concise legislation which is applicable as a facilitating basis⁷⁷.
4. Strengthening the prevention culture: the prevention policy should be harmonised; its application would strive for better and safer working environments. All stakeholders have an obligation to address the prevention policy and undertake responsibility to adequately implement the prevention policy⁷⁸.

The strategy, simultaneously, enlists numerous operational objectives, despite the relevance and importance of all of them combined—for the purposes of this report - only a few will be discussed. The continuous prevention of occupational accidents is vital to consider, especially due to the severity of the circumstances which may occur—i.e., injuries or fatalities. An example of prevention mechanisms may be demonstrated in relation to fires, regulated through the Royal Decree of March 28, 2015. To effectively address a prevention policy, the Directorates General for the Supervision of Wellbeing at Work and the Humanisation of Work, and the Fund on Occupational Accidents would be under the obligation to closely scrutinise regulations to retrieve the best practises on preventing occupational accidents. Consistent prevention of health problems derived from employment must be addressed, especially in respect to the inhalation of toxic chemicals—that may be a prominent issue for domestic workers depending on the cleaning products used during the work activities. Innovative risks which may arise ought to be monitored by the FPS Public Health to develop additional research or new legislation when required. In the aforementioned context, and the relevance of the contemporary nature of the COVID-19 pandemic would have had to be taken into account. The right to attain work and to acquire a decent income is deemed a fundamental validated within the Constitution and relevant international treaties. In terms of domestic work, the strategy proposes further acknowledgment on the fact that migrant workers do not have adequate language proficiencies, which could result in complexities in comprehending the rules on health and safety to be safeguarded at the workplace⁷⁹.

4.1.3 Ratification of the ILO

The ILO Domestic Workers Convention, 2011 (No.189) was ratified by Belgium in 2015, and subsequently entered into force on the 10th of June 2016. The impact of the ratification was

⁷⁶The Belgian National Strategy for Wellbeing at work 2016-2020 as proposed by the Minister of Employment: Strategic and Operational Objectives 10-11.

⁷⁷Ibid 11-12.

⁷⁸Ibid 12.

⁷⁹Ibid 14-17.

quite limited, as domestic workers were already strongly protected under Belgian laws. Some argued that Belgium's ratification of the ILO Convention was merely figurative, providing domestic workers and their trade unions in Belgium a greater sense of security and protection by supporting their cause in the international arena⁸⁰. Despite the fact that a myriad of aspects from the Convention were already addressed in Belgian labour laws, its adoption provided further protection for the domestic workers towards enhancing the quality of the service. Pursuant to this ratification, certain amendments of Belgian legislation were passed to establish efficient compliance.

4.2 Italy

4.2.1 Domestic Legal Framework

In Italy, Law no. 339/58 defines the domestic work as employment that provides services to a family and focuses on regulating the employment relationship, while, also, serving as a basis for the definition of domestic workers: “*employment relationships concerning employees of domestic services who perform their work, continuous and prevalent, of at least 4 hours a day with the same employer, with remuneration in cash or in kind. Employees of domestic personal services are defined as workers of both sexes who work for the functioning of family life in any capacity, whether they are specifically qualified personnel or personnel assigned to general tasks*”⁸¹. This shows that the law defines domestic workers as service providers for families and not according to the specific tasks they perform. The remuneration in kind refers to the part of the salary provided only in the case of co-living with the employer, for accommodation and food, which can be monetised as indicated by the National Collective Labour Agreement.

Apart from the legislation, in Italy, labour relations in the domestic work sector are defined by collective bargaining at national level. The commitment of both employers' organisations and trade unions to represent the interests of their members led to the signature in 1974 of the first national collective bargaining agreement for the domestic work sector⁸². According to the first National Collective Labour Agreement (CCNL) for the Domestic Sector, “*the contract applies to employees, including those of non-Italian nationality or stateless persons, however remunerated, employed in the functioning of family life and family relationships structured, taking into account some fundamental characteristics of the relationship*”. The distinction is made in the CCNL between workers providing mostly indirect care services—domestic-assistants (colf) and workers providing mostly direct care services—care-assistants (badanti). It is important to note that one of the requirements enlisted in the Law no. 339/58 for defining domestic work employment is that the scope of the law covering only employment for *at least 4 hours of work a day with the same employer*, is surpassed by the collective agreement, which requires the contractualization of domestic work relationship even for one hour per week.

⁸⁰ Nuria Ramos Martin and Ana Belen Munoz Ruiz (n7).

⁸¹ Italian Law No. 339/1958 ‘On the protection of domestic work’.

⁸² International Labour Organisation, ‘Making Decent Work a Reality for Domestic Workers: Progress and Prospects Ten Years after the Adoption of the Domestic Workers Convention, 2011 (No. 189)’ (2021) 162.

The CCNL provides for permanent employment and fixed-term employment contracts as well. Being applicable to all employees in the sector, irrespective of their political status, the law is broad in scope, but remains at the same time unspecific⁸³. The collective agreement is signed by the employers' organisations FIDALDO, DOMINA and the representatives of the most important trade unions—Filcams CGIL, Fisascat CISL, Uil-Tucs and Federcolf. The collective labour agreement also includes a common declaration acknowledging that violence and harassment in the domestic workplace constitutes abuse and a violation of human rights⁸⁴. Hence, an explicit reference is made to the ILO Convention 190 (2019) and the ILO Recommendation 206 (2019). The signatories to the agreement also agreed to promote initiatives to counter any behaviour conflicting with human dignity.

The CCNL covers only the direct employment relationship established between the domestic worker and the family. The Italian national collective bargaining agreement—most recently renegotiated in 2020 - covers almost 4 million people (domestic workers and families/employers)⁸⁵. In 2021 there were 920,722 regular domestic workers and 992,587 regular domestic employers. Considering the rate of informal/unregistered work in the PHS sector accounted for 57%, there are about 4 million people covered by the CCNL including regular and irregular workers and employers. The collective agreement includes a social protection system in line with the Italian labour legislation. This system of rules currently represents the legal framework for the majority of employment contracts in the PHS sector⁸⁶. The system of contractual protection provides for the payment of holidays, sickness leave, maternity leave, 13th month's salary and severance pay. The remuneration including the minimum wage for domestic workers is fixed by the respective collective agreement.

In Italy, family booklets are dedicated to occasional work and include the social protection for workers. Each hour has a cost of €10 for the family, of which €7 goes to the worker, € 1.50 to The National Institute of Social Security (INPS) for social protection and €1.50 to National Institute for Insurance against Accidents at Work (INAIL) for accidents at work. This type of declarative and remuneration system can be used for hiring private persons, that are not registered as self-employed and do not run a business, and only perform certain work activities sporadically and occasionally⁸⁷. Users of the service are families via a pre-financed instrument of payment consisting of checks purchased from the National institute of Social Security. Each check has a nominal value fixed at 10 euros; an amount aimed at compensating work activities of a duration not exceeding one hour⁸⁸. Occasional work benefits are subject to economic limits, based on the calendar year in which the work was performed. Such economic limits have reduced the usage of checks by households. This decrease is further based on the risen alarm about the risk of limiting the application of the collective labour agreement CCNL, to evade the social security protection

⁸³ Ad-PHS (n5) 3.

⁸⁴ International Labour Organisation (n79) 185.

⁸⁵ Ibid 162.

⁸⁶ Ad-PHS (n5) 3.

⁸⁷ Ad-PHS (n5), 3.

⁸⁸ Ibid 3.

system, with the consequent attraction to the check of important shares of the domestic labour market⁸⁹. To date, the family booklet is used in a residual way. However, the usage of checks is slightly increasing, the number of worked hours has raised up to 1.5 million in August 2019⁹⁰.

4.2.2 Importance of Health and Safety in the Workplace

The CCNL clearly recognises the importance of safety at work. According to Article 28 of the agreement, every worker has the right to a safe and healthy working environment in the household. As in every work environment, the employer should prevent risk and give training to its workers about risks, hazards, and how to prevent them. For example, it is the employers' responsibility to ensure that the electrical system is equipped with an appropriate residual current device, the so-called lifesaver⁹¹. The usage of equipment and exposure to particular chemical, physical and biological agents should not take place before the training of the worker. It is also the employers' obligation to provide employees with specific rules that need to be followed in order to perform domestic tasks safely and prevent accidents or injuries. This information should be provided in written form at the time of recruitment, but the employee can also receive it at a later stage⁹². The document should be signed by the employees to ensure that they acknowledge the working rules in the domestic sector, and any risks associated with it. Article 28 of the CCNL, also provides that, in the case of an accident or occupational diseases, domestic workers have the right to preserve their job for between six months and two years for job tenures from 10 to 180 calendar days in proportion to length of the service. Article 29 of the agreement establishes that, in case of an accident at work or occupational disease, domestic workers are entitled to the benefits provided for in the Presidential Decree of 30 June 1965, No. 1124 -the same benefits as those provided for other workers -.

Providing coverage for employment injury and healthcare is utterly important in Italy, where domestic workers are protected by social security legislation. Within these measures, it is also important that all risks associated with domestic work are covered in the definition of employment injury and that it includes a definition of the workplace broad enough to include the household and commuting to and from work⁹³. PHS workers who contribute to social security are entitled to insurance benefits for occupational injuries and illnesses. In case of an accident at work, workers are entitled to a daily allowance for the temporary inability to work. Moreover, there is a permanent disability allowance. that covers for work of more than 10 % and a permanent allowance for survivors. Likewise, there is a single payment for family relatives in case of death. These entitlements are paid by the national institute for occupational accidents and injuries. Also, there is a healthcare fund set up by the social partners such as CASSACOLF, providing daily

⁸⁹ Ibid 4.

⁹⁰ Ibid 4.

⁹¹ DOMINA National Observatory on Domestic Work, '2 Annual Report on Domestic Work' (2020) 17.

⁹² Ibid 17.

⁹³ International Labour Organisation (n79) 126.

allowances for hospitalizations. Another institution – EBINCOLF provides OSH training and other preventive measures⁹⁴.

EBINCOLF, the National Bilateral Agency of the Section of Employers and Family Collaborators, is a bipartite authority created in the framework of the National Collective Agreement on Domestic Work. The agency was established on 23 December 2002 by the national representations of the employers' associations and the trade unions representing workers in the PHS sector. These are, on the side of the employers, FIDALDO and DOMINA and on the workers' side the trade union organisations Federcolf, Filcams Cgil, Fisascat Cisl and Uiltucs. The agency seeks to establish an observatory to monitor working conditions in the sector, calculate the average standard earnings, assess the level of implementation of the National Collective Agreement in different regions and areas, Furthermore, the regulations on migrant workers must check the welfare and social situation of domestic workers and respond to their training needs and to provide analyses and proposals on occupational safety in the sector⁹⁵.

Because of the tasks performed, domestic workers are at higher risk of domestic accidents: the National Institute for Insurance against Accidents at Work (INAIL) already addressed the issue in 2010 in its publication “Lavorare in casa in sicurezza” [Working at home safely], a manual for housekeepers and family assistants, focused on the risks that exist in PHS sector⁹⁶. The manual was published ten years ago and was already consisting of relevant characteristics such as the high rate of irregularities and the strong presence of foreign workers⁹⁷. These two factors have a direct impact on occupational safety. For example, certain information and communication tools (i.e., summary sheets on regulations) have been developed for foreign workers with limited language skills. In 2014 INAIL published “Safe home”, a multilingual brochure (Spanish, English, Russian, and Romanian) contributing to domestic accident risk reduction.

It is important to mention that INAIL collects data on occupational diseases, a pathology contracted by workers during their work or as a result of the work environment. In the context of domestic work, among the most recognised occupational diseases are musculoskeletal disorders resulting from physical activities, and respiratory diseases caused by chemical agents found in household cleaning products. These risks are common for both carers and housekeepers, therefore the recognised occupational diseases for the two categories are very similar⁹⁸.

4.2.3 Ratification of the ILO

Italy has ratified the ILO Domestic Workers Convention, 2011 (No. 189) on January 21, 2013. A simplified procedure allowed the country to proceed with the signature of the ratification, without the text of the Convention passing through the examination of the Italian Parliament. The reason for this is that Italy's legislation regarding the matter is similar and, in some cases, more

⁹⁴ Ibid 126.

⁹⁵ Ad-PHS (n5) 8.

⁹⁶ DOMINA (n88)16.

⁹⁷ Ibid 16.

⁹⁸ DOMINA(n88) 20.

extensive than the provisions of the Convention itself⁹⁹. Italy was the first state in Europe to ratify the Convention. It contributed to raise awareness for domestic workers rights and helped the employers' organisations such as DOMINA to bestow to the health and safety of the domestic workers. This same organisation initiated some practises to respect human rights of migrant domestic workers in collaboration with the ILO Italy Office.¹⁰⁰

It is true to say that the ratification of the ILO Convention did not have a strong effect on the legal framework applicable to domestic workers in Italy. The main reason is that domestic workers have already been covered by a national collective agreement since 1974. When the ILO Convention was adopted in 2011, the rights of domestic workers were already more extensive than the standards of the ILO Convention due to the Constitutional principle of equality in Italy's legislation. Also, many of these labour and social security rights are enjoyed by applying the principle of proportionality. In case of protection related to pregnancy and maternity leave, the protection of domestic workers could be further improved, for this reason, both social partners jointly with the representative of the ILO in Rome have signed a document addressing the Italian government and asking them to adopt legal changes for ensuring full social protection of domestic workers, as the minimum available protection for the PHS sector is still not enough¹⁰¹. Also, the social partners addressed the Ministry of Labour with the support of the ILO office in Italy and asked for the adoption of social protection measures for domestic workers, as during the lockdown due to Covid-19 pandemic the government did not at first adopt measures for protection of the workers in the PHS sector.

4.3 The Netherlands

4.3.1 Domestic Legal Framework

The Netherlands' current domestic legislation that applies to domestic workers is the "Regeling Dienstverlening aan Huis" (RDAH). The Netherlands has adopted legislation with a limited protection of the rights of domestic workers. The existing laws safeguard several fundamental rights, prevent child labour protecting against abuse, violence, and intimidation, provide rules on the minimum terms of employment, a duty to provide information, methods of payment, minimum wage, working conditions and rest times¹⁰². However, this extent is limited by domestic workers in the Netherlands being recognised as 'irregular' workers and therefore have no standard employment contracts. Consequently, they also have very limited social security rights.

The RDAH also causes domestic workers to have low job security as the lack of employment formalities making it very easy for employers to dismiss domestic workers with zero notice. This, paired with limited access to social security benefits causes domestic workers to be

⁹⁹ Interview with Lorenzo Gasparrini, President of DOMINA (Online, 9 November 2021).

¹⁰⁰ Interview with Lorenzo Gasparrini, President of DOMINA (Online, 9 November 2021).

¹⁰¹ Interview with Massimo De Luca, Lawyer of DOMINA (Online, 15 November 2021).

¹⁰² Nuria Ramos Martin (n7) 23.

in an extremely vulnerable position¹⁰³. The current Dutch legislation is rooted in former laws regulating domestic workers from the 1930s that insinuated that households should be excluded from having the same financial and administrative obligations as ‘normal’ employers¹⁰⁴. As in this time, domestic work was considered a continuation of the education of young women. This idea being carried on into the current laws that established a system where domestic workers -of which 95 % in the Netherlands¹⁰⁵ are women - are excluded from most rights regarding social security benefits. The RDAH allows employers to hire domestic workers with little formality and inexpensively, hence being economically beneficial for the government as there are little administrative costs and it increases the employment rate. However, the lack of formality results in the rights of domestic workers being insufficiently protected.

The RDAH lays out the rights of employers and employees in the Personal and Household Services Sector in the Netherlands. Domestic workers are, for example, granted paid pregnancy and maternity leave and are not allowed to be discriminated based on religion, race, political stance, gender, or sexual preference. These rights granted to domestic workers by the RDAH are limited compared to the rights of workers with a regular employment contract in the country. Employees with a standard employment contract, are continuously paid in the event of sickness for 104 weeks, at least 70 % of their wage, whereas domestic workers are only paid for 6 weeks in equivalent situations¹⁰⁶. Especially in times of the pandemic, access to social security makes a large difference. It can be argued that the RDAH is imbalanced in favour of employers by making the situation for them as regards to domestic work more beneficial than the situation for employees. This is exemplified by the fact that employers do not have to get compulsory insurance in terms of sickness and unemployment benefits nor capacity to work when hiring a domestic worker according to the RDAH¹⁰⁷. Meaning that hiring domestic workers in the Netherlands is very affordable, thus benefiting employers.

Next to the RDAH, the Netherlands also has the ‘Arbowet’ in place of the ‘Arbeidsomstandigheden wet’ translating to “Working conditions law”. The ‘Arbowet’ protects general health and safety rights of all workers or employees in any sector in the Netherlands. The provisions in the ‘Arbowet’ also apply to domestic workers and to employers hiring domestic workers. The RDAH and the ‘Arbowet’ are the only two pieces of legislation currently applying to domestic workers, thus protecting their rights in the Netherlands. The RDAH being a more specific law scheme acknowledging domestic workers and their circumstances, and the ‘Arbowet’ being a very general piece of legislation ensuring healthy and safe working conditions for all workers. Both the RDAH and the ‘Arbowet’ do not acknowledge undocumented domestic

¹⁰³Inspectorate SWZ Ministry of Social affairs and Employment, “Exploratory study of labour exploitation and serious disadvantage in domestic work in the Netherlands” (2020).

¹⁰⁴M de Rutter, “Ook de thuishulp eist recht op pensioen en WW”, 4 November 2021, De Volkskrant.

¹⁰⁵ ‘Over Fair Work’, (*Fair Work*) < <https://www.fairwork.nu/over-fairwork/> accessed on 24/1/2022.

¹⁰⁶Nuria Ramos Martin, (n7), 23.

¹⁰⁷ Ibid 105.

workers. Meaning that they are generally not provided with any of the rights covered in these domestic legislations.

4.3.2 Importance of Health and Safety in the Workplace

As mentioned before, the only legislation in place in the Netherlands ensuring the protection of the general health and safety of all workers is the ‘Arbowet’. Its Chapter 5 outlines guidelines especially for workers in healthcare to prevent physical strains in order to ensure the health and safety of these workers. At-home caretakers also fall under the scope of the workers protected by this legislation. There is a monitoring procedure especially provided by this chapter called the “Risico Inventarisatie en Evaluatie” (RIE) implemented to inspect whether employers provide appropriate health and safety conditions to their employees¹⁰⁸. Thus, the Arbowet predominantly covers health and safety regulations regarding domestic workers involved in the health-care sector such as at home-caretakers. Besides the ‘Arbowet’ there is no legal framework that acknowledges specific health and safety concerns the totality of the domestic workforce.

In terms of health insurance, domestic workers cannot claim benefits provided by the insurance acts such as the Work and Income Act (WIA) or the Unemployment Benefits Act (WW). Employers of domestic workers are not required to pay their insurance contributions on their salaries. Therefore, if domestic workers in the Netherlands want health insurance, they need to pay these high contributions themselves. Furthermore, they are also required to pay the income related health care contribution themselves under the Healthcare Insurance Act (Zvw)¹⁰⁹. As there are no regulations specifically acknowledging health and safety risks of domestic workers, work accidents are more likely to arise.

Domestic workers do a lot of manual labour, such as carrying buckets of soap up and down stairs, cleaning areas that are difficult to reach, hence, it is possible that these activities may result in an accident¹¹⁰. This increased risk and lack of insurance makes people working in the PHS sector extremely vulnerable. During the COVID-19, health and safety regulations safeguarding workers from any sector were crucial. Especially domestic workers being in very close proximity to their employers and thus, exposed to a greater chance of being infected by the virus. However, besides the general government guidelines, no specific regulations were implemented to the PHS sector by the Dutch government during the pandemic in terms of the protection of health and safety of domestic workers¹¹¹. The lack of acknowledgement of specific health and safety risks of domestic workers in the RDAH, the ‘Arbowet’ and employers of domestic workers not being obliged to provide insurance result in workers of the PHS sector being in a very precarious position.

¹⁰⁸ ‘Arbocatalogus VVT Versie 4’, A+O VVT, 3 May 2021.

¹⁰⁹ Ad-hoccommissie Werken en Leven in de Toekomst (WLT), “Markt voor persoonlijke dienstverlening in internationaal perspectief Varianten en denkrichtingen”(2020), Sociaal - Economische Raad (SER).

¹¹⁰ E. L. Meelker, R. Soudagar, “Jij zit betaald thuis, je schoonmaker ook?”, One World, 30-03-2020, <https://www.oneworld.nl/lezen/discriminatie/sociaal-onrecht/jij-zit-betaald-thuis-je-schoonmaker-ook/> accessed on 3/1/2022

¹¹¹ Interview: Juridisch expert: Sarah Jeddaoui- Bureau Clara Wichmann (Online, 11th of November 2021).

4.3.3 Ratification of the ILO

The Netherlands voted for the adoption of the ILO Domestic Workers Convention, 2011 (C-189) when it was first established¹¹². However, as the ILO Convention aims to provide domestic workers with the same rights as any other employee in other sectors, the RDAH would need to be abolished. The RDAH lessens the obligations of employers and thus also provides less rights to domestic workers¹¹³. Therefore, it does not comply with the ILO Convention. Due to the Netherlands not wanting to abolish the RDAH, the Parliament voted against the ratification of the ILO C-189. The ILO Convention intends to prevent the exploitation of domestic workers and protect them from abuse. The Dutch government, when declaring that they would not ratify the Convention, argued that according to the research conducted by the ‘commissie Dienstverlening aan huis’ (committee on domestic work), there are rarely any cases of exploitation in the PHS sector in the Netherlands¹¹⁴. However, these investigations into the exploitation of domestic workers have not been published and there is very limited information surrounding this topic, likely due to lack of investigations that were conducted¹¹⁵. The lack of acknowledgement of domestic workers’ rights due to not having ratified the ILO Convention places the Netherlands in a very fortunate position economically as regards to domestic work. Individuals can hire domestic workers inexpensively and easily through the current RDAH which increases employment. Further, the little number of obligations that need to be fulfilled, such as health and safety regulations, and but not limited to, monitoring mechanisms, leaves the Dutch government with lower costs and administration. These factors caused the Netherlands to decide to not ratify the ILO Domestic Workers Convention, 2011 (No.189) and continue to keep the RDAH in place. However, there has been much controversy surrounding this decision. In the Netherlands groups of domestic workers, trade unions and NGOs are arguing that workers in the PHS sector are not provided with sufficient rights by the RDAH and that a ratification of the Convention would ensure better protection¹¹⁶.

¹¹² Tweede Kamer der Staten-Generaal, “Kabinetsreactie op het advies van de commissie «Dienstverlening aan huis», inclusief standpuntbepaling inzake ILO-verdrag 189”, 29427 nr. 100, 23-10-2014.

¹¹³ Bouwens, W. H. A. C. M., Kalsbeek, E., Baarsma, B. E., De Koning, J., & Schnabel, P. Dienstverlening aan huis: wie betaalt de rekening? Ministerie van Sociale Zaken en Werkgelegenheid. , Vrije Universiteit Amsterdam Research Portal (2014).

¹¹⁴ Ad-hoccommissie, Sociaal - Economische Raad (SER) (n108) 25.

¹¹⁵ Interview: Senior beleidsmedewerker : Jeroen Visser- Sociaal Economische Raad (SER) (Online, 11 November 2021).

¹¹⁶ Tuur Elzinga, “Noodsituatie huishoudelijk werkers tijdens Corona-crisis”, Federatie Nederlandse Vakbeweging (FNW), 088-3681834, 24 april 2020.

5. Gaps in Legislation

5.1 Belgium

According to Article 9quinquies paragraph 1 of the Royal Decree of the 12th December 2001, as amended by the Royal Decree of the 9th January 2004, authorised undertakings concluding a service voucher work contract are required to comply with the Act of the 4th August 1996 concerning the welfare of workers during the execution of their work, and its implementing decree¹¹⁷. This provision was adopted with the intention of protecting service voucher employees, however, issues have risen as to its applicability in practice¹¹⁸. The Act of the 4th August 1996 reads, in its Article 5 paragraph 1, that the employer is responsible for taking the necessary measures to promote the well-being of its workers at work. This article follows with a list of general principles of prevention which need to be applied by the employer¹¹⁹. Included therein is the obligation to avoid risks and assess them if they cannot be avoided. Furthermore, Article 8 of the Royal Decree of 27th March 1998 concerning the well-being policy of workers provides that the employer must make a prior risk analysis, on the level of the undertaking and on the level of each group of workstations or functions as well as on an individual level¹²⁰. More importantly, Article 9 of this Royal Decree contains a non-exhaustive list of elements which the preventative measures should pertain to. For instance, the list includes the organisation of the business, the layout of the workplace, the choice and use of work equipment, the choice and use of collective and personal protective equipment and work attires, and the application of appropriate safety and health signage, etc.¹²¹.

Upon reading these provisions, it is difficult to imagine how they can be respected and applied in the context of the service voucher system. Indeed, how can an employer respect the provisions above when the employees have multiple workplaces, where the employer does not regularly meet the worker at their workplace(s), where the clients are so numerous that a preventative risk analysis on the basis of a visit is practically impossible, etc.¹²² It is against this background that the National Employment Office (NEO) issued a series of directives and recommendations on the topic¹²³. In a report on the service voucher system, the NEO stressed that the employer is responsible for ensuring the health and safety of employees at the workplace and preventing the risks linked to their work. The NEO also insisted on the obligations of the employer with regards to the education and training of workers. According to the NEO, these obligations are specifically important in the context of the service voucher system since this work often takes

¹¹⁷ Royal Decree of the 9th January 2004, amending the Royal Decree of the 12th December 2001 concerning the service voucher system.

¹¹⁸ Valérie Flohimont, 'Le régime souvent dérogatoire des titres-services' (2009) 1 Tijdschrift voor sociaal recht / Revue de droit social 59, 80.

¹¹⁹ Workers Well-Being Act of 4 August 1996, art.5(1) and (2).

¹²⁰ Royal Decree of the 27th March 1998, art. 8.

¹²¹ Ibid, art. 9(3).

¹²² Flohimont (n118) 81.

¹²³ Office National de l'Emploi <<https://www.onem.be/fr>> accessed 17 November 2021.

place at individuals' households, meaning that it is particularly difficult to conduct preventative risk analyses in each workplace¹²⁴. The NEO stated that the employer has an obligation to inform workers about the general risks involved in this line of work and about the preventative measures which can be taken. With regards to domestic work, for example, the NEO stated that this involves informing workers about the harmfulness of cleaning products and informing them on the importance of wearing gloves when using these products or providing them with explanations on how to use them in a safe way.

An example of a law that adequately protects the well-being of workers during the performance of their work and respects the practical requirements imposed by the nature of the activity and the location where it takes place is the law regarding the ALE (Agence Locale pour l'Emploi) checks. Article 4 paragraph 2 of this law states that the client is responsible, alongside the employer, for respecting the provisions of the law concerning workers' welfare during the execution of their work. Although this provision has been criticised for not being sufficiently precise, it is nonetheless a practical measure that aims to guarantee a better security for the worker by invoking the responsibility of the client. In the context of the service voucher system, such a provision would encourage the client to explain to the worker the risks present in the household, the precautions which need to be taken with the available cleaning products, the area where the worker can find emergency numbers, etc. Therefore, taking into consideration the shortfalls of the Royal Decree of 12th December 2001 in protecting service voucher workers, legislators should consider introducing a provision that would allow the client to be held liable where they endanger the worker's safety. On the one hand, this provision would encourage clients to take more precautions when inviting workers in their households. On the other hand, this provision would ensure the applicability of Article 9quinquies of the Royal Decree concerning the service voucher system¹²⁵.

5.2. Italy

Domestic work in Italy is legally defined as employment meant to provide services to a family. Therefore, the instruments promoting the domestic sector mainly focus on regulating the employment relationship. In Europe, Italy is the country that has the highest rate of households employing domestic workers directly, making the families one of the primary employers in the sector. Consequently, the CCNL is one of the most widely applied employment regulation instruments. Since 1.2 million workers, accounting for more than half of the workers in the personal and household services sector, do not have a regular employment relationship, of whom a high percentage do not have a regular residence permit either, it is legitimate to assume that the sector as a whole is the broadest sector from the point of view of the number of employees, compared to all other public and private sectors¹²⁶.

¹²⁴ Flohimont (n118) 81.

¹²⁵ Royal Decree of the 12th December 2001, Article 9quinquies.

¹²⁶ Ad-PHS (n7) 6.

From the existing data, it is clear that the home care services, personal and family care consists mostly of female and immigrant workers. The CCNL is not applied to undeclared workers and, consequently, their health and safety rights are not protected. In case of the legal dispute against the employer regarding health and safety in the domestic courts, it is difficult for the undeclared domestic worker without the contract to prove that they are indeed providing service to the employer, if there is no sufficient evidence such as witnesses. This created an issue during the lockdown; domestic workers who lived with the employer lost their jobs as the families decided to let the workers go. Therefore, the domestic workers lost, not only the job and the salary, but also the place to live, hence having to spend the night at homeless shelters. It is also true to say that transportation issues during the pandemic have contributed to the regularisation of the sector. There was an increase by 10% of the declared workers, as transportation was only possible for the workers who had official employment contracts¹²⁷.

As life expectancy in Italy continues to rise, challenges arise for the Italian social and welfare system and a greater need for personal care services is expected¹²⁸. Out of necessity, lack of financial resources and the urgent need for more domestic workers, Italian families often rely on undeclared workers to reduce costs, sometimes forced to employ undeclared workers without a residence permit, who are more difficult to monitor. Therefore, there is an incentive to give the employers higher tax benefits for the regularisation of the sector, otherwise the trend of informally hiring undeclared workers will continue to grow¹²⁹.

In Italy a person seeking a job is receiving—‘reddito di cittadinanza’, financial support, from the government which has created an issue for regularisation of the sector¹³⁰. Workers prefer to get financial support and do not register themselves as domestic workers resulting in domestic workers not having health and safety protection that they would have if they had official contracts signed under the CCNL. A domestic worker on a regular contract would cost about 40% more than an irregular worker, a percentage that however varies depending on tasks, nationality, working time, and the conditions prevailing in the black market, such as irregularity that can be preferred by the migrant carer, who may want to exchange a regular position for a higher wage¹³¹. A regular contract is usually searched for the purposes of renewing the residence permit, since it is linked to a regular work contract. Even in the case of a regular contract, it is common to under-declare the number of working hours to evade social contributions as a work permit only requires a foreign worker to pay social contributions for a minimum of 25 hours per week¹³². By declaring this minimum level, even when the worker provided service during more hours, both parties, the domestic worker and the family, are in advantageous position as they can gain by evading social contributions and sharing this illegal rent.

¹²⁷ Interview with Lorenzo Gasparrini, President of Domina (Online, 9 November 2021).

¹²⁸ DOMINA (n88) 49.

¹²⁹ Interview with Lorenzo Gasparrini, President of Domina (Online, 9 November 2021).

¹³⁰ Interview with Lorenzo Gasparrini, President of Domina (Online, 9 November 2021).

¹³¹ Giuseppe Ciccarone, ‘Personal and Household Services – Italy’ (European Employment Policy Observatory Ad hoc Request, 2015) 9.

¹³² Ibid 9.

Over the years, all these factors have led to an increase in the share of undeclared domestic workers, who outnumber those operating under a regular employment contract. Therefore, the 849,000 regular domestic workers registered at INPS should be added to undeclared workers who represent the largest component in this sector¹³³. The National Institute of Statistics (ISTAT) estimates the rate of irregularity in the domestic sector at 57.6% in 2018,¹³⁴ and 57% as of 2019¹³⁵. Furthermore, the consolidated act on health and safety at work (Legislative Decree No. 81 of 9 April 2008) does not directly cover workers who provide care services nor domestic workers in general, *de facto* excluding them from its scope of application. EBINCOLF is actively working to fill this regulatory gap and alleviate the risks related to domestic work.¹³⁶

Even though social care and household services are expected to grow significantly in the future, a comprehensive set of policy measures aiming at supporting the development of personal and household services, the reduction of undeclared work, and the creation of a formal and structured economy for this sector is still lacking¹³⁷. In 2009, the action plan “Italia 2020” was introduced to improve the work-life balance and the integration of women in the labour market. The idea behind this plan was to build a welfare state on the basis of family needs and responsibilities, and to promote different options of family support, through taxation schemes, family allowances, universal vouchers and personal services¹³⁸.

Furthermore, in Italy a special group—so-called ‘live in’ domestic workers—is particularly vulnerable and disadvantaged as maximum working hours are longer for them than for other domestic workers¹³⁹. Nowadays, the maximum weekly working time for domestic workers is set by the CCNL at 40 hours weekly, distributed over five or six days. However, it is set at 54 hours weekly for live-in domestic employees engaged for full service, consisting of maximum daily working hours of 10 non-consecutive hours¹⁴⁰. For part-time live-in workers a maximum of 30 hours per week for ‘reduced services’ is set. While the working time limit for non-resident full-time domestic employees (40 hours weekly) is equal to the normal limit of employees in other sectors, the particular limit of 54 hours for live-in domestic employees is highly problematic as it is highly questionable that such number of working time is compatible with EU law. Indeed, Directive 2003/88/EC sets a maximum of weekly 48 working hours (including overtime) within a reference period of four months, which might be prolonged according to Article 19 of that Directive¹⁴¹. Italy did not declare any use of “opting out” clauses that are possible through collective agreements (Directive Article 18). Although this does not include derogation from

¹³³ DOMINA (n88) 73.

¹³⁴ Ibid 74.

¹³⁵ Interview with Massimo De Luca, Lawyer of DOMINA (Online, 15 November 2021).

¹³⁶ DOMINA (n88) 31.

¹³⁷ Giuseppe Ciccarone (n128) 7.

¹³⁸ Ibid 7.

¹³⁹ Kirsten Scheiwe (n33) 11.

¹⁴⁰ National Labour Collective Agreement of 2001 (CCNL), Article 16.

¹⁴¹ Kirsten Scheiwe (n33) 14.

maximum weekly working hours (Directive Article 6), only possible through ‘opting out’ by Member States based on Article 17 or by individual opt-out according to Article 22¹⁴².

CCNL contains a different treatment of overtime work and overtime pay to the disadvantage of live-in workers. A consequence of the differences in maximum working hours under the CCNL is that the established overtime work rates will be granted to live-in domestic workers only if working hours exceed 54 hours weekly. In this case working hours during the night from 10 p.m. to 6 a.m. are considered as normal night work and compensated by an increment of 20%, while overtime work during this period is compensated by an increase of 25%¹⁴³.

5.3 The Netherlands

The current labour law applicable to domestic workers in the Netherlands differentiates them in four categories. The first are workers employed by a company or institution. These workers are entitled to social security and labour rights. Therefore, the RDAH must not be applied to them. The second type of domestic workers are employed by a private household where they work more than four days a week. In this case, the requirements for the RDAH are also not fulfilled and employers must comply with the same obligations as employers in any other sector. Thus, these workers also enjoy regular social security and labour rights. The third type of domestic worker consists of people that work less than four days a week for a private household that they found through an intermediary contact such as care workers. For these workers the RDAH does apply, therefore, they have limited labour rights and social security. However, their intermediary contact does give a yearly report to the tax authorities and the employee. Lastly there are domestic workers that work less than four days a week for a private household. The RDAH is applied automatically to these workers meaning they also have limited social security and labour rights. If these workers are employed informally, the employers do not report to tax authorities or anyone for that matter¹⁴⁴.

As mentioned earlier, the last two types of domestic workers to whom the RDAH applies are excluded from certain labour and social security rights such as employee insurances. Workers who work more than four days a week but for different employers are still not considered to fit within the scope of the first two types of workers mentioned. Therefore, they fall under the scope of the RDAH and do not have access to most social security benefits.

The ‘Arbowet’ , solely covering the health and safety needs of domestic workers in the health-care sector, results in other domestic workers not being protected by any health and safety guidelines for their employers. Meaning that domestic workers not involved in the health care sector such as cleaners, dog walkers, au pairs etc., do not fall directly under the scope of chapter 5 of the ‘Arbowet’ and have an increased vulnerability due to this gap in laws regarding health and safety in the Netherlands.

¹⁴² Kirsten Scheiwe (n33) 14.

¹⁴³ Ibid 14.

¹⁴⁴ Nuria Ramos Martin (n7) 25.

The current legislation in the Netherlands does not comply with the standards of the ILO Domestic Workers Convention, 2011 (No.189). This piece of domestic legislation is also likely to be in breach of the Convention on All forms of Discrimination Against Women (CEDAW) ratified by the State. Domestic workers under the RDAH being excluded from receiving social security benefits might be a violation of Article 11 of the CEDAW. This article states that: “*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...*”¹⁴⁵. The right to social security is included in these “same rights” and as the Netherlands has not taken “reasonable measures” to eliminate the exception of domestic workers not receiving social security benefits under the RDAH, the current legal framework applicable to them does not comply with the obligations set in the CEDAW¹⁴⁶.

The RDAH only providing domestic workers who work for less than four days a week at a private household with very basic rights that excludes social security leaves a major gap in their legal protection¹⁴⁷. The PHS sector, predominantly consists of informal work meaning that most domestic workers are excluded from social or economic benefits such as health insurance, unemployment benefits, retirement funds etc. This does not only go against the ILO Domestic Workers Convention, 2011 (No.189) (which the Netherlands is not obliged to comply with due to the lack of ratification), but it might be considered as a violation of human rights of domestic workers, according to international treaties. It has been argued that employers hiring domestic workers for less than four days a week should not be burdened with obligations, therefore, domestic workers are exempt from the applicability of most social security regulations. Nonetheless, the lack of social security within the RDAH is still a gap in Dutch domestic legislation leaving a large part of domestic workers extremely vulnerable.

5.4 Liability

The very essence of fault-based liability coincides with three intrinsic elements, a fault (by the tortfeasor), a damage (towards the victim) and causality between the fault and the damage¹⁴⁸. This is a rather interesting mechanism to determine whether liability would be a feasible option available for domestic workers to claim their rights. The Principles of European Tort Law (PETL) and the Draft Common Frame of Reference (DCFR) furnish the relevant principles¹⁴⁹. Article 1:101(1) of the PETL sets forth a general feature of attributability, and Article 4:101 demonstrates a feature of fault on the basis of intentional or negligent violations of a required standard of conduct. Similarly, Article VI.-1:101(1) of the DCFR insinuates that a person suffering a damage

¹⁴⁵ CEDAW (1981) Article 11

¹⁴⁶ Nuria Ramos Martin (n7) 43.

¹⁴⁷ Ibid 32.

¹⁴⁸ Eric Tjong Tjin Tai, Chapter 8. ‘European Tort Law’, (2011) Introduction to European Private Law: A Textbook, 5.

¹⁴⁹ Ibid 7-9.

has a right to reparation from the individual who has caused the damage either intentionally or negligently, or if there is a direct causal link to the damage¹⁵⁰.

In general terms, a negligence test would urge for comparison of the plaintiff's conduct with a reasonable man, otherwise recognised as the *bonus pater familias*. This acknowledges what should have been expected from an average careful person in the same circumstance, and the result would compel negligence. Article 3:102(b) DCFR mentions that negligent conduct arises when the amount of care does not amount to something of which a reasonably careful person would have conducted under the same circumstance. Article 4:102(1) PETL, similarly, designates attention towards the standard of conduct that a reasonable person should attain, along with certain non-exhaustive criteria to consider, such as the dangerousness of the activity, expertise of the individuals, and relationship between those involved. Establishing the conduct of a reasonable person, as previously mentioned would entail delving into further requirements: whether a reasonable person would have acted similarly, and what skills or knowledge that reasonable person should have had. Nevertheless, to attribute a general overview for the countries in question would not necessarily be feasible without additional research, for, the acknowledgement of negligence is an element of *ius in causa positum*, in other words, the law is retrieved within the facts of the case at hand¹⁵¹.

If a case were to be brought before the Court, an objective or subjective test would be accomplished. A subjective test would imply for evidence that the defendant was aware of the risk, and whether he had the necessary skills to avoid such risk. An objective test would imply a normative approach on what the defendant should have known about the risks, and what skills he should have had to avoid such damage; and in such circumstances, the reasonable person test would be taken into account¹⁵². Take, for instance, the case of a domestic worker being injured by a cleaning product, precisely requested by the client, the Court would be able to insinuate that the client should have known about the risks and that they had the skills to avoid such risk by not making the worker use such product.

5.4.1 Belgium

Under the Belgian Civil Code, a claim based on a tort is covered by Article 1382 wherein a person is obliged to repair or compensate the damage caused as an occurrence of fault. Article 1383 presents how to bring a claim resulting from negligence; that of which may persist when there has been an infringement of a statutory rule or there has been a failure to abide by a particular duty of care. The standard rule for duty of care is essentially that of '*bonus pater familias*' in which one must acknowledge how a reasonable or careful person would have acted under the same

¹⁵⁰ Cees van Dam (n42) 141.

¹⁵¹ Ibid 234-235.

¹⁵² Ibid 263-265.

circumstance¹⁵³. This, in effect, is determined on a case-by-case basis, thereby depending on what the case at hand entails in terms of fault and damage. For a domestic worker to rely on such provisions is a rather ambiguous matter, especially given the lack of case-law as an assertion. For, if an injury were to occur in the premise of their employment, that being a private household, demonstrating a particular fault may be complex since the clients typically do not have a core duty of care attributed towards them. Contrarily, if the domestic worker were to damage a belonging within the private household, it would be feasible to bring forth a claim directly asserting fault, damage, and causation, interrelated with the breach of a duty of care owed by the domestic worker.

Currently, there is seemingly not much case law with regards to injuries occurring in the domestic sphere in Belgium; this could either be a result of the grand scale effectiveness attributed to the service voucher system, or perhaps due to the unwillingness for workers to bring forth claims in these cases. Pinpointing which one is the probable cause is a relatively complex matter, one of which will not be further delved upon in this research due to its highly ambiguous nature. In terms of damages which may occur at the workplace by the domestic worker, the service voucher companies are responsible, and thereby would be obligated to pay for it. An aspect which occurs relatively often, is one of dishonesty, in that clients persistently place blame upon domestic workers for damages in their homes¹⁵⁴. In this context, it is vastly complex to nullify the claims, especially given the fact that there is no inspection or monitoring available at the time that the damage may or may not have occurred. Another aspect which may be considered is a power imbalance between the parties involved. When it comes to the employers, or in this circumstance the service voucher companies, it may be the case that intervention on complaints may be circumvented due to the fear of losing clients¹⁵⁵.

5.4.2 Italy

There is not much case law available on accidents at work of domestic workers. In most of the cases there are extra-contractual agreements on compensation for damages. In any case, in Italy, domestic workers are covered by the regular national legislation regarding health and safety. There are some cases about using a video camera surveillance system but if the equipment was installed for security reasons of the house or the family, it can also register the images of the domestic worker. That could create a problem with privacy issues. The case law so far has established that the system should be installed only with the purpose of surveillance and should be as restricted of privacy as possible (for instance not recording of sound). It cannot be installed in the toilet or in the room used by the domestic worker to change her clothes or in the room of a living-in domestic worker. This issue is covered by the national collective agreement. So far, the

¹⁵³ Denis Waelbroeck, Kelly Cherretté & Aurélie Gerth, 'Belgium' - Europa. <https://ec.europa.eu/competition/antitrust/actionsdamages/national_reports/belgium_en.pdf> accessed 16 January 2022.

¹⁵⁴ Interview with Nico Daenens, CEO of Group Daenens (Online, 2 December 2021)

¹⁵⁵ Sarah Mousaid, Kim Bosmans, and Christophe Vanroelen, 'Empowering Domestic Workers: A Critical Analysis of the Belgian Service Voucher System' (2017) 7(4) *Societies* 36, 4.

case law established that this kind of system cannot be used to control the performance of the work by the domestic worker. That is not allowed. It is not obligatory to inform the Ministry of Labour/Administration of the installation of the video camera, but it is compulsory to inform the domestic worker about it. What is interesting is that, on the contrary, the worker is allowed to record images of the workplace to prove possible breaches of health and safety at work and use that as evidence in Court¹⁵⁶.

5.4.3 Netherlands

In the Netherlands, fault-based liability is embedded in Article 6:162 of the Dutch Civil Code (BW). This demonstrates certain elements attributed towards negligence, which will be further illustrated¹⁵⁷. (1) Unlawfulness: an infringement of a right, an act, or an omission in violation of a legal duty, and/or an act or an omission which is in violation of an unwritten standard. (2) Attributability: negligent action is attributable to the defendant; the defendant should have reasonably known or been aware that those actions would result in an unlawful act. (3) Loss/Damage: plaintiff has suffered harm, such as pain and suffering, or loss of earnings. (4) Causation: establishing a causal link between the act and the loss which has been endured - using the ‘but-for-test’. (5) Relativity: a relative link between the harm induced and the right or obligation which has been breached¹⁵⁸.

Essentially, attributing such elements towards an injury which has occurred in a private household would be a relatively complex task to accomplish, especially as the burden to prove such damage rests upon the plaintiff – in this case, the domestic workers. The dominant obstacle is the lack of regulations in the Netherlands, in general, surrounding the topic of domestic work, as well as the inability to conduct inspections or monitoring procedures. Nevertheless, Article 7:658 BW demonstrates a duty of care on the part of the employer, which denotes that an employer ought to arrange and maintain the spaces and rooms wherein work is performed under his responsibility and give instructions regarding safety measures to prevent the employee from suffering damages during employment. Taking this into account, it may prove beneficial to acknowledge that if a domestic worker were to be employed in a rather hazardous household, the employee would have an obligation to uphold the necessary safeguards and information to their employers. The case of *Bayar/Wijnen*¹⁵⁹ which brought forth a claim based on Article 7:658 BW for a breach of duty of care concerning safety measures in the use of a dangerous machine, had the potential to extend to personal injury cases. This may be illustrated by a ruling of the Supreme Court of 11 April 2009 where an employee slipped in a puddle of water, and where taking further precautionary measures to prevent such actions was considered a relatively simple

¹⁵⁶ Interview with Massimo De Luca, Lawyer of DOMINA (Online, 15 November 2021)

¹⁵⁷ “Tort in the Netherlands - Dutch Law Firm AMS in Amsterdam” (2020) AMS Advocaten <<https://www.amsadvocaten.com/practice-areas/law-of-obligations-and-contract-law/tort/>> accessed 14 January 2022

¹⁵⁸ Hein Kernkamp, “Unlawful Act” Minerva Advocaten <<https://minerva-advocaten.nl/en/news/unlawful-act>> accessed 14 January 2022

¹⁵⁹ HR 11 November 2005, ECLI:NL:HR:2005:AU3313, NJ 2008/460 (*Bayar/Wijnen*)

task.¹⁶⁰ The potential for domestic workers to rely upon such cases does not seem very promising; with little monitoring procedures, and with the increasing nature of the black labour market, employers would not attain the necessary incentives to take further steps to ensure health and safety at the workplace. Similarly, domestic workers are unlikely to bring forth claims against their employers due to the high dependency of their employment relationship and limited financial means.

¹⁶⁰‘Bayar/Wijnen.’ (2019, January 30) LetselschadeSlachtoffer.
<<https://www.letselschadeslachtoffer.nl/letselschade-jurisprudentie/bayar-wijnen/>> accessed 15 January 2022

6. Innovative Approaches

6.1 Preliminary Facts

The domestic workforce is extremely vulnerable to violence, exploitation, forced labour and harassment. In the worst cases domestic workers may find themselves in conditions that amount to modern slavery¹⁶¹. As the work environment of domestic workers is behind closed doors there is a lack of transparency as regards to whether their employers are complying with their obligations. Most domestic workers worldwide are female, as stated by the ILO, out the total workforce, 76.2% are women¹⁶². The lack of rights and protection due to limited legislation has led to tens of millions of women and girls¹⁶³ being exposed to low wages, long working hours, lack of social security, sexual exploitation, etc. Children and migrant workers are most vulnerable to these forms of exploitation as they are the least protected by the law. The ILO has adopted a strategy to help governments, workers, and employers to ensure that domestic workers do decent work. They have also helped 60 countries improve their system regulating the legal protection of PHS taskforce¹⁶⁴. International instruments such as the ILO Domestic Workers Convention, 2011 (No.189) are crucial as they are tools to eliminate the invisibility of domestic workers. The implementation of the Convention has led to several countries adapting their domestic legislation in conjunction with standards laid out in the Convention in areas such as anti-discrimination, immigration, health and safety¹⁶⁵. . In order to adopt the ILO's strategy to ensure that decent work becomes a reality for domestic workers, some countries have also initiated their own practices to comply with their obligations. Other countries have no practices whatsoever, meaning the only tools to ensure the protection of domestic workers are provided by NGOs like in the Netherlands.

The lack of formality in the PHS sector worldwide has resulted in the exploitation and abuse of many domestic workers. The correlation between domestic workers that predominantly consist of women which have differences in race, class, and citizenship statuses and the unequal treatment by governments as regards to protection of their rights compared to other sectors implies a certain extent of discrimination. Adopting practices such as training mechanisms inspections or other mechanisms that enhance the regulation of domestic workers would be a big step forward in the fight against discrimination and human rights violations in the PHS sector.

¹⁶¹--, 'Recognizing the rights of domestic workers', International Labour Organisation (ILO), 23 August 2018, https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_641738/lang--en/index.htm accessed on 12/1/2022.

¹⁶²Ibid 157.

¹⁶³--, 'Domestic Workers', Human Rights Watch, 2012, <https://www.hrw.org/topic/womens-rights/domestic-workers> accessed on 5/1/2022.

¹⁶⁴ Ibid 159

¹⁶⁵ Nuria Ramos Martin (n7) 27.

6.2 Belgium

6.2.1 Best Approaches to Health and Safety

The functioning of the service voucher system is regarded as a triangular employment relationship between the service voucher company, which is deemed to be the employer, the client, and the worker. The clients and the domestic workers have contracts with the service voucher company on a simultaneous basis. The clients have the ability to hire domestic aid from the service voucher company, which is, in turn, responsible for allocating payment and social security contributions, and ascertaining health and safety in the workplace. The client pays a total sum of 9 euros for a voucher, which amounts to one hour of work. To put it in the simplest of terms, the service voucher system is one which has been subsidised by the regional government which grants around 15.17 and 15.83 euros per voucher, in addition to the previously mentioned 9 euros. The amount of the voucher would then culminate to a total of 24.17 and 24.83 euros¹⁶⁶. In addition, the clients may benefit from a tax reduction which differs in percentage depending on the region¹⁶⁷. In Wallonia, there is a tax reduction of 0.90 on the first 150 service vouchers purchased per person, where the service voucher would then cost you 8.10 euros after the tax reduction¹⁶⁸. In Brussels, the tax reduction is 1.35 euros on the first 163 service vouchers purchased, reducing the price to 7.65 euros¹⁶⁹. In Flanders, the tax reduction is 1.80 on the first 174 service vouchers purchased, thereby the price of the voucher after the reduction amount to 7.20 euros¹⁷⁰.

The benefits derived from the service voucher system and its functioning are plentiful. Predominantly, it is a rather straightforward and simple procedure—one of which grants individuals the possibility to have workers perform household chores from a trusted and approved company. The formality of the system allows a legal process with a secured method of payment, whilst allowing the clients to have an effective control of their expenses therein. On an annual basis, a tax certificate is attributed from Sodexo (the voucher issuer company) which enables users to benefit from the tax reduction. Lastly, the system attributes a form of flexibility, wherein it may be pursued either electronically or on paper. Concerning the former, this is accomplished via a bank transfer and is immediately available pursuant to ordering. The latter is also to be completed via bank transfer, however, is sent via post within a time period of 5 working days¹⁷¹. Both methods of the system are easily accessible, and directly available for anyone who seeks to make use of the service voucher system and get aid in terms of household cleanliness from a reliable and highly regulated company.

¹⁶⁶ Country Report: Belgium, (2020) Advancing Personal and Household Services (Ad-PHS)

¹⁶⁷ Christiane Timmerman, Noël Clycq, François Levrau, Lore Van Praag & Dirk Vanheule, *Migration and integration in Flanders: Multidisciplinary perspectives* (Leuven University Press, 2018). 221

¹⁶⁸ Titres-Services Wallonie, 'Quelle est la déduction fiscale?' (Titres-Services Wallonie) <<https://titres-services.wallonie.be/citoyen/information/deduction-fiscale/montant-deductible>> accessed 26 January 2022.

¹⁶⁹ Titres-Services Bruxelles, 'Quelle est la déduction fiscale?' (Titres-Services Bruxelles) <<https://www.titres-service.brussels/citoyen/information/deduction-fiscale/montant-deductible>> accessed 26 January 2022

¹⁷⁰ Titres-Services Flandre, 'Quelle est la déduction fiscale?' (Titres-Services Flandre) <<https://titres-services.flandre.be/citoyen/information/deduction-fiscale/montant-deductible>> accessed 26 January 2022

¹⁷¹ Titres-Services Sodexo, 'En quoi les titres-services sont-ils avantageux pour moi?' (Titres-Services, Sodexo) <<https://titres-services.wallonie.be/citoyen/information/avantages/pour-moi>> accessed 26 January 2022

Whilst working in the PHS sector, workers endlessly encounter a diminished amount of bargaining power within their employment relationships with clients. This is predominantly demonstrated by the fact that workers are seemingly dependent on the clients to have an employment opportunity, hindering their ability to effectively promote their rights. This dependency of the workers is a consequence of the limited opportunities available for individuals due to their low qualifications, or inability to effectively enter the labour market as immigrants or the language barriers. The service voucher system, in Belgium, has had a large impact on recapturing bargaining power for domestic workers in their employment relations. By formalising this employment, a triangular employment relationship has been created between the domestic worker, the service voucher company, and the clients. The integration of a service voucher company has deferred the reliance of workers on their clients and granted them a more secure employment with numerous benefits—stemming from unemployment benefits to sick leave¹⁷². This mechanism ensures that domestic work, in its entirety, is treated as a normal and equal employment relationship regulated by the standard labour laws available in Belgium.

All in all, health and safety within Belgium is regulated at a rather high level, that of which can be demonstrated through the Well-Being Act of 4 August 1996, as well as the National Strategy on Well-Being at Work 2016-2020. Both of which address mechanisms to safeguard the rights of workers entirely, whilst also acknowledging that hindrances may be involved. As it has been mentioned, employers, or the service voucher companies, have a key role in addressing violations of human rights, as well as mitigating the associated risks with effective measures. Simultaneously, they acknowledge the risks and provide prominent training opportunities, as well as campaigns to raise awareness on the conditions at work for, not only the domestic workers, but also the clients involved in the triangular relationship. The ability to control and safeguard health and safety within personal households is very complex as it is not a seemingly regulated environment, nor is there a facilitated basis of conducting inspections. Nevertheless, service voucher companies aim to sufficiently address the ongoing concerns to the best of their abilities, whilst respecting the privacy of clients' homes. To further ascertain health and safety, workers also have a key responsibility in applying their knowledge acquired from the training possibilities in practice during their work performance.

When the COVID-19 pandemic began in Belgium, service voucher companies took it upon themselves to protect the health and safety of their workers. Whilst the Belgian Federal Government deemed domestic workers essential workers, thus, compelling them to carry on with their work amidst the lockdown, service voucher companies refused to put their workers at risk and temporarily ceased to provide household services to clients. For several months, to protect their health and safety as well as that of their clients, domestic workers were able to suspend the provision of their services by relying on unemployment benefits¹⁷³. Eventually, as prospects of ending the lockdown began to materialise, service provider companies put in place plans and practises to enable domestic workers to resume their work. One company in particular, Group

¹⁷²Sarah Mousaid, Kim Bosmans, and Christophe Vanroelen, (n150) 2-4.

¹⁷³ See Section 8.1 of this report for additional information on the impact of the covid-19 pandemic on the PHS sector in Belgium.

Daenens, launched a successful campaign to help domestic workers return to work safely. Through discussion and consultation with several experts and virologists, the company adopted a training and preventative framework to provide a safe and sustainable working environment for workers. It focused on adopting appropriate behaviours by teaching workers and clients the good reflexes to adopt to hinder the spread of the virus, such as social distancing, washing hands regularly and cough and sneezing hygiene¹⁷⁴. As part of the campaign, they further implemented the following¹⁷⁵:

- Coloured information papers attached to workers' payslips listing preventative steps to take to stay safe at work;¹⁷⁶
- Visual guidelines about the provision of domestic services and basic safeguards to prevent the spread of coronavirus.
- Information cards available in 8 different languages to advise domestic workers on preventative measures to adopt to prevent coronavirus transmission.
- Personal training and coaching to inform domestic workers about the health guidelines, followed by monthly meetings to discuss their implementation at the workplace.
- A movie "A corona-proof working day".
- Displaying visual stickers and sheets in the office.
- A chat platform on the company's website to answer domestic workers' questions available in French, Dutch, English and Polish.
- An updated FAQ about the virus and about financial, administrative and safety issues.

6.2.2 Training Mechanisms

The service voucher system has set a subsidy system wherein individuals are required to obtain a minimum of 9 hours of training, and up to 18 hours of paid training. Currently, in Flanders and Brussels it is 13 hours, and in Wallonia this will soon be altered to 16 hours for every full-time equivalent each year. Each company which employs a new household keeper has to provide training and may decide what type of training to proceed with¹⁷⁷. Upon commencement of the service voucher system, numerous policies were adopted to promote training in the facilities. The most important was the 'Federal Training Fund' in 2007, wherein an annual budget was granted by the federal government as a quasi-reimbursement for expenses in relation to training.

The Joint Committee 322.01 accentuated two dominating initiatives to increase the number of employees who received training. Firstly, there was the implementation of a Sectoral Training Fund in 2009, wherein companies were encouraged to facilitate training and additional required support. From the 1st of September 2014, the fund would reimburse the training costs for a maximum amount of 18 hours for new employees, yet the costs would merely be reimbursed under the condition that training has been provided for a minimum of 9 hours., Moreover, there was a rule allowing new domestic workers to attain 9 hours of mandatory training; thereby, for a full-

¹⁷⁴ Group Daenens, 'Safely Back to Work' (2020) <<https://www.safelybacktowork.eu/>> accessed 18 December 2021.

¹⁷⁵ C189 European Alliance (n9) 15.

¹⁷⁶ Interview with Nico Daenens, CEO of Group Daenens (Online, 2 December 2021).

¹⁷⁷ Interview with Peter Van de Veire, Director of Form TS (Online, 3 November 2021).

time or an equivalent contract, a company would require to offer 12 hours of training, and this allocated time may differ per region. This system could be considered a best practice. The mandatory nature of training provides the opportunity for new domestic workers to be fully equipped and qualified to face the challenges embedded in the work environment of a private household. Nevertheless, these initiatives also have shortcomings. The health risks associated with the domestic work may be insufficiently addressed due to the inability to fully comprehend the magnitude of the risks to be faced. Due to the undervalued nature of the work itself, the risks may be undermined and inadequately addressed. This oblivious nature may be a problem for policy makers and the employers or clients as they have never dealt with the specific risks of the working environment of a domestic worker, thereby not grasping the complexities of the tasks and the requirement of training. On the other hand, domestic workers themselves, may not evidently perceive the risks associated either, hence questioning why to opt for training¹⁷⁸.

Form TS, as a bipartite body, provides training for domestic workers which entails different aspects. Primarily, there is technical training consisting of ways in which to conduct certain tasks, such as cleaning windows, and which products to use. Secondly, there is soft-skill training regarding matters of communication with the clients and organisation of the job. Lastly, there is a motivational factor which acknowledges the fact that housekeepers are inherently undervalued in society, and hence provides them with support in taking pride in their jobs. This last component is a rather vital one for domestic workers given that they may face negative psychological impacts. To further induce such positive motivation, there is a campaign conducted on an annual basis demonstrating to customers the complexities of being a housekeeper, and the fact that they are working professionals and should be highly respected. For instance, in 2020 an awareness campaign was launched by the Sustainability Fund aimed towards the service voucher system to promote respect for this profession. This had the title of '*Ce n'est pas magique! C'est le travail d'un.e professionnel.le*', which essentially translates to '*It is not magic! It is the work of a professional*'¹⁷⁹. Embedding such a title, it becomes immediately clear what the campaign aims to transpose; on this basis, the work of home help should no longer be overlooked, as they obtain training and work full-time at the best of their abilities just like any other employment.

Needless to say, clients are not subjected to any training whatsoever as they merely seek to attain services within their private households. Establishing a mandatory training scheme for clients would be complex in nature and would disincentivize individuals from entering the service voucher system as clients; acquiring training would be deemed unnecessary and time-consuming. In addition, as there is a vastly significant number of clients, it would be very difficult to offer training at such a large spectrum. The most suitable way of offering training for clients is to create campaigns which allow the clients to be aware of the complexities connected to this type of work, as was developed by Form TS. The Sectoral Training Fund, set in 2017, provided a means to raise

¹⁷⁸ Sarah Mousaid, Kim Bosmans, Kelly Huegaerts and Christophe Vanroelen, 'The service voucher system, health and health inequalities' (2015) Vrije Universiteit Brussel Interface Demography, 27-29.

¹⁷⁹ 'Campagne de sensibilisation 2020: Ce n'est pas magique! C'est le travail d'un.e professionnel.le.' (Form TS, 31 July 2020). <<https://form-ts.be/actualite/news/campagne-de-sensibilisation-2020-ce-nest-pas-magique-cest-le-travail-dune-professionnelle/?L=0&cHash=4a7dbaa0233464f3e58022efc4eff0b9>> accessed 4 December 2021.

awareness on the work in the service voucher system. A communication campaign, recognised as ‘*Tous Respectueux*’, initiated on an annual basis prior to the aforementioned campaigns, addressed the concerns of domestic workers in relation to acquiring respect and suitable equipment. This was launched by means of social media platforms, where workers were encouraged to distribute leaflets to their clients at the private households which enumerated a list of adequate working conditions as a means to raise awareness¹⁸⁰.

6.2.3 Inspections

A central component of the Royal Decree regarding the service voucher companies is that they ought to ascertain that the employment environment is exempted from risks and dangers and that the workers do not encounter abuses or discrimination. In essence, compliance with that obligation remains complex due to the nature of the workplace in the domestic sector—personal households—thereby, there is ambiguity on whether health and safety is truly guaranteed¹⁸¹. In Belgium, the Labour Inspection Convention No.81 was ratified in 1957, which is specifically tailored towards industrial workplaces. Nevertheless, given the implied nature of such ratification, insofar as to protect and safeguard the health and welfare of individuals, inspections should have the capacity to extend to all workplaces to ensure efficient compliance. It seems to be rather unfair to disregard the interests and health of domestic workers due to the absence of monitoring regulations. However, the right to privacy within homes is a key factor embedded in the UDHR, specified in Article 12. Establishing a mechanism to balance the rights of both parties is evidently a complex task.

In addition, if a dispute were to arise between the client or employer and domestic workers, the Inspection of Social Laws may intervene. This could entail complications in terms of inspections to be conducted—entering a private premise would not be a possibility unless permission has been granted from the court—wherein comprehensive justification would be a requisite for their decision to enter the property. Despite ratification of the ILO Domestic Workers Convention, 2011 (No.189), Belgian policymakers seemingly do not have a prospect to set another basis for the inspections to take place¹⁸².

Whilst conducting interviews with stakeholders in the realm of the domestic work sector in Belgium, the difficulties enshrined in conducting inspections was especially highlighted. As previously acknowledged, entering a private household to inspect would consist of a breach to the rights of the individuals seeking domestic services, and a potential incentive for the client to strive for undeclared work to avert such inspections. An alternate complexity is that a domestic worker is not typically employed in one single household—that is to say, they often perform work in various working places, and it would be a difficult task to control and monitor each work environment. From the perspective of the Director of Form TS - which offers a high-level quality of training for

¹⁸⁰Country Report: Belgium, (n162) 11.

¹⁸¹Sarah Mousaid, Kelly Huegaerts., Kim Bosmans, Mireia Julià, Joan Benach, & Christophe Vanroelen (n58) 52.

¹⁸²Joris Michielsen, ‘Promoting integration for migrant domestic workers in Belgium’ (2013) International Migration Papers No.116, 28-29

its workers -methods to ascertain safety with the exclusion of inspections have been upheld. Through extensive training, their aims include sufficiently informing the workers how to conduct their work in a safe manner, and to establish a form of motivation and assertion. To elaborate, it is highly important for the workers to have the capacity to use their voice. Despite seemingly being considered as being in a rather weaker position vis-à-vis the homeowners, domestic workers ought to be able to be assertive in relation to their employment and responsibilities. It may be the case that clients request the workers to use atypical or harmful products for cleaning, such as ammonia, yet the workers must be able to affirm that such substances are dangerous and will not be used during their practice¹⁸³. A best practice on behalf of a Group Daenens, is that a survey has been created which enlists 150 questions in relation to, working conditions, safety of the workplace and sexual harassment. This survey has reached approximately a 50% response rate and has enumerated an interesting set of data which could enhance the working conditions for domestic workers. Albeit this being highly beneficial, this is not a standard provided for in other companies offering the service voucher system as it is vastly time-consuming¹⁸⁴.

In addition to service voucher, there is also an au-pair system and domestic workers of diplomatic personnel. The former will not be delved upon, yet the latter is relevant to consider in respect to the complications which may arise during such employment relations. In essence, it is a possibility for domestic workers to work under a diplomatic jurisdiction, wherein the acquisition of a work permit would be replaced with a diplomatic identity card via their employer¹⁸⁵. Diplomats attain vast benefits and immunities, demonstrating that the employment relationship is eminently transposed of unequal powers. To combat possible abuses in these cases, the Belgian government enacted a section tailored towards victims of trafficking working for diplomatic personnel within the Ministerial Circular of 26 September 2008. This had the objective of creating enhanced investigations whilst acknowledging the immunities corresponding to the diplomatic status. Domestic workers, however, would be in a rather unfortunate position in circumstances wherein abuses may occur, and they seek to leave their employer. This is because their identity card is connected with the diplomatic employer, hence, a work permit would not be granted unless a new contract is signed, and without such, the worker would risk having to leave the country. The Good Offices Commission, which was established by the Ministerial Circular of 23 May 2013, has the capacity to intervene for disputes in relation to a contract, and a Commission was particularly created for workers in a diplomatic setting. Their role would be to resolve issues between the parties by obtaining a civil settlement. This is a rather beneficial aspect especially for resolving issues on wages yet lack of cooperation by the employer could create complications on the

¹⁸³ Interview with Peter Van de Veire, Director of Form TS (Online, 3 November 2021)

¹⁸⁴ Interview with Nico Daenens, CEO of Group Daenens (Online, 2 December 2021)

¹⁸⁵ Annual Evaluation Report (2020) Myria
<https://www.myria.be/files/2020_Annual_report_trafficking_and_smuggling_of_human_beings-Part_1.pdf>
accessed 19 December 2021.

result¹⁸⁶. Overall, domestic workers of diplomatic personnel could face further complications than an employee working under the service voucher system, particularly in circumstances of abuse or limitations on their guaranteed safety, due to the restricted intervention possibilities linked with the diplomatic immunity.

6.3 Italy

6.3.1 Best Approaches to Health and Safety

In Italy, Ca.Sa.Colf represents the integrative healthcare fund, launched within the framework of the National Collective Agreement on Domestic Work¹⁸⁷. The instrument provides additional healthcare services and benefits both workers and employers members of Ca.Sa.Colf. The social partners signatory of the National Collective Agreement on Domestic Work include DOMINA and FIDALDO from the employers' side, FILCAMS CGIL, FEDERCOLF, FISASCAT CISL and UILTuCS from the employee's side, as well as the service provider Unisalute, member of the Unipol Insurance Group. Italy has established free telephone services to respond to information requests on issues related to the social protection of domestic workers¹⁸⁸. DOMINA advises employers on how to fulfil their legal obligations, regularisation, and formalisation of the employment relationship.

In the health and social care sector cooperatives play a key role. They have contributed both the greatest amount of VA (Value added Euros) and overall employment, although their number is lower than in other economic sectors. Cooperatives, which represent 2.9% of enterprises in the PHS sector, generated 21.6 % of the total VA and employ about 34.4 % of the total number of employees in the sector.¹⁸⁹

On the social and solidarity economy side, a social cooperative—Spazio Aperto Servizi was founded in 1993. It promotes and brings well-being and care to people through the management of social, health, welfare and educational services as it offers an all-encompassing response to the needs of each user in an innovative way for families, the elderly, adults, children, and people with disabilities in the Milan area and its hinterland.¹⁹⁰ Lybra is a social cooperative, promoted by the Acli Provinciali of Trieste founded in 2003. It offers social housing services, job search support, educational services for minors and persons with disabilities, health, and rehabilitation services. The services offered are aimed at associations, public bodies, employers' associations, social cooperatives, but also at for-profit companies that are interested in developing services consistent with the corporate purpose of Lybra.¹⁹¹

¹⁸⁶ Annual Evaluation Report (2020) Myria. <https://www.myria.be/files/2020_Annual_report_trafficking_and_smuggling_of_human_beings-Part_1.pdf>, 11-12

¹⁸⁷ Ad-PHS (n5) 8.

¹⁸⁸ International Labour Organisation (n79) 169.

¹⁸⁹ Ibid 7.

¹⁹⁰ Ad-PHS (n5) 10.

¹⁹¹ Ibid 11.

One of the most efficient ways to reach out to both workers and private households to provide correct information on any risks existing in the household is EBINCOLF, the National Bipartite Agency of the Section of Employers and Family Collaborators. It published five handbooks on safety at work in the domestic sector. The employers provide the handbooks to the workers as established by Art. 27 of the CCNL¹⁹².

1. Household cleaning and hygiene. Useful guide to identify the symbols on labels of products used for cleaning the home. Basic information is also provided on prevention and ways to behave in case of ingestion, inhalation or contact with harmful substances.

2. Electricity at home. Correct information about the operation of home appliances is important not only to reduce electrical risk, but also to increase savings in the bill. In this case, prevention plays a fundamental role to avoid overloading, overheating and electrocution.

3. Ladders and stools. These are used on a daily basis for cleaning, but some precautions are needed to manage them safely.

4. Use of gas at home. Observing a few simple precautions can be important to avoid unpleasant accidents; for example, the maintenance and proper use of the boiler, metre and pipes are essential. Some important safety measures must also be taken for the daily use of the stove or gas oven.

5. Handling and lifting loads. As domestic work implies physical tasks and namely lifting and carrying loads (i.e., moving furniture), some expedients can reduce the risk of injury. There are some simple, basic techniques for moving or lifting weights that make it possible to avoid potentially serious damage.”

6.3.2 Training Mechanisms

In recent years, the demand by households in Italy for private care services has highly increased. This is mostly due to current socio demographic trends, including the ageing of the Italian population, as well as the difficulties encountered by public services in fulfilling the needs of all citizens requiring direct support care¹⁹³. The social partners have been cooperating with the National Entity for Standardisation (UNI) to come up with a set of objectives and reliable criteria for the selection and training of domestic workers that will ensure that workers qualifications and standardised occupations . Such an occupational standard developed by UNI for domestic workers defines the knowledge, skills, and competences required for professionals working in family-care-related work. This standard defines the competencies and tasks for each of the three different occupations in the domestic work sector (housekeepers, carers, and babysitters), in compliance

¹⁹² DOMINA (n88) 17.

¹⁹³ International Labour Organisation, (n79) 169.

with the European Qualifications Framework¹⁹⁴. The objective criteria are provided for the design and delivery of occupational training and for the recognition of prior learning.

As far as quality management is concerned, the regional qualifications system does not provide a systematic dissemination of qualifications under the CCNL Domestic Work¹⁹⁵. This makes the system of certification weak in public structures. Additionally, there is a further professional profile, care assistant - Operatore Socio Sanitario (OSS)- that is relevant for PHS provision. A standard training programme for this profile has been developed and implemented throughout the country for the last four years¹⁹⁶.

EBINCOLF, by promoting training at various levels, not only fulfils one of its statutory tasks, but also contributes to the progress of a fast-growing sector in Italy. The overall objective of such measures is to upskill workers and make them more aware of the role they play for the care recipient and for society as a whole. Thus, the objective is that workers are more prepared to face professional and personal challenges with greater competence and professionalism and, not least, in complete safety¹⁹⁷. The most recent ISTAT surveys confirm that domestic accidents are increasing in Italy, weighting on public health. Accordingly, training activities promoted by the Bipartite Body include special training-information programmes on safety at work to provide housekeepers, carers and babysitters with the knowledge and skills needed to best perform their work in total safety¹⁹⁸. Since 2015, it financed activities in the field of training and qualification, by offering 30,000 hours of classroom and training to more than 10,000 workers across the country — including housekeepers, carers and babysitters — totally free of charge¹⁹⁹.

6.3.3 Inspections

Irregularities and wrongdoings in the domestic sector are not only widespread, but also very difficult to bring to light given the limitations for assessment and monitoring activities²⁰⁰. Most of the domestic workers find themselves in irregular situations as sometimes contracts prepared by households do not clarify the worker's rights and obligations, their duties, and other essential elements such as vacation, overtime, and days off. Such irregularities are often disputed. The statistical archives of the National Labour Inspectorate, in particular the Report updated as of 2019, contain information on inspection activities in the framework of labour and social legislation, allowing to estimate the rate of irregularities and wrongdoings among workers and companies, as well as the collection of unpaid taxes and bonuses, etc.²⁰¹. According to the archives, the most widespread irregularities in the workplace are inappropriate definition of the employment relationship, violation of working hours, criminal and safety violations. Since they only refer to

¹⁹⁴ Ibid 215.

¹⁹⁵ Ad-PHS (n5) 7.

¹⁹⁶ Ibid 7.

¹⁹⁷ DOMINA (n88) 31.

¹⁹⁸ Ibid 31.

¹⁹⁹ Ibid 31.

²⁰⁰ Ibid 76.

²⁰¹ DOMINA (n88) 22.

inspections, these figures do not fully reflect the actual market. However, they are crucial for understanding what types of wrongdoings are most common in the sector.

The data refers to labour inspection activities as particularly relevant with a view to families who employ domestic workers, since the Labour Inspectorate cannot carry out inspections in private dwellings but can only take action after a report. What is most surprising is the very little variation in the rate of labour inspections across sectors, which is still estimated at 0.9%, whereas with the exception of 2015 registered it at 1.2%. The decrease in the number of inspections targeting families who employ domestic workers is accompanied by a decrease in the rate of irregularities, particularly between 2015- 2016, and 2016-2017²⁰². A slight increase by about 4% was registered between 2018-2019. Among the 106,446 inspections carried out in 2019, 72,255 disputed irregularities, accounting for 67.9% of total inspections²⁰³.

The Annual Report on inspection activities also shows the number of workers involved in the disputed violations. With a view to undeclared work – i.e., employment relationships that occur without any type of contract, and therefore deny social security coverage and protection provided by law and exclude payment of taxes – inspections identified 32,367 undeclared workers, 1,145 of which were third-country nationals without a regular residence permit²⁰⁴. The great share of undeclared work in the domestic sector does not necessarily come to light during labour inspections: in 2015 and especially in 2016, the percentage of irregularities related to undeclared work had an incidence of over 50% of the total (56.4% in 2015 and 60.8% in 2016). In 2017, the share dropped to 47.3%, reflecting the actual decline of the rate of undeclared domestic work from 48.4% (2016) to 43.8% (2017). The drastic drop in 2018 and 2019 cannot be clearly explained²⁰⁵.

6.3.4 Complaint Procedures

Employers' organisations in Italy provide administrative support, tax and contractual advice, model employment contracts and guides for employers to try to promote decent work for domestic workers and foster good employment practises. Employers of domestic workers also rely on their organisations to provide dispute mediation services and legal counsel. For instance, DOMINA offers legal and technical support to assist employers and workers in reaching agreements to resolve complaints. One key success factor in Italy is the capacity of the employers' organisation–DOMINA – to collect data on the sector and publish Annual Reports. This function is critical to the campaigns of both organisations to raise awareness about the household as an economic and political actor, while valuing the model of employment between private individuals and domestic workers.

²⁰² Ibid 23.

²⁰³ Ibid 24.

²⁰⁴ Ibid 25.

²⁰⁵ Ibid 26.

6.4 The Netherlands

6.4.1 Best Approaches to Health and Safety

Approaches to health and safety as regards to domestic work are very limited in the Netherlands. However, the ‘Arbowet’ in principle does apply to domestic workers and covers certain health and safety regulations that need to be complied with also for domestic workers. The lack of regulations causes vulnerability for domestic workers regarding health and safety especially due to their position of dependency regarding their employer. Domestic workers are extremely dependent on their job due to low job security and social economic security²⁰⁶. Both factors make them vulnerable to exploitation such as underpayment, excessive working hours, and illegal employment. These consequences also expose workers in the PHS sector to disproportionate psychological and physical distress, thus encountering health and safety risks. There are no ‘best’, let alone approaches currently adopted by the Dutch government ensuring health and safety of domestic workers. However, they are extremely needed.

There are, however, Initiatives by Non-Governmental Organisations (NGO’s) such as FairWork,²⁰⁷ initiated by Humanitas and Oxfam Novib as a project. It is a non-governmental organisation, and a large quantity of their work is conducted by volunteers, however the organisation is recognised by the government as an “Algemeen Nut Beogende Instelling” which is an organisation that is considered to have public interest. Therefore, they also receive certain tax benefits. Moreover, their aim is to fight and prevent modern slavery in forms by supporting the victims of such abuses, by putting them in contact with trained professionals that spread awareness to the public. FairWork provides domestic workers – at risk or victim of exploitation by their employer – with the useful measures to take in these situations, that the government does not. For example, during the pandemic, they supplied undocumented workers in the Netherlands with example letters that they could use to request their employer to continue paying their salary during the lockdown. However, they stated in their 2020 overview report that out of fear of causing problems, many may not have done this. FairWork also makes use of ‘cultural mediators’, able to speak several languages in order to better communicate with domestic workers who may not be very familiar with the national language. They can provide information to the workers about their rights and act as a general support system²⁰⁸.

6.4.2 Training Mechanisms

The Netherlands currently has no training mechanisms in place for domestic workers²⁰⁹. The administration and costs of such an initiative does not correspond with the current attitude of the Dutch government towards supporting the PHS sector. Accordingly, for example, language classes for non-Dutch workers or any other practices relating to the wellbeing of domestic workers have not been implemented. Often, non-Dutch workers documented or undocumented lack the

²⁰⁶Fair Work (n105).

²⁰⁷Ibid.

²⁰⁸ Fair Work (n105).

²⁰⁹Ibid.

ability to speak the local language²¹⁰ thus, making it hard for them to communicate their needs and properly engage in the integration process. Language classes would aid in destroying this language barrier and increase domestic worker's ability to ensure their own rights. Unfortunately, at this point, if domestic workers want to partake in these types of training mechanisms, they will need to arrange and pay for them themselves. As stated before, NGOs such as FairWork are able to provide domestic workers, with tools such as cultural mediators, example statements/letters etc. Nevertheless, it has been discovered that migrant workers only use NGOs as a last resort²¹¹.

The awareness of labour rights in the Netherlands could lead to the encouragement of victims of exploitation to report possible irregularities or abuses. The central government has recently initiated awareness campaigns about the RDAH. This consists of their website providing information on the requirements of domestic workers, the obligations their employers need to fulfil, how workers can initiate their own agreements and how they can set up insurance. The webpage also includes useful documents relevant for domestic workers. Besides, there is also a page for employers outlining what obligations they have towards their personnel²¹². The webpage is, however, not as accessible for non-Dutch speakers which, as earlier established, composes a large part of the workforce. In 2020, 1831 people went to FairWork for individual advice which was double the amount of people compared to the year before. These people were provided with cultural mediators, online awareness campaigns and further education programs on their rights. These online education programs are the closest thing to training mechanisms currently available for domestic workers in the Netherlands.

6.4.3 Inspections

As it is not required for people hiring domestic workers in the Netherlands to provide their employees with a contract²¹³, there is little formality in the PHS sector. For instance, no employers forum exists allowing the latter to identify the fact that they are hiring domestic aid. where employers need to identify they are hiring domestic workers. However, there is one exception with the 'Risico Inventarisatie en Evaluatie' (RIE) a monitoring mechanism implemented according to Chapter 5 of the 'Arbowet' to ensure the health and safety of workers in the health care sector also including at home care workers. Therefore, there are arguably very few ways to organise monitoring mechanisms such as inspections. Currently, no formal inspections are put in place in the Netherlands that would ensure households hiring domestic workers are providing the rights domestic workers are entitled to. The SZW, –the Dutch government department responsible for social issues and employment – is able to perform unannounced inspections at workplaces in

²¹⁰Ibid.

²¹¹ De Balie Live Journalism, "Natalia Robledo-Contreras over de positie van huishoudelijk werkers in Nederland en het belang van ILO-189", deBalie, 20 November 2020.

²¹²'Regeling Dienstverlening Aan Huis', Rijksoverheid. <https://www.rijksoverheid.nl/onderwerpen/dienstverlening-aan-huis>, accessed on 17/1/2022.

²¹³Ad-hoccommissie , Sociaal - Economische Raad (SER) (n101) 4.

companies in order to ensure the labour legislation is being complied with. Nonetheless, the General Act on Entry into Dwellings currently in place prevents the SZW from doing the same for domestic work.

In 2018 and 2019 the SZW investigated the working conditions of domestic workers and published a report focusing on the exploitation of au pairs, private servants, migrant workers working in 24-hour live-in home care, and undocumented domestic workers²¹⁴. The data collection method engaged to produce this report consisted of interviews, reports of abuses, inspections, and criminal investigations. The SZW also has a unit in a collaboration with Dutch Immigration and Naturalisation Service that attempts to ensure that the rights under the Dutch alien legislation are complied with by au pair firms. This is crucial as it was found that more than 50% of au pairs in the Netherlands work more than the maximum of 30 hours a week and only get compensated around 340 euros a month²¹⁵. Another unit under SZW is attempting, through inspections and alert issuing, to stop intermediary agencies in 24-hour live-in home care from not complying with the law. After the SWZ report was published in 2019 there were no inductions and further inspections were done. Moreover, these issues could only have increased since the Covid-19 pandemic started in 2020, as the workers vulnerable position in PHS could only have worsen, , it can be argued that consistent and unannounced inspections would be a very beneficial appliance in attempting to improve the conditions of workforce in the Netherlands. Notwithstanding this is seriously limited by the factor that it would be an infringement with privacy rights.

²¹⁴ Ibid 211.

²¹⁵ Inspectorate SWZ Ministry of Social affairs and Employment (n.102) 21.

7. Covid-19 Implications

7.1 Belgium

In March 2021, when the WHO officially declared the COVID-19 outbreak to be a pandemic, the Belgian government swiftly introduced federal measures to tackle the spread of the virus. These measures required companies to transfer to telework where possible, obliged all non-essential shops to close, and encouraged residents to stay at home and isolate themselves. However, not much changed for PHS workers. They were declared essential workers and thereby, were expected to continue providing their services, and resume their work for their clients. This caused widespread panic amongst PHS workers as many feared catching or spreading the virus to their clients. Moreover, they were not entitled to compensation in situations where clients cancelled their appointments, causing a serious shortfall for those who are already in a precarious situation²¹⁶. This prompted trade unions to come forward and ask for the regions' help to subsidise up to 75% of the service voucher system. Service voucher companies also refused to put their workers at risk and hence, stopped providing household services²¹⁷.

Taking into consideration the legitimate concerns raised by PHS workers, Federgon, the federation of service voucher companies, made an official demand to federal authorities to suspend the household assistance activities²¹⁸. In response to the concerns expressed, the Belgian government offered temporary unemployment benefits to service voucher workers, by way of a flexible interpretation of *force majeure* in Belgian law. Under Articles 1147 and 1148 of the Belgian Civil Code, a debtor is released from his contractual liability if he can prove that the non-performance of his obligations is a consequence of *force majeure*. *Force majeure* is defined as a sudden and unforeseeable event, beyond the control of the employer and its workers, which makes the performance of the employment contract temporarily or permanently impossible. In other words, a debtor can invoke *force majeure* if it is impossible for him to perform his contractual obligations either temporarily or permanently following the occurrence of circumstances which cannot be attributed to him²¹⁹. Therefore, from the 13th March 2020 to the 31st August 2020, a flexible application of the concept of *force majeure* was accepted and situations of temporary

²¹⁶ Ryckmans G and Heinderyckx S, 'Coronavirus en Belgique: "C'est la panique totale pour les aides-ménagères"' (RTBF, 17 March 2021) <https://www.rtbf.be/info/dossier/epidemie-de-coronavirus/detail_coronavirus-en-belgique-c-est-la-panique-totale-pour-les-aides-menageres?id=10459899> accessed 18 December 2021.

²¹⁷ Interview with Nico Daenens, CEO of Group Daenens (Online, 2 December 2021).

²¹⁸ Federgon, 'Le secteur des titres-services demande aux autorités de fermer le secteur' (Federgon, 17 March 2020) <<https://federgon.be/fr/communique-de-presse/news/de-dienstenchequesector-vraagt-aan-de-overheid-om-de-sector-te-sluiten-pc-32201/>> accessed 18 December 2021.

²¹⁹ BDO Belgium, 'Qu'entend-on par force majeure dans le cadre de vos obligations contractuelles en cette crise du coronavirus?' (BDO Belgium, 27 March 2020) <[62](https://www.bdo.be/fr-be/actualites/2020/qu%E2%80%99entend-on-par-force-majeure-dans-le-cadre-de-vos-obligations-contractuelles-en-cette-crise-du-cor#:~:text=un%20bail%20commercial%20%3F-,Qu'est%20ce%20la%20force%20majeure%20dans%20le%20droit,et%201148%20du%20Code%20Civil.> accessed 18 December 2021.</p></div><div data-bbox=)

unemployment linked to COVID-19 were considered as temporary unemployment for reasons of *force majeure*.²²⁰.

When PHS workers resumed their work in the summer of 2020, the regions organised themselves to ensure that they received the necessary PPE equipment to work safely (gloves, hand sanitizer and a double layered mask). In April 2021, the Minister of Economy and Employment announced new measures to protect domestic workers who are exposed to a high risk of exposure to coronavirus. These new measures oblige employers to provide their domestic workers with disposable surgical masks and hand sanitizer. Additionally, they allow domestic workers to maintain 100% of their salary in cases where they refuse to perform a service which would, according to them, seriously put their health at risk²²¹. These measures were welcomed with open hands in the PHS sector, despite being introduced quite late.

7.2 Italy

With specific regard to domestic work, a series of structural characteristics of home and personal care made the sector particularly exposed to the health crisis²²². According to Alberto Pilotto, President of the Italian Society of Hospital and Community Geriatrics, the disease affects all ages, but has the most severe effects on the elderly²²³. The most striking example can be found in care homes where, as attested by the Italian National Institute of Health's (ISS) report published on 17 June. Indeed, 55 of the 9,000 deaths recorded between 1 February and 5 May in care homes (equal to 9.1% of the residents), 7.4% of said deaths were in residents who had tested positive for the virus, and 33.8% in those with flu-like symptoms²²⁴. Due to domestic work being based on interpersonal contact, whether that be caring for the elderly or children, contact with personal items are essential. The employers' home is the workplace, and this makes working remotely impossible.

During the pandemic, many domestic workers lost their jobs and main financial means. However, PHS are often a fundamental service for the family (such as the case of assistance for the elderly or people dependent on care), which cannot be interrupted. Against a backdrop of financial distress, the cost for the family became an unsustainable burden for many²²⁵. During the lockdown, Green Pass, either with certification of vaccination against Covid-19 or the negative test result, was obligatory for the domestic taskforce to show to the families before the start of the working day. Families had to control the Green Pass of the domestic workers, or they were subject to fines. The problem arose as Green Pass only recognised certain types of COVID-19 vaccines.

²²⁰Office National de l'Emploi, 'Chômage temporaire - Covid 19 (Coronavirus) du 13.03.2020 au 31.08.2020 inclus, du 01.09.2020 au 30.09.2020 inclus, et du 01.10.2020 jusqu'au 31.03.2022 inclus' (ONEM, 14 December 2021) <<https://www.onem.be/fr/documentation/feuille-info/e1-0>> accessed 18 December 2021.

²²¹ FGTB HORVAL, 'Covid-19: nouvelles mesures de protection pour les titres-services'(26 Avril 2021), <<https://www.horval.be/fr/secteurs/titres-services/actualites/covid-19-nouvelles-mesures-de-protection-pour-les-titres-services>> accessed 20 January 2022.

²²² DOMINA (n88) 213.

²²³ Ibid 213.

²²⁴ Ibid 213.

²²⁵ Ibid 214.

Considering that most of the domestic workers in Italy are from Eastern Europe, they have been vaccinated with different types of vaccines. Monitoring the family who oversaw the control of the Green Pass became an obstacle. Hence, Green Pass regulation was ineffective²²⁶. Recently, the government granted Green Passes to the workers vaccinated with other types of vaccines against the virus.

High percentage of undeclared work in Italy—around 60% – caused specific problems during the pandemic. During the lockdown, when any travel had to be justified and documented, undeclared workers could not reach their place of work²²⁷. Foreign workers also suffered from the pandemic, they lost their jobs and found themselves in the difficult situation of no longer having accommodation and at the same time not being able to go back home because of border closures. The PHS sector due to its nature of profession and some of the government regulations, in the first phase of the crisis, was faced with considerable difficulties. For example, the first three Ministerial Decrees (DPCM 01/03, 08/03, 09/03) did not provide any guidance on domestic workers and caused great uncertainty and confusion among families who employ domestic workers, because it meant that workers (at least in live-out contexts) were formally forbidden from travelling to their workplace²²⁸.

The Decree named 'Cura Italia'²²⁹, included restrictions for domestic work that did not apply for other sectors. Indeed, the sector was explicitly excluded from the wage guarantee fund, which was granted to all other employers regardless of the sector or the number of staff (Article 22, paragraph 2)²³⁰. Similarly, domestic work was excluded from the ban on dismissals (which in its first enactment had a validity of 60 days), meaning workers were still at risk of losing their job²³¹. Another discrimination that Cura Italia Decree entailed against the sector was excluding them from the EUR 100 bonus.

ILO Domestic Workers Convention, 2011 (No.189) establishes the need to ensure equality of treatment between all workers on key elements of employment such as working hours, remuneration, and so forth. To tackle this situation, employers' associations played a fundamental role in the first phase of the crisis in trying to fill the information gap faced by many families²³². DOMINA published a set of guidelines for employers and domestic workers on what measures to take during the coronavirus pandemic.

In October 2020, during the second outbreak of the virus, the associations addressed the Minister of Employment and Social Policies for consideration of measures in support of the domestic sector. Declaring their availability for a constructive discussion on crisis interventions for domestic workers, in particular the extension of the wage guarantee fund, COVID-19 sick leave paid by the state, work-related COVID-19 illnesses, free personal protective equipment for care

²²⁶ Interview with Lorenzo Gasparrini, President of DOMINA (Online, 9 November 2021)

²²⁷ DOMINA (n88) 214.

²²⁸ Ibid 214.

²²⁹ Legislative Decree No. 18 of 17 March 2020.

²³⁰ DOMINA (n88) 216.

²³¹ Ibid 216.

²³² Ibid 216.

workers, and any other aid measures²³³. Many of which have been achieved as a result of mobilisation by employers' and workers' organisations²³⁴. For example, in Italy, domestic workers were initially excluded from emergency income support measures. However, following such pressure, a decree was issued in May 2020 to provide PPE for domestic workers and extend short-term income support for workers who are in a formal employment relationship in cases of reduced hours of work²³⁵. These provisions, however, exclude “live-in domestic workers” from the compensation and do not afford the same level of compensation as that granted to other workers²³⁶.

From the early stages of the pandemic, the importance of personal protective equipment (masks, hand sanitizer, disposable gloves) was essential to reduce the chances of infection²³⁷. Domestic workers received different treatment compared to other sectors in this case as well. There was no obligation for them to wear such equipment, when other sectors related to personal care (e.g., care homes) had to be equipped. Afterwards, the Relaunch Decree required the use of PPE also for domestic workers but did not specify how to obtain it and who should cover the costs, whether it was the employer or the workers.

In light of the closure of schools and education services of all kinds, the Cura Italia Decree (Art. 23 and Art. 25) provided for specific parental leave for a continuous or split period, up to 15 days, for workers with children under the age of 12, which parents could use alternately between themselves, payment of a babysitter bonus was also possible. A 13-point Framework Agreement was approved by the Sardinian authorities where point number 9 concerned domestic workers with a contract registered with INPS and workers paid using the declarative and remuneration system. The compensation amounted to EUR 600 (one-off) for domestic workers who lost income, proportionally reduced according to the hours of work documented in the contract and the number of lost hours during March 2020. Moreover, they were paid on a pro-rata basis according to a standard 40-hour week and for housekeepers paid with the declarative and remuneration system, by considering the loss of Family Booklet in March compared to an average of the previous quarter.

7.3 The Netherlands

During the COVID-19 pandemic many domestic workers suddenly found themselves without a job. Their employers were not legally obliged to continue their payment of wages during this period. People living and working in the Netherlands legally were able to receive unemployment cheques while without a job, however undocumented domestic workers, – estimated to include about 40.000 – 75.000 workers in the Netherlands²³⁸ – were left without an

²³³ DOMINA (n88) 231.

²³⁴ International Labour Organisation (n79) 236.

²³⁵ Ibid 237.

²³⁶ Ibid 237.

²³⁷ DOMINA (n88) 237.

²³⁸ --, ‘Huishoudelijk medewerkers staan wereldwijd met lege handen door COVID-19’, (*Mondiaal FNV 10/6/2020*) <https://www.fnv.nl/mondiaal-fnv/nieuws-mondiaal-fnv/nieuws-verhaal/huishoudelijk-medewerkers-staan-met-lege-handen>. Accessed on 3 /1/2022.

income and without any compensation. Undocumented domestic workers, therefore, became extremely vulnerable during the pandemic and many risked losing their accommodation or being unable to feed themselves and their families. This vulnerability exposed undocumented domestic workers to risks of exploitation or being forced to work in unacceptable conditions. During the pandemic many households dismissed PHS workers due to the high risk of being infected, and those that continued the employment of their workers had no strict regulations as regards to safeguarding their employees from being infected. Nothing but the country's national restrictions at that time protected domestic workers from being infected by the virus. Due to in-existent job security or social and economic safety net, often, their only option was to continue working in an environment where they were exposed to the risk of contracting the virus.

In the course of the pandemic, many domestic workers were fired and left with no social or economic protection. Unemployment was, therefore, a major source of stress for these people as it resulted in them being unable to pay for their basic needs. These incredibly stressful circumstances resulted in many domestic workers having depressive symptoms and other psychological complaints²³⁹. The pandemic also had a major impact on the mobility of domestic workers which also caused psychological struggles. For example, during the pandemic, a large group of undocumented domestic workers from Nigeria were, due to their lack of protection by the RDAH on being fired without notice, the first to be let go. Because companies were suffering from financial consequences of the pandemic or households no longer needed their services, these workers suddenly had no more income. Next to this, as these workers were in the process of requesting documentation, the unemployment caused by the pandemic often slowed down this process. In order to start the registration process professional legal assistance is needed. Their unemployment, therefore, caused them to not be able to initiate the process. This can also be considered a major source of psychological distress for undocumented workers caused by the pandemic²⁴⁰.

The problems faced by domestic workers in the Netherlands can be made clear from the Kollman case. The claimant was working in the Netherlands at multiple homes taking care of several chores. As a domestic worker under the current Dutch legislation RDAH it was discovered that domestic workers are not entitled to unemployment social security benefits once she was dismissed by one of her employers during the COVID-19 pandemic. Whilst requesting unemployment benefits the claimant was told that under Dutch legislation domestic work is excluded from social security benefits. Therefore, a claim was brought against the Dutch institute that provides people with social benefits (UWV) to the national court of Rotterdam, then ²⁴¹. In the Netherlands, the RDAH currently excludes domestic workers from receiving unemployment benefits and retirement funds²⁴². Recently the national court of Rotterdam decided on this case

²³⁹ FairWork (n102).

²⁴⁰ (*Mondiaal FNV 10/6/2020*) (n240).

²⁴¹ Arbocatalogus (n105) 13.

²⁴² 'Thuiszorghulp heeft voortaan ook recht op sociale zekerheidsregelingen', NOS, 16 December 2021, <<https://nos.nl/artikel/2409783-thuiszorghulp-heeft-voortaan-ook-recht-op-sociale-zekerheidsregelingen>>.

against the UWV²⁴³ and stated that the exclusion of domestic workers that work less than 4 days a week from receiving social security constitutes indirect discrimination on ground of sex as 95% of workers in the PHS sector in the Netherlands are women. This decision by the Court means that all care workers in the Netherlands have a right to social security and are no longer excluded from receiving unemployment benefits. For other domestic workers, in general, in the Netherlands this decision is also extremely important as they are in similar positions as care workers and can use this decision to support their case against the UWV. The pandemic highlighted the limited protection of rights for people working under the RDAH. Therefore, cases such as the above mentioned arose. It can be argued that the pandemic exposed the faults in the current Dutch system regulating domestic workers, and generated awareness about the fact that the RDAH does not effectively protect domestic workers.

The pandemic had an immense impact on domestic workers. Many became unemployed without any form of compensation or safety net. This increased the vulnerability of the domestic workforce and led them to work in unacceptable conditions regarding the dangers of the pandemic. Furthermore, the corona crisis caused unemployment and challenged domestic workers' possibilities to afford their basic needs. This was especially problematic for undocumented workers which had uncertainty regarding their chances of staying in the country resulted in psychological consequences for many of them. Lastly, the pandemic also heightened all the flaws in the RDAH and exposed the lack of protection it provides. This resulted in cases such as the one of the domestic care workers who challenged her exclusion from access to unemployment benefits. The ruling in that case, recognising that that exclusion clashes with equal treatment legislation, the outcome became a milestone in the movement for the recognition of domestic workers rights in the Netherlands.

²⁴³ ROT 20/452 en ROT 20/836, Rechtbank Rotterdam, 16-12-2021.

8. Conclusion

This report sought to provide a comprehensive study on health and safety at work in the personal and household services sector in Belgium, the Netherlands and Italy through a comparative and multidisciplinary perspective. To achieve this, a qualitative approach was taken by thoroughly examining all relevant international and domestic legislation, closely reading reports and academic articles, as well as hosting a hybrid seminar and conducting interviews with experts in the field. As mentioned previously, four main questions were asked to approach this report. This conclusion will seek to provide a rigorous and extensive answer to each of the questions listed above.

8.1 Health and Safety

In the spectrum of domestic work, health and safety remains of a rather ambiguous nature for, how can one ensure compliance of fundamental rights within the work environment when it consists of a private household? The ILO Domestic Workers Convention, 2011 (No.189) aims to enhance the work conditions for domestic workers and notes that Member States must effectuate prominent measures to promote protection vis-à-vis abuse, harassment, and violence²⁴⁴. Similarly, numerous instruments provide safeguarding elements towards fair and just working conditions, and elimination of discrimination – an aspect which is at the forefront of domestic workers due to the majority of them being of immigrant status –. In addition to such abuses, other risks also arise, among them being hazardous exposures and psychosocial risks.

In Belgium, the ILO Domestic Workers Convention, 2011 (No.189) was ratified in 2015, which expanded the scope of the Well-Being Act to apply to domestic workers, in conjunction with Article 13 of the Convention asserting the right to a safe and healthy environment. Alongside this, Belgium has a very effective transposition of health and safety in the work sphere, specifically attributed in the Labour Contracts Act of 3 July 1978, as well as the Well-Being Act of 4 August 1996. These Acts designate the responsibilities of employers, as well as employees, to uphold health and safety measures, aligned with preventive mechanisms and training possibilities for the domestic workers. The National Strategy on Well-Being at Work 2016-2020 provides high protection for individuals and ascertaining health and safety, alongside other relevant objectives. Within this Strategy, it simultaneously acknowledges the barriers domestic workers may encounter in terms of language proficiencies, which could hinder their access to effective health and safety.

In Italy, the ILO Domestic Workers Convention, 2011 (No.189) was ratified in 2013, wherein domestic workers' rights were further recognised, and influenced employers' organisations to reinforce health and safety within this sector. In accordance with such, DOMINA assembled practices in the scope of protecting human rights for migrant domestic workers, alongside the ILO Italy Office. The CCNL acknowledges the vital aspects of safety, including provisions on how employers attain a responsibility to mitigate risks and offer training to their workers in respect to the associated risks and how to prevent them. Coverage and healthcare for

²⁴⁴ International Labour Organisation (ILO) Convention Concerning Decent Work for Domestic Workers C189 [2011] Articles 5-6.

injuries encountered by the workers is an important aspect, also included in that collective agreement, and healthcare funds have been developed by the social partners regarding this issue.

In the Netherlands, the ILO Domestic Workers Convention, 2011 (No. 189) was not ratified, due to the lack of compliance of the RDAH with the minimum standards for domestic work set in that Convention. Health and safety at the workplace is generally regulated by the 'Arbowet'. The framework is not of an extensive nature, and there are no specific or particular measures to ensure and uphold health and safety for domestic workers—especially within private households—. There is no form of health insurance, training possibilities or risk mitigation. The lacking formality of the employment relationship, as well as the increasing risks associated with domestic work, places the employees in vulnerable positions as they are highly dependent on their employers. The RDAH limits the rights attributed to domestic workers and validates the clear power imbalance between the parties in this special type of employment, with a lacking incentive to ensure health and safety.

Thereby, in terms of health and safety, Belgium and Italy present the most advanced instruments aimed at protecting, not only domestic workers, but all workers in general. The ratification of the ILO demonstrates an ameliorated response in the realm of health and safety and has advanced the objectives at a national scale. The Netherlands, however, has the weakest system of safeguarding these interests. The refusal to ratify the ILO Convention No.189 and improve domestic workers' rights has been economically beneficial for the Netherlands due to lower costs of hiring workers under this special regime, as well as an increase of informal employment in the sector. Evidently, this has not contributed whatsoever to the promotion of safety for domestic workers. If the ILO Domestic Workers Convention, 2011 (No.189), would have been ratified, perhaps the Netherlands would have expanded the scope of their national regulations insofar as to protect PHS workers, and provide adequate training for the mitigation of risks.

8.2 Gaps in Legislation

As a result of the limited acknowledgment regarding the specific circumstances of PHS workforce, in particular that it is conducted within personal households, this results in insufficient regulation towards the protection of PHS workers' rights. Essentially, it creates gaps in legislation in the countries under study.

If legislation safeguarding labour rights is applicable to domestic workers, which is already a big problem as the PHS sector is not often considered as 'regular work' by states, the legislation would often fail to consider issues faced by workers in this domain. The large scale of informality in the sector also creates a lack of regulation which results in domestic workers being insufficiently protected by law and sometimes even subjected to human rights violations.

Belgium has the most effective regulation of the PHS sector due to the implementation of the service voucher system. However, the Royal Decree, albeit beneficial, still does not fully cover the protection of domestic workers due to the difficulty of applying Article 9 to the service voucher system. It lays out a non-exhaustive list of elements of preventative measures which employers should pertain to. The monitoring of the health and safety working conditions for domestic workers

is, therefore, limited by the Royal Decree failing to recognize the circumstances of domestic workers, such as having numerous employers. The National Employment Office (NEO) has, however, demanded for employers of domestic workers to be informed on the specific health and safety risks they might face. The gap in the Belgium legislation can further be filled by a more specific provision that would hold employers liable for endangering the health and safety of domestic workers, which would cause employers to be more cautious and Article 9 to be more effective.

In Italy it is shown how the high employment informality of the PHS sector causes a major gap in applicability in the existing legislation. As the CCNL is not applicable to undeclared workers, more than half of domestic workers in Italy are left unprotected by law. Many domestic workers are willingly choosing to remain out of the scope of the CCNL and not register all their working time in order to receive financial support from the government. However, this also results in 57 % of domestic worker's health and safety rights in Italy not being secured as they are also not protected by the consolidated act on health and safety at work (Legislative Decree No. 81 of 9 April 2008). Furthermore, the CCNL is not preventing 'live in' domestic workers from being exploited in cases where their working time might not be complying with EU law (Working Time directive). Thus, the CCNL not applying to undeclared workers has left a huge gap in the legislation where non-visible workers who make up more than half of the PHS sector are unregulated. If the CCNL does apply there is still insufficient protection for certain domestic workers who are 'live in' domestic workers, as it leaves them exposed to exploitation in terms of working too many hours.

The Netherlands has the RDAH that applies to domestic workers who work less than 4 days a week for one employer which does not provide workers with many social benefits that workers with a regular employment contract do receive. This can be argued to be incompatible with certain human rights such as the right to access to social security and social protection. The legislation protecting general health and safety rights of workers in the Netherlands also fails to acknowledge the health and safety risks of domestic workers with the exception of domestic workers in the health care sector (at home care workers). Furthermore, a gap in the legislation is that many domestic workers work for different employers. The lack of recognition they face as regular workers and their rights in Dutch legislation has caused these gaps and left workers extremely vulnerable especially in times like the COVID-19 pandemic.

There are gaps in the domestic legislations of each country that, in varying degrees, impact the health and safety conditions of PHS workforce. If the legal instruments would more accurately apply to domestic workers, such as more efficient monitoring mechanisms in Belgium or an improved hour limit for 'live in' domestic workers in Italy, the health and safety risks of domestic workers could probably be decreased. In addition, lack of proper regulation of domestic workers due to the informality of their work, especially in Italy and the Netherlands, leaves broad gaps in the legislation. Recognising domestic work as 'real work' and formalising the PHS sector may fill these gaps and grant domestic workers more protection of their labour and social security rights.

8.3 Innovative Approaches

Due to the lack of formality in the PHS sector and to better ensure decent work for domestic workers, the countries under study have initiated their own innovative approaches. Governments adopting practices such as training, inspections and other mechanisms demonstrate their willingness to contribute to the health and safety of domestic workers.

It is true to say that the Belgium's approach in enhancing the regulation of domestic workers through the service voucher system is a big step forward in the fight against discrimination and human rights violations occurring in the PHS sector. Service voucher companies are responsible for allocating payment and social security contributions and ensuring health and safety in the workplace. Additionally, the clients may benefit from a tax reduction that is one of the best incentives for the PHS sector to stay regularised, which is still a great obstacle in Italy and the Netherlands. Despite Italy being the first country that ratified the ILO Convention and has further enhanced awareness on domestic workers rights, more than half of the laborforce in the sector does not have a regular employment relationship. In Italy, Ca.Sa.Colf, the healthcare fund, provides healthcare services and benefits both workers and employers members. The Dutch legislation does not comply with the ILO Convention and that international treaty has, therefore, not been ratified. Consequently, there are no remarkable 'best practices' let alone innovative approaches currently adopted by the Dutch government to ensure health and safety of domestic workers.

In Belgium, the Service voucher companies acknowledge the importance of training. The awareness is raised on the conditions at work for domestic workers and clients involved in the triangular relationships. While in the Netherlands there are no training mechanisms available for the PHS sector. If they want to participate in these types of training mechanisms, they will need to arrange and pay them themselves. In Belgium, the company is obligated to provide training to a new worker, which helps them to be fully equipped and qualified to face the challenges in the work environment of a private household. In Italy, organisations advise employers on how to fulfil their legal obligations, regularisation, and formalisation of the employment relationship and provide meaningful information to the employees.

In Belgium, a bipartite body–Form TS provides training for domestic workers which entails different aspects such as technical training, soft-skill training and, most importantly, motivational factors. Motivational factors highlight the undervalued treatment of housekeepers in society and try to provide them with support in taking pride in their jobs. The existence of this component is crucial as domestic workers may face negative psychological impacts.

In the Netherlands lack of social security exposes workers in the PHS sector to disproportionate psychological and physical distress causing health and safety risks, which are not taken into consideration. However, the central government has initiated awareness campaigns about the RDAH. The campaigns consist of information provided on their website on the requirements for hiring domestic workers, obligations their employers need to fulfil, how domestic workers can initiate their own agreements and how they can set up insurance. Also, useful

documents that are relevant to domestic workers are available.

In Italy, the most recent survey confirms that domestic accidents are increasing, and the organisations are eager to reach out to both workers and private households to provide correct information on any risks existing in the household. EBINCOLF published five handbooks on safety at work in the domestic sector that focus on five topics including household cleaning and hygiene; electricity and gas at home; Ladders and stools; and handling and lifting loads. Additionally, EBINCOLF provides training that aims to upskill workers and make them more aware of the role they play for the care recipient and for society. The aim is that they will be more prepared to face professional and personal challenges with greater competence and professionalism and, not least, in complete safety.

The existence of statistical archives of the National Labour Inspectorate in Italy, in particular the Report updated as of 2019, containing information on inspection activities in the field of labour and social legislation, is crucial for understanding the types of wrongdoings that are most common in the sector. One key success factor in Italy is the capacity of the employers' organisation such as DOMINA to collect data on the sector and publish Annual Reports. This function is critical to the campaigns of both organisations to raise awareness about the household as an economic and political actor, while valuing the model of employment between private individuals and domestic workers. In Belgium, a best practice of a company, namely Group Daenens, is that a survey has been developed and acquitted a 50% response rate, which enlists 150 questions in relation to the working conditions, the safety of the workplace and sexual harassment. This tool has helped to provide an interesting set of data which could enhance the working conditions for domestic workers. The Dutch government has not implemented a formal mechanism to organise inspections in households with domestic workers. as that is prohibited by privacy legislation.

All things considered, the reliance of domestic workers on their clients is significantly being reduced by the integration of service voucher companies, which provide workers with more secure employment and various benefits, ensuring that domestic work is treated as a normal and equal employment relationship regulated by the standard labour legislation available in Belgium. This sets a great example for other countries under study.

Italy, due to the vast informality of the PHS sector, needs more initiatives that will defer workers' reliance on the employer and contribute to regularisation of the sector. In the Netherlands, domestic workers are extremely dependent on their job due to low job security and low social economic security, hence more innovative and progressive practises need to be implemented.

8.4 Covid-19 Implications

The COVID-19 pandemic and the numerous lockdowns that ensued significantly impacted the work and livelihoods of workers around the world. This was also important in the PHS sector where a high number of workers already find themselves in a precarious situation, enjoying fewer

rights and lower social protection than other employment sectors. In fact, the ILO estimates more than 45% of domestic workers in Europe were disproportionately affected by the COVID-19 pandemic. The repercussions they faced ranged from reduced working hours to job loss²⁴⁵. In addition, many of them suffered a loss of income due to work incapacity resulting from the fear of spreading or contracting COVID-19 paired with mobility restrictions²⁴⁶. In the European Union, Member States took different approaches to support and provide help to PHS workers.

In Belgium, when the pandemic began in March 2020, domestic workers were considered essential workers and thereby obliged to continue to work. However, following health and safety concerns brought by service voucher companies and trade unions, the Belgian Federal Government decided to offer temporary unemployment benefits to service voucher workers, by way of a flexible interpretation of *force majeure* in Belgian law. The regions also distributed PPE equipment to all PHS workers once their work was resumed. Since April 2021, domestic workers are also entitled to receive their full salary if they refuse a job because of health concerns.

Italy was severely hit by the COVID-19 pandemic, suffering the highest amount of coronavirus loss in the entire European Union²⁴⁷. Government measures and regulations introduced to tackle the spread of the disease significantly impacted domestic workers. This is, in part, due to the high percentage of undocumented and foreign workers in the field. The ‘Cura Italia’ Decree No. 18 of 2020 implemented at the start of the pandemic explicitly excluded domestic work from the wage guarantee fund and the ban on dismissals, putting them at risk of losing their job. Domestic workers were also initially excluded from acquiring PPE equipment. However, pursuant to efforts of employers’ and workers’ associations, conditions slightly improved for domestic workers in subsequent waves of the pandemic. Finally, as a result of that lobbying, domestic workers were included in the emergency income support measures.

In the Netherlands, the pandemic had a strong impact on documented and undocumented domestic workers alike. Whilst domestic workers employed under the Dutch legislation RDAH were exempted from social security protection, undocumented domestic workers were left without an income and without any compensation. It was also shown that many undocumented domestic workers also suffered psychological distress due to the inability to afford basic necessities such as food and rent²⁴⁸. Nonetheless, the pandemic shed light on the precarious situation of domestic workers in the Netherlands, leaving many hopeful that improvements will soon follow.

In summary, PHS workers found themselves in different situations during the COVID-19 pandemic as Member States took distinctive approaches to protect this sector of employment. Among the countries examined, Belgium undoubtedly provided the best protection for domestic

²⁴⁵ Marlies Vegter, ‘Locked Down and Out: Effects of Covid-19 on Domestic Workers in Europe’ (European Social Citizenship, 4 November 2020) <<https://www.eusocialcit.eu/locked-down-and-out-effects-of-covid-19-on-domestic-workers-in-europe-blog/>> accessed 12 January 2022.

²⁴⁶ Ibid.

²⁴⁷ European Centre for Disease Prevention and Control, ‘COVID-19 situation update for the EU/EEA, as of 8 February 2022’ (ECDC, 8 February 2022) <<https://www.ecdc.europa.eu/en/cases-2019-ncov-eueea>> accessed 8 February 2022.

²⁴⁸ FairWork (n105).

workers as compared to Italy and the Netherlands. The Belgian Federal Government was able to respond swiftly to health concerns and lack of demand in the sector by expanding the scope of Belgian law to offer domestic workers unemployment benefits. On the other hand, the Italian and Dutch government initially provided no economic relief to domestic workers, regardless of their legal status. Belgium also provided their workers with the necessary PPE equipment to protect them from virus infection, whereas protective equipment was not distributed in Italy until employers' organisations mobilised for the cause. Moreover, Italy and the Netherlands count a high number of undocumented workers in the PHS sector, which generated further challenges during the pandemic. Therefore, the COVID-19 pandemic highlighted the importance of granting essential social protection to PHS workers. It also demonstrated that an increase in formality in the PHS sector as well as health and protection safeguards, followed by quick government responses, lead to stronger protections and greater health and safety and social security for domestic workers in times of emergency.

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10. Annex

10.1 List of Semi-Structured Interviews conducted with representatives from the following stakeholders/organisations in the PHS Sector²⁴⁹

Belgium:

1. Director of Form-TS: Peter Van de Veire. Interview conducted on the 3rd of November 2021
2. CEO of Group Daenens: Nico Daenens: Interview conducted on the 2nd of December 2021

Italy:

1. President of the National Observatory of Domestic Work DOMINA: Lorenzo Gasparrini. Interview conducted on the 9th of November 2021
2. Lawyer of the National Observatory of Domestic Work DOMINA (employer's organisation): Massimo de Luca. Interview conducted on the 15th of November 2021
3. Project Manager of Group Gallas (domestic workers agency): Alberto Varin. Interview conducted on the 30th of November 2021

The Netherlands:

1. Legal expert: Sarah Jeddaoui- Bureau Clara Wichmann - Interview conducted on the 11th of November 2021 (online)
2. Senior policy officer: Jeroen Visser - Sociaal Economische Raad (SER)- Interview conducted on the 11th of November 2021 (online)

10.2 A hybrid seminar on health and safety at work in the personal and household services sector (PHS) was organised at the University of Amsterdam on the 16th of November 2021

In this seminar, a group of experts from the OECD and European Agency for Safety and Health at Work (EU-OSHA), as well as social partners at the EU level, discussed what the best strategies are to fight informality in the PHS sector and improve the protection of workers regarding health and safety at work. They also provided information on the situation of workers in the PHS sector during the COVID-19 pandemic and on best practices and innovative initiatives aimed to improve their protection.

Experts from the following organisations participated as speakers in the seminar:

²⁴⁹ The names of the interviewees for this report have been included in text because the authors (students participating at this Amsterdam Law Clinics case) have informed consent of the interviewees about including their names in the report.

1. European Federation for Services to Individuals (EFSI)
2. European Federation of Trade Unions in the Food, Agriculture, and Tourism (EFFAT)
3. European Union Agency for Occupational Safety and Health (EU-OSHA)
4. Organisation for Economic Co-operation and Development (OECD)
5. Representatives of EFFE and UNI Europa sent written contributions to the topics discussed at the seminar.

For further information about the hybrid seminar, please refer to the following: <http://www.efsi-europe.eu>