

Job Quality and Industrial Relations in the Personal and Household Services Sector – The case of Germany

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1 Introduction: Thematic focus, structure of the report, methodology and empirical basis

This report deals with employment rights and working conditions of workers in the domestic service sector. In both public and academic debates, the term ‘domestic work’ is used to denote a broad range of activities, including both **housekeeping tasks**, such as cleaning, cooking etc., and **interactive work**, in particular caring for children, elderly or disabled people. As noted by Lutz and Pallenga-Möllenbeck (2010: 420) “*distinguishing these separate domestic activities is very useful for analytical purposes. In reality, however, these tasks are not divided into separate working areas; rather, they usually coincide*”. This is particularly the case with regard to domestic work in households with elderly people as they often depend on support in both areas. As a result, there is also a substantial overlap with regard to provider structures and the structure of the labour supply for the two segments, and rather increasingly so, as we will see. Therefore, the structure of the report does not reproduce the analytical distinction between care work and housekeeping work, but rather follows the different contractual forms that can be found in the segment of domestic work in Germany. Wherever appropriate and available, we will however present data distinguishing between the two segments.

The first section of the report provides a general description of the PHS-market in Germany, the second section analyses the impact of the ILO convention 189 on the legal framework in general; the third section analyses the situation of different groups of domestic workers, by adopting the concept of ‘protective gaps’. This analytical framework has been developed as part of a previous research project on precarious work (see Grimshaw et al. 2016; Jaehrling et al. 2016 for Germany). It distinguishes between four different types of protective gaps:

- **Employment protection gaps** derive from the fixing of low minimum standards and exclusive eligibility rules (e.g. in marginal part-time jobs or in temporary jobs);
- **Social protection gaps** deprive workers from, for example, unemployment benefits, maternity leave and pensions.
- **Enforcement gaps** denote a lack of measures ensuring that statutory rules and collective agreements are abided by. This may be because workers lack information about their rights, or are fearful of contesting the issue, or face considerable constraints where the work is organised in the informal economy.
- **Representation gaps** occur where there are absent or weak institutional arrangements for representation via unions or works councils, as well as employer engagement in collective employers’ organisations.

The concept of protective gaps is based on the understanding that these different types of gaps are combined and interact with each other in various ways, depending on legal, societal and economic conditions, and create different types and degrees of precariousness across all forms of employment (including standard employment).

The report is based on a review of the academic literature, available documents and statistics, and 11 expert interviews (see table 1 below). We would like to express our thanks to all those who were interviewed as part of this research.

Table 1: *List of Interviews*

	Organisation	Interviews
Employers / Employer associations		
1	Bundesverband haushaltsnaher Dienstleistungs-Unternehmen (BHDU) <i>Business association representing interests of service companies providing household-related services</i>	Participation and presentation of PHS project at annual BHDU-Conference, Münster (09.11.2018) Interview with BHDU-President (26.11.2018)
2	Service Company providing household-related services <i>public enterprise (owned by local authority), North-Rhine-Westphalia</i>	Interview with Managing Director (26.11.2018)
3	Service Company providing household-related services <i>Family-owned, Eastern Germany</i>	Interview with Owner (16.01.2019)
Trade unions + employees		
4	Vereinigte Dienstleistungs-Gewerkschaft (Ver.di) <i>United Services Trade Union</i>	Interview with 2 trade union secretaries from the Health and Social Care Section; experts in the issue of 'Live-Ins' (23.01.2019)
5	Deutscher Gewerkschaftsbund (DGB), Bundesvorstand <i>German Confederation of Trade Unions, National Executive Board</i>	Head of Unit in Department for legal affairs (31.01.2019)
6	Helping	Interview with a self-employed domestic worker (24.01.2019)
Politics, NGOs, Best Practice projects		
7	Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSFJ) <i>Federal Ministry for Family Affairs, Senior Citizens, Women and Youth</i>	Interview with Head of Unit in Gender Equality Department of the BMFSFJ (30.11.2018)

8	Modellprojekt „Fachkräftesicherung über die Professionalisierung haushaltsnaher Dienstleistungen“ <i>Regional Pilot Project for the introduction of service vouchers for household related services</i>	Interview with project coordinator from the 'Diakonisches Werk der evangelischen Kirche in Württemberg e.V.' (23.11.2018)
9	Minijobzentrale, Essen <i>Public Authority in charge of the registration of mini-jobbers, including the handling of administrative matters for mini-jobbers in private households</i>	Interview with 2 head of units (18.12.2018)
10	ZAV, Bonn <i>International Placement Services (Zentrale Auslands- und Fachvermittlung - ZAV) of the Federal Employment Agency</i>	Short telephone conversation with Press officer (12.03.2019)
11	CariFair, Paderborn	Interview with project coordinator (30.04.2019)

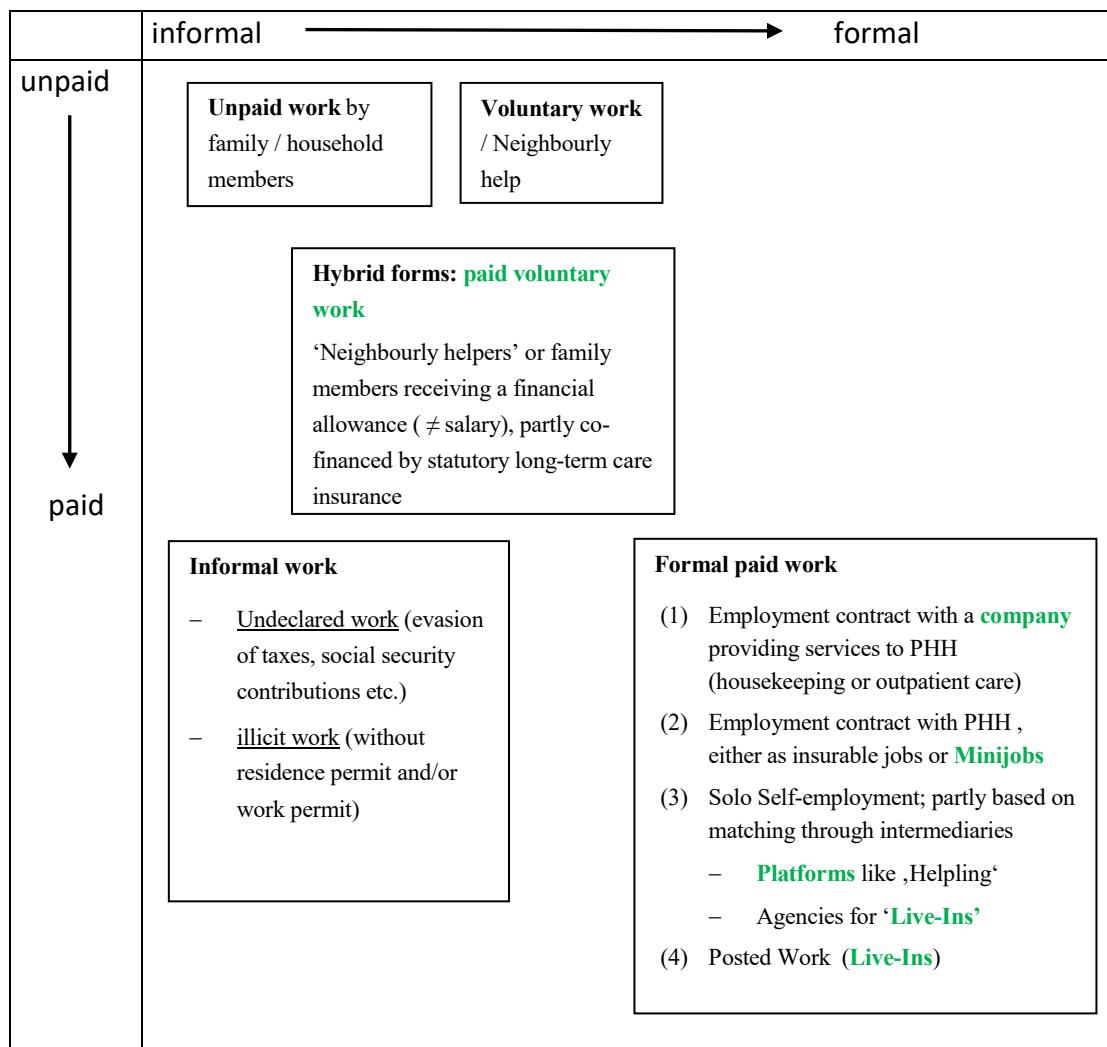
2 The structure of the PHS-sector in Germany and current trends

2.1 Structure of the PHS-sector in Germany

While the focus of the study is on paid and formal employment, we deem it necessary, in this first section, to take account of the specific structures of this sector and additionally highlight the role of *informal* and *unpaid* work that makes up for a very substantial part of the work performed in households. This is important, not only in order to draw a more complete picture of this market segment; but also in order to understand some of the challenges facing any attempts to formalize employment and improve employment conditions in the sector, due to the *interdependencies* in the development of formal employment and other forms of work.

Figure 1 provides an overview on the most important forms of work that can be found in private households in many countries, and the specific shape they take in Germany.

Figure 1: The enlarged labour market in the domestic service sector



Source: Own presentation based on Jaehrling 2004a.

In terms of size, the different forms of informal and unpaid work continue to be much more important than jobs in the formal economy (see section 2.2. for figures and trends). The importance of informal paid work indicates that the expansion of public and regular market services has not been able to keep pace with the increasing demand for household services over the past decades. This in turn can be attributed most notably to a rise in female labour market participation and the demographic change, i.e. the increase of elderly people requiring assistance in order to be able to continue living in their own home.

It is against this background that from the mid-1990s politics in Germany started to develop policies aimed at a multitude of goals: combating undeclared work; incentivising the aid of family members and neighbours in the provision of care for the elderly; supporting the professionalization of household services and, not least, combating high rates of unemployment (see Weinkopf 2003; Jaehrling 2004b). Accordingly, this mix of policy goals also meant that policy initiatives at regional and national level were not only aimed at creating

regular jobs covered by social security contributions. In parallel, they also supported other ‘atypical’ forms of employment, in particular ‘Mini-jobs’, and a hybrid form of work between paid formal and unpaid work that we propose to label ‘paid voluntary work’. Moreover, they tacitly tolerated the growth of the group of ‘Live-Ins’, thus migrant domestic care workers mostly from Eastern European Countries (Lutz/Pallenga-Möllenbeck 2010).

- Mini-jobs, or more accurately ‘marginal employment’ (“geringfügige Beschäftigung”), are jobs with a monthly salary of up to 450 €. Mini-jobbers are not covered by the general obligation to pay social insurance contributions and they are exempt from paying income tax on their earnings. This form of state subsidy for low earnings is granted regardless of other individual earnings or the household income. There are a few specific regulations for mini-jobbers employed by private households that will be explained further below; they basically are meant to lower barriers for households to become a formal employer, through both lower administrative burdens and financial incentives (see section 4.4 for more details).
- By ,paid voluntary work‘ we refer to a hybrid form of work whereby the care-giver receives a monetary compensation for his or her service, but this compensation has neither the status nor the level of a salary. Rather, the compensation is conceptualised as a recognition for previously unpaid work performed by relatives or neighbors that constituted an important element in traditional structures of ‘welfare production’. In order to preserve this relatively inexpensive form of elderly care, the introduction of the Long-term care insurance in Germany in 1994 included the introduction of a cash-and-carry option, the ‘Pflegegeld’, which is much lower than the alternative allowance dedicated to purchase professional care services. Elderly persons in need of care can thus opt for a lump sum, the ‘Pflegegeld’, as an alternative to purchasing services from a certified company or charity organisation providing social care and they can spend this money in order to ‘reward’ their own relatives, neighbours, or any person they wish, for their ‘help’.
- Live-Ins temporarily stay and work in households with elderly person in need of care and are often expected to be on-call around the clock. Most of them stay in the household for a couple of weeks or months before taking a break during which they are replaced by another Live-In. Live-Ins may be working informally, but they may also be sent to Germany under the Framework set by the Posting of Workers Directive. Many of them are also self-employed or a hybrid type of ‘freelancers’ (see section 4.3. for more details). As the ‘Pflegegeld’ comes without any requirements regarding levels of pay or registration of the person who is providing care, it can also be used in order to subsidise this very low paid and partly informal variant of domestic work.

- Finally, the most recent type of atypical work in the household service sector has emerged with specialized platforms that broker contracts between private households and (mostly) solo self-employed domestic workers. In the area of housekeeping activities, the most important platforms Helpling (www.helpling.de) and ‘Book a Tiger’ (www.bookatiger.com) started their business in 2014; yet Book a Tiger has recently decided to quit the business and focus on contract cleaning for companies instead. Another important platform is ‘betreut.de’, the German branch of ‘Care.com’; it offers both the brokering of housekeeping and care-giving services. It is sometimes difficult to distinguish these genuine platforms from professional service companies who employ domestic workers, as these companies too have started to use online interfaces similar to Helpling in order to support the matching between customer demands and staff supply.

However, regular employment in companies providing services to households has considerably increased since the mid-1990s as well. In the area of housekeeping work, tax incentives, public subsidies and pilot projects have supported the emergence and growth of professional service companies offering domestic services to households by the hour, just like other trades. Since direct public subsidies were usually restricted to the ‘start-up’ phase, the prices per hour charged to households (ranging approx. between € 20 and € 30) are now much higher than prices on the informal market, or for the atypical forms of work listed above.

In the area of elderly care, the introduction of the statutory Long-term Care (LTC) insurance in 1994 has laid the foundations for a strong employment growth in companies providing outpatient elderly care (see section 2.2.1 below). Membership in either the statutory or a private LTC insurance is since compulsory for all citizens. In the statutory LTC insurance, monthly contributions of currently 3.05 – 3.3 % of earnings entitle persons in need of care to benefits in kind or cash whose amount depends on the level of care needed. The level of care needed is formally assessed by an independent Medical Review Board of the Statutory Health Insurance Funds (MDK – Medizinischer Dienst der Krankenkassen). A recipient can choose between residential care, outpatient elderly care, or the said care allowance (Pflegegeld) which can be used to reward close relatives, neighbours, or any other person who looks after the elderly person at home, thus for more or less informal forms of care. The LTC insurance is a partial insurance only, thus it reimburses fixed benefits that are meant to cover only part of the actual price of the goods and services. In many instances, therefore, persons in need of care have to substantially top up the benefit out of their own pocket in order to cover the expenses for the necessary services. The highest benefit for the group of those with the highest needs of care (care degree 5 / ‘Pflegegrad 5’) currently stands at € 2,005 per month for a person relying on residential care, € 1,995 for a person relying on professional outpatient care and € 901 for the care allowance. Those being cared for at their own home can

additionally claim € 125 for housekeeping and attendance services by professional service providers.

2.2 Recent Trends in Demand and Supply

Due to different statistical sources for housekeeping work and elderly care, this section treats the two overlapping segments separately.

2.2.1 Elderly Care

The number of elderly persons who are cared for in their own home (or in the home of relatives) has increased very strongly over the past 20 years. In 2017, 2.594 Mill. out of 3.414 Mill. recipients of the LTC insurance, thus around 75% of them, were being cared for at home, according to official statistics.¹ This was an increase by 80% compared to 1999 (1.442 Mill. out of 2.016 Mill. elderly persons in need of care). Thus the overwhelming majority of elderly persons is cared for at their home, and the large majority of them is exclusively cared for by their own relatives or other informal forms of care refinanced by the care allowance. Only roughly a third (0.892 Mill.) of those who are looked after in their own home are relying on services provided by outpatient care providers.² This is still an increase by more than 100% since 1999 (0.415 Mill.).

The growth in demand has been accompanied by a strong employment growth in companies providing outpatient care services. This segment is relatively well covered by official statistics. As table 2 below shows, there were around 332,000 employees of outpatient care providers in 2017 whose main task was to provide services to private households, predominantly in the field of basic and nursing care, yet also in the field of housekeeping. Both groups have been growing substantially over the past decade, in particular the group of employees providing basic and nursing care (+142%). Moreover, since 2002, the long-term care insurance has introduced and expanded financial support for so-called ‘attendance’ services, primarily with a view to elderly persons with dementia that are still physically fit and do not yet need ‘basic and nursing care’, but benefit from activating, day-structuring and supervisory services. This is still the smallest segment, as the table shows, but it is also fast growing.

¹ Source: Pflegetatistik. Tabelle: Pflegebedürftige: Deutschland, Stichtag, Art der Versorgung, 31.12.2017. Data retrieved from www.gbe-bund.de

² Source: Pflegetatistik. Tabelle: Von ambulanten Pflegediensten betreute Pflegebedürftige (Anzahl), 2017. Data retrieved from www.gbe-bund.de

Table 2: *Staff in outpatient social care providers (“ambulante Pflegedienste”)*

	1999	2003	2007	2011	2013	2015	2017	1999-2017
Total	183,782	200,897	236,162	290,714	320,077	355,613	390,322	+112%
Nursing care service management („Pflegedienstleitung“)	11,528	12,786	14,859	16,671	16,849	18,091	19,819	+72%
Basic and nursing care (“Körperbezogene Pflege”)	119,388	135,540	163,580	204,795	219,401	238,828	267,849	+124%
Attendance „Betreuung (§ 36 Absatz 2 Satz 3 SGB XI)“					10,477	14,965	14,898	
Housekeeping „Hilfen bei der Haushaltsführung“)	34,902	32,449	33,140	38,092	37,760	44,275	49,518	+42%
Administration (Verwaltung, Geschäftsführung)	9,121	10,447	12,349	14,144	15,282	16,631	18,154	+99%
Other „sonstiger Bereich“)	8,843	9,675	12,234	17,012	20,308	22,823	20,084	+127%

Source: Pflegestatistik – Ambulante und stationäre Pflegeeinrichtungen: Grunddaten, Personalbestand, Pflegebedürftige, Empfänger und Empfängerinnen von Pflegegeldleistungen. Statistisches Bundesamt, Zweigstelle Bonn

Data retrieved from: www.gbe-bund.de

Table 2 shows that there is an overlap in the service portfolio offered by outpatient care providers and service companies specialized in housekeeping services. This overlap is produced from both sides: Just as outpatient elderly care providers are also offering housekeeping services, the service companies providing predominantly housekeeping services have started to expand their service portfolio by including services classified as ‘attendance’. Reforms in the LTC insurance over the past years have subsequently expanded the possibilities for households to get reimbursed part of the costs they bear for housekeeping activities and ‘attendance’ activities, thus activities that are not related to physical care (see Feulner 2017 for an overview). Moreover, the reforms have opened up this market segment for companies other than the outpatient care providers. Professional service companies whose core business is housekeeping can now also bill housekeeping and attendance services with the LTC insurance funds, under certain conditions – notably a certification procedure whereby the service companies provides proof of a concept for training and quality management. This segment is however still a relatively small part of most service companies, yet is expected to gain in importance in the future, due to a strong increase in the number of households with elderly persons in need of care, and the pronounced skill shortages in elderly

care (interview 1, 2 and 3). According to one interviewed manager of a service company in East Germany (Interview 3), outpatient care providers are now quite grateful for the additional support from service companies and are interested in cooperating with them, whereas this was not the case until a few years ago.

Live-Ins: There are no available statistics on this group, but estimations range from 160,000 to 250,000 households who use this model of elderly care (see section 4.3 below), so very roughly around 5-10% of those who are being cared for in their own home.

2.2.2 Housekeeping activities

According to Enste (2016), in 2015 3,627 million private households in Germany reported in the GSOEP-survey that they are using some kind of “household help”. This corresponded to a proportion of around 9% of all private households (Enste/Heldman 2017: 4) – among them around 6.5% with a permanent regular demand and 2.5% with occasional take-up. Domestic workers in Germany predominantly provide household-related services for the elderly and for families with a higher income (Enste/Heldman 2017: 4). Surprisingly the total number of households with domestic helpers had declined between 2005 and 2015 by around 240,000 (Table 3) or 6.6% with a peak of 3,970,000 households in 2009.

Between 2005 and 2015, the number of employees subject to social insurance in private households increased from 36,745 in 2005 up to 47,201 in 2015 (+22.2%). The increase of the number of registered employees with mini-jobs (with monthly earnings of up to € 450) in private households had been much more pronounced: The number of registered mini-jobbers increased from 108,710 in 2005 up to 304,073 in September 2018 (Minijobzentrale 2019) (in total by +279,3%). This relatively high increase of the number of mini-jobs has obviously also been supported by the relatively low level of the deductions for mini-jobs in private households.

Table 3: Number of households with domestic helpers in Germany, 2005-2015

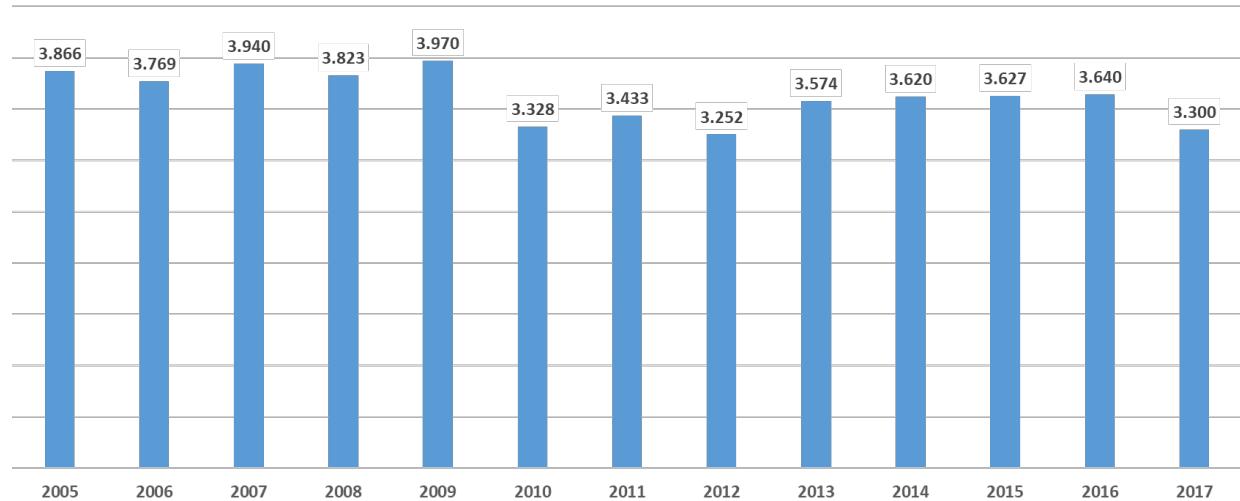
Year	Households with domestic helpers	Insurable jobs	Mini-jobs	Not officially registered domestic helpers (range)	
2015	3,627,000	47,201	296,326	2,670,821	2,967,147
2014	3,620,000	44,978	284,662	2,701,036	2,985,698
2013	3,574,000	42,607	264,993	2,716,414	2,981,407
2012	3,252,000	41,170	249,311	2,442,897	2,692,208
2011	3,433,000	39,739	233,990	2,671,291	2,604,349
2010	3,328,000	37,426	222,075	2,604,349	2,826,424

2009	3,970,000	36,129	198,458	3,318,497	3,516,955
2008	3,823,000	34,794	173,165	3,284,711	3,421,876
2007	3,940,000	33,656	158,334	3,411,342	3,569,676
2006	3,769,000	36,265	130,656	3,320,767	3,451,423
2005	3,866,000	36,745	108,710	3,483,125	3,591,835
Total change 2005/2015	-239,000	+10,456	+187,616	-812,304	-624,688
Change in % 2005/2015	-6.6%	+22.2%	+272.6%	-30.4%	-21.1%

Source: Enste 2016 (based on GSOEP) and own calculations.

Figure 2 provides an overview on the development of the total number of private households reporting in the GSOEP that they use some kind of domestic support between 2005 and 2015 and its variation over time.

Figure 2: Total number of private households with some kind of domestic help in Germany, 2005-2015 (in 1,000s)*



*including both regular employment and informal work

Source: Enste 2017 and 2019.

The share of private households with some kind of (legal or illegal) domestic support in recent years ranged between 8% and 10% and – surprisingly – has not been growing in the last decade. Theoretically this could be due to the fact that the usage of legal domestic workers has increased in importance but not the overall number of private households with legal or illegal domestic workers.

However, the stagnation contradicts the widespread assumption of a general increase of the demand for support at home which is typically regarded as a result of the rise in female employment and the ageing of the population. A further possible explanation for the surprising results could possibly be under-reporting by households with domestic workers – for instance, because the sense of wrongdoing might have increased in private households that employ domestic workers informally. Private households in search for a domestic cleaner frequently complain that it is difficult to find domestic helpers who are willing to take up a regular employment position. The reasons behind that range from not being eligible to have official earnings (lack of a work permit or even lack of a residence permit) to a preference for getting cash pay without any deductions (for instance because the earnings might lead to a reduction of other public financial low-income support such as “Hartz IV”).

It can be assumed that the figures above also contain at least some ‘Live-Ins’ who perform both housekeeping work and basic nursing tasks in households of elderly persons, in the various forms of contracts used for this group (posted work, Self-Employment, direct dependent employment, informal work). However, the wording of the question in the SOEP questionnaire only asks if the household „regularly or occasionally employs a cleaning or household help“³; so the wording suggests an *employment relationship*, and the activities (cleaning or household help) indicate *housekeeping tasks* rather than basic nursing tasks. Hence part of the ‘Live-Ins’ are probably not included in the figures. The wording also leaves some scope for interpretation whether the data also covers domestic workers who are employed by a service company.

The number of companies and employees currently active in the field of household services in Germany cannot be derived from existing statistics or surveys. This is also due to the fact that it is difficult to identify and define them. Two studies (both on behalf of the BMFSFJ) published in autumn 2012 provided at least some information in that regard. Prognos (2012) estimated the number of household service companies nationwide at around 2,500 and the number of people employed at these companies at approximately 25,000 (working on average 20 hours per week) which equated to 12,500 full-time employees. Unfortunately, the study did not provide details on how the information regarding the number of companies and employees active in the field of household services was determined from the results of an Allensbach survey of private households. Regarding the split between legal and illegal forms of household support services used, the study concluded that around two thirds of household services are not provided legally (Prognos 2012: 25). In East Germany the proportion of undeclared work was at 49%, considerably lower than in West Germany (68%). The proportion

³ The question in the GSOEP is: „Beschäftigen Sie in Ihrem Haushalt regelmäßig oder gelegentlich eine Putz- oder Haushaltshilfe?“ The German word ‘beschäftigen’ rather indicates an employment relationship.

of undeclared work differed according to age groups with users of 70+ years old having the highest proportion (Prognos 2012: 57).

The projected total of 1.68 million users of legally provided household services is disseminated as follows (Prognos 2012: 25):

- 40% (710,000 households) said they had a registered mini-jobber.
- 32% (520,000 households) said that they pay their domestic worker by invoice; which means that these workers are self-employed.
- The remaining 28% (450,000 households) said that they "transfer the wages to the company which employs the domestic workers".

A comparison with other existing statistics suggests that the number of users of legal household services is likely to be over-estimated by the Prognos study. For example, the number of households stating that they employ domestic workers with a registered mini-job is more than three time higher than the number of mini-jobs in private households registered with the mini-job centre at the time the survey took place (at the end of 2010: 222,075 according to Minijobzentrale 2010). The 24th subsidy report by the German Federal Government put the number of private households that declared a tax-deductible mini-job in a private household at 230,000.

There are no comparative studies of statistics available regarding the use of the other two forms of legal household services ("by invoicing" where self-employment is likely, or service companies); however, these figures also appear to be extremely high. Prognos (2012: 25) pointed out that the total number of users of legally provided household services they identified is very close to the 1.8 million households that declare tax-deductible expenditures for household services.

A nationwide survey of household service providers was carried out by Becker et al. (2012). For this purpose, 4,158 companies likely to provide services to private households were identified and invited to take part in the survey in summer 2012. Of these just 583 participated in the survey and only 373 companies confirmed that they provide household-related services. The yearly revenue in 2011 for around one third of these companies was less than € 50,000 while 22% stated that their turnover was € 50,000 or more (Becker et al. 2012: 31). Almost 60% of the companies had only up to 10 employees while only 13% of the companies had 50 employees or more. The breakdown by the type of employees revealed that 30.2% of the employees worked as a mini-jobber whereas 34% were full-time employees and 35.8% were part-time workers subject to compulsory social security contributions.

According to the companies the average price customers paid per hour of work was € 22.18 (incl. VAT) (Becker et al. 2012: 51), whereby there was a significant difference between East and West Germany (€ 17.72 vs. € 24.50). One quarter of the companies surveyed (24.5%) stated that the end price for customers was between € 5 and € 15 and 28.8% said it was between € 15 and € 20. Over 46% of the companies charged more than 20 € per hour. In reference to their customer base, 40% of the companies said that they (almost) exclusively provide services in private households, whereas 17% said that less than 20% of their revenue was generated through services for private households.

The Prognos study also included an evaluation of the market potential for family support services (again using a broad definition). According to this evaluation, in addition to the current 12% of users, a further 11% of households had already paid for domestic help and a further 16% could envisage doing so. 21% were undecided, and according to their own admissions, 39% would not consider it (Prognos 2012: 37). If the last two groups were left out, this suggests that there are a further 11.1 million households as potential users of household services. Taking into account further model assumptions (limiting factors, willingness to pay etc.), Prognos estimated the potential market at 3.1 million additional users.

3 Legal framework: legislation on domestic work and implementation of the ILO Convention 189

Germany was among the first European countries to ratify the ILO convention 189 in 2013; the convention entered into force one year after the ratification, in September 2014. The ratification was welcomed by all political parties, academic observers and NGOs, in particular with a view to its importance for migrant domestic workers. This was against the background of a number of cases of severe violations of basic labour rights and of physical violence that had received media coverage and legal disputes over the previous years – most notably cases of female domestic workers working for diplomats (see section 2.2 for details). The adoption of the convention was however not perceived in the first place as a stimulus triggering changes in the legal framework, which would e.g. abolish exemptions for domestic staff and provide for equal rights. As a detailed expert assessment commissioned by the trade union financed *Hans-Böckler-Stiftung* found, the German law already provided for the minimum requirements laid down in the convention (Kocher 2012). There was a broad consensus, thus, that the ratification would not require any legal adjustments in order to provide for equal rights – as stated both in the governments' draft for the law implementing the ILO convention (see Bundesregierung 2013: 1) and in the motion filed by the opposition (see SPD/Grüne 2012: 2).

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

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

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

- a) a weak enforcement of basic rights,
- b) low minimum labour standards for workers generally,
- c) a lack of specific regulatory measures addressing in particular the situation of migrant domestic workers.

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

- The **low level of wages** for domestic workers across all employment forms. The political position of Social Democrats, Green Party and the Left reiterated their claim to introduce a national minimum wage of € 8.50 – which at the time did not yet exist – or to at least

introduce an industry-specific minimum wage by declaring the relevant collective agreements generally binding (see SPD/Grüne 2012).

- The **social protection gaps for mini-jobs** which also affect mini-jobs in private households (see several statements in the debate in parliament, Deutscher Bundestag 2013 and Scheiwe et al. 2014).
- A lack of specific regulations and other measures targeting the situation of **migrant domestic workers working for diplomats** who even in case of severe labour exploitation and abuse are protected from legal prosecution by their diplomatic immunity (see Deutscher Bundestag 2013)
- A major point of criticism was that the law implementing the convention neglected to address the specific situation of migrant domestic workers working and living in private households with persons in need of care, the so-called '**Live-Ins**', mostly from Eastern European countries. The most controversial issue was that the government did not merely abstain from introducing specific measures targeting this group, but to the contrary contributed to legalize their unequal treatment by making use of the possibility provided by the ILO convention to introduce a clause allowing for exemptions from the national law on working time. This exemption was justified by the specific characteristics of domestic work (see paragraph 4.3 below for details) (Deutscher Bundestag 2013; Kocher 2014; Scheiwe et al. 2014; Scheiwe 2015; DGB 2016).

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

The fact that the government had not yet responded to these claims was problematized in a press statement by NGOs and a letter to the Federal Ministry of Labour and Social Affairs, on the occasion of the fifth anniversary of the adoption of the Convention in Germany (Justitia et Pax 2018). The letter put a particular emphasis on the problematic situation of Live-Ins.

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

welcomed this decision as an important step helping to improve labour conditions of domestic workers in Germany.⁴

The next section paragraphs provide a more detailed analysis of the current legal framework and resulting protective gaps identified as most problematic during the consultation process accompanying the adoption of ILO Convention 189.

4 Analysis of Public Policies, Social Partners' Actions, Good Practices

This section analyses the situation of different groups of domestic workers, by adopting the concept of 'protective gaps' (employment protection gaps, social protection gaps, enforcement gaps, representation gaps) as spelled out in the introduction. These different types of gaps often cumulate and interact with each other in various ways, and create different types and degrees of precariousness across all forms of employment (including in standard employment).

4.1 Industrial Relations and Statutory Wage Levels

This first paragraph provides an overview on industrial relations in the sector and thus is relevant for the different groups and forms of work that will be analysed in the following sections.

Not surprisingly, industrial relations in the domestic service sector are patchy and overall very weakly developed. Outpatient elderly care is not an exception, but compared to the other forms of domestic work it is clearly best off in terms of the rate of coverage by collective agreements: According to estimations more than 60% of employees in elderly care are covered by collective agreements or similar pay schemes (Evans 2016: 27). The collective bargaining landscape is however characterised by a strong fragmentation; the number of collective agreements or similar schemes at either company level or regional level is estimated at more than 1,400 (*ibid*). A particular feature of elderly care (and other segments of the health and social care sector) is the large share of non-for-profit providers run by church-owned charities and other welfare organisations. They can rely on a specific legislation that allows them to deviate from the usual regulations applying to collective bargaining and staff representation at company level, with overall weaker individual and collective rights. Still, most of them are covered by agreements that fix similar terms and conditions than the ones fixed by the collective agreements concluded, most importantly, between the trade union Ver.di and a number of employer associations representing elderly care providers (public and private for profit). Wage levels for skilled staff remain low compared to other occupations, and the government has recently announced a 'Konzertierte Aktion Pflege' that aims to

⁴ see https://www.ilo.org/berlin/presseinformationen/WCMS_491326/lang--de/index.htm

increase working conditions and in particular pay levels, in order to combat the labour shortages in elderly care (see section 4.7 below).

With regard to housekeeping activities, on first sight, the established structures resemble those in other industries: Since 1955, a collective agreement has been negotiated between the DHB (Deutscher Hausfrauen Bund) as the employer organisation and the trade union NGG (Gewerkschaft Nahrung-Genuss-Gaststätten).⁵ The collective agreement(s) are concluded at regional level and apply both to employees in private households and to employees of companies providing services to private households. At the time of the first ratification, this collective agreement sparked public debate and outrage because it stipulated that domestic employees were entitled to a whole day off every week, and the 8-hour day was introduced as well – something which at the time was considered by many as unfeasible in the particular case of domestic work (see Scheiwe 2015: 49). Since 1964, another collective agreement has been concluded, at the national level, between the catholic Berufsverband (bkh) on the employees' side and the VerbraucherService Bundesverband im Katholischen Deutschen Frauenbund (KDFB) on the employers' side. Table 4 shows current conditions fixed by a selection of these agreements.

⁵ The Trade Union NGG was also a founding member of the International Domestic Workers Federation (IDWF, see <http://idwfed.org/en>) which in 2013 transformed the previous IDW Network launched at an ILO Conference in 2009 into a global federation (EFFAT 2015).

Table 4: Collectively agreed working conditions for housekeeping work* in private households (as of January 2019)

Social partners	DHB ¹ NGG ²	DHB ¹ NGG ²	VS ³ bkh ⁴
Employers: Employees:			
regional coverage	North-Rhine-Westphalia**	Berlin**	Germany
weekly working hours (FT)	38.5 hours	38.5	39
gross hourly wages in €	hourly: 10.52 month (FT): 1,809	hourly : 11.53 – 13.57 month (FT): 1,926 – 2,266	hourly : 11.56 – 13.10 month (FT): 1,941 – 2,201
annual allowance	60 % of monthly wage	60 % of monthly wage	100% of monthly wage
holiday allowance	60 % of monthly wage	60 % of monthly wage	5,11 € per (holi)day
paid holidays	30 days	30 days	27 days / 30 days for employees aged 40+

*for tasks not requiring a vocational degree

** In the other regional collective agreements, monthly wages ranged from € 1.663 in several Eastern German federal states, to € 1.933 in Hamburg (in 2018)⁶

1 DHB – Deutscher Hausfrauen Bund

2 NGG – Gewerkschaft Nahrung-Genuss-Gaststätten

3 VS – VerbraucherService im Katholischen Deutschen Frauenbund e.V

4 bkh – Berufsverband für Angestellte und Selbständige in der Hauswirtschaft e.V.

It must be stressed, however, that these collective agreements have a rather theoretical meaning, in the sense that they do not even cover the majority of those in formal employment, not to mention those in informal employment. However, the collective agreements can act as a point of reference for private households and employees.

- In fact, the Federal Foreign Office, in the information material distributed by its foreign mission to domestic workers applying for a Visa, refers to these CA as minimum standards they are entitled to (see section 4.2 below). For the reasons explained below, it is however very doubtful that these minimum standards are observed in practice.
- In a similar vein, the International Placement Services (*Zentrale Auslands- und Fachvermittlung – ZAV*) of the Federal Employment Agency requires households who wish to use the services of the ZAV for recruiting a domestic worker from abroad to apply the collective agreement between NGG and DHB in the employment contract that has to be

⁶ See the overview provided by the International Placement Services (*Zentrale Auslands- und Fachvermittlung – ZAV*) of the Federal Employment Agency.

<https://www3.arbeitsagentur.de/web/content/DE/service/Ueberuns/WeitereDienststellen/ZentraleAuslandsundFachvermittlung/Personalsuche/PersonalsuchefuerDeutschland/Detail/index.htm?dfContentId=L6019022DS TBAI525108>

concluded between the household and the domestic worker (see ZAV 2018). However, since the beginning of 2019, the ZAV has stopped its brokerage services for the domestic workers (see section 3.4 below)

In the same sense, two other **industry specific minimum wages** are potentially relevant in the sector. It is a contested issue, however, whether these minimum wages also apply to individuals performing domestic and care work in private households.

(1) The collective agreement for the industrial cleaning sector is negotiated between the trade union IG BAU and the employer association BIV (*Bundesinnungsverband des Gebäudereiniger-Handwerks*). The lowest hourly wage of this CA has been declared generally binding for a long time already and thus covers all for profit and non-for-profit companies predominantly providing cleaning services. The lowest hourly wage in the industrial cleaning sector is € 10.05 in East Germany and € 10.56 in West Germany and Berlin, as of January 2019.

Some service companies – among them the one headed by one of our interviewees – apply the CA for the industrial cleaning sector. As the owner explains, she has received diverging answers from different authorities regarding her question if the CA is applicable, but she prefers to be on the safe side in order to avoid troubles with the inspection authorities from the statutory pension insurance (Interview 3). These inspections take place every four years in order to check if social security contributions have been paid correctly; to this end they also check if and which wages the company is obliged to pay due to CAs declared generally binding. According to the President of the Business Association representing professional service companies (BHDU), there are currently a few pending legal cases that are expected to clarify the issue (Interview 1). According to the BHDU president, such a clarification is urgently needed; and many member companies would very much welcome a court ruling clarifying that the CA for the industrial cleaning industry also applies to domestic work in private households, as this would provide a level-playing field, at least among service companies. According to a survey among BHDU-member companies in 2017, most member companies however paid their employees an hourly wage at around the level of the CA, or slightly higher (internal paper on survey results, provided by BHDU).

(2) The industry specific minimum wage for care-givers ("Pflegemindestlohn") is not based on a collective agreement, yet only on prior consultations with social partners, and was introduced in 2010 by the government through a decree ("Pflegemindestlohnverordnung"). The current level of this minimum wage for care-givers is € 10.55 per hour in East-Germany and € 11.05 in West-Germany and Berlin; from July 2020 it will be raised successively to reach € 12,55 by August 2022 (see also section 4.7).

The guidance material on this minimum wage issued by the Federal Ministry of Labour and Social Affairs (BMAS) specifies that a) the minimum wage does not apply to persons employed by private households, as it only applies to *companies* providing care services, and private households cannot be regarded as companies (BMAS 2018: 9).

This argument has a longstanding tradition⁷, yet is contested by legal experts who argue that the fact alone that a private household has recourse to a paid domestic worker justifies these latter's equal treatment with other employees (Kocher 2014: 90). In any case, this exemption at most applies to domestic worker directly employed by private households – but not e.g. to posted workers, as these are employed by a foreign company. Since the minimum wage for care-givers was extended through the national Law on Posted work, it also applies in principle to foreign companies. Even in this case, however, another difficulty to determine whether the minimum wage applies arises from the definition of the activities covered by the decree. Companies are only covered under the condition that they predominantly provide nursing services, whereby 'predominantly' means that more than 50% of employees' working time is dedicated to nursing (see BMAS 2018: 7). Moreover, within these companies, certain occupations are exempt, such as employees predominantly performing non-nursing tasks like cleaning etc. In this regard, the government has acknowledged that there is a grey zone, in the case of employees whose task profile includes both housekeeping and nursing-related tasks. In 2017, the government has therefore clarified, in the respective decree ("Dritte Pflegemindestlohnverordnung") that employees are entitled to the nursing minimum wage provided "*that they work at least 25 percent of their agreed working time together with recipients of care services in a day-structuring, activating, caring or nursing capacity.*" (BMAS 2018: 11; authors own translation)⁸. This is typically the case for 'Live-Ins', as we shall see below. The most important trade union organizing nurses and nursing assistants, Ver.di (*Vereinigte Dienstleistungsgewerkschaft*) therefore claim that Live-Ins should be entitled to the industry specific minimum wage for care-givers (Interview 4). Yet empirical findings indicate that hourly wages are frequently much lower (see section 4.3).

The introduction of the **national minimum wage** in 2015 has ultimately introduced a definite minimum standard which applies to all employees, including domestic workers. The only gap left in this regard is for solo-self employed.

To sum up, there are thus quite a few collective agreements that apply to different types of domestic work. Over the past 10 years, legal regulations have increasingly closed the

⁷ It had been put forward already by the Federal Constitutional Court in 1964 in the legal dispute on the collective bargaining capacity of the catholic employee organization bkh (see Kocher 2014: 89f).

⁸ Helping elderly people to do gardening work is given as an example in the Ministry's guidance material (BMAS 2018: 12).

protective gap resulting from a low coverage rate by collective agreements, by declaring some of the relevant CAs legally binding, and finally by introducing the national minimum wage in 2015. The current protective gaps for domestic workers in terms of wages and working conditions therefore are less due to a lack of CAs or legal regulations, but primarily due to lack of mechanisms securing the enforcement of minimum rights. Moreover, they also result from households and companies strategies of “institutional avoidance” (Jaehrling/Méhaut 2013), i.e. the circumvention of labour laws by resorting to self-employment and freelancers, as in the case of platform-based work (see section 4.6) and Live-Ins (section 4.3), or by resorting to informal work. With a view to the large segment of informal work, it is necessary to keep in mind, though, that some of the circumvention strategies are consensual, thus correspond to domestic workers’ preferences to avoid having to pay taxes and social security contributions.

Given the decentralized nature of service provision and many practical problems to organize domestic workers, i.e. to enforce minimum standards with the help of collective voice, a very important organizational infrastructure for domestic workers are counselling services provided by Trade Unions, NGOs or charitable organisations. These aim to help domestic workers to claim their individual rights and to exit situations of severe labour exploitation. This kind of organizational infrastructure is mostly targeting migrant domestic workers and will therefore be discussed as part of the next two paragraphs.

4.2 Migrant Domestic Workers Working for Diplomats

The group of domestic workers working for diplomats is small: in 2012, there were 226 registered workers working for members of embassies or international missions, according to information provided by the government (Bundesregierung 2012a). Domestic workers working for diplomats have to be registered, at least if they have entered Germany with the diplomat, in order to receive a residence permit. As noted above, several cases of severe labour exploitation, mistreatment and physical violence had gained public attention in the years leading up to the ratification of the ILO Convention, most notably the case of a female domestic worker from the Philippines who had been employed by a member of the embassy of Saudi-Arabia in Berlin. She trusted a German NGO in 2011 to take her case to the labour courts. The lower courts first declined even to admit the case, referring to the diplomatic immunity of embassy members that protects them from legal prosecution, according to the *Vienna Convention on Diplomatic Relations* from 1961. It was only after the employment relationships had ended and the diplomat had left the country that the highest labour court decided that the case was admissible (Bundesarbeitsgericht, Urteil vom 22.08.2012, 5 AZR 949/11). The case did not end with a ruling, but with a settlement according to which the

diplomat had to pay his former employee 35.000 € (Arbeitsgericht Berlin, Aktenzeichen 36 Ca 3627/11). According to the assessment of a legal expert, this settlement was preferable to a ruling, from the point of view of the employee, since, firstly, she would otherwise have had difficulties to provide sufficient proof, and secondly, a ruling would have been difficult to execute, both for diplomatic and factual reasons (Hensche 2017).

These difficulties and restrictions to enforce national laws on private households of diplomats remain more or less in place until today. For lack of efficient means to enforce the law *ex-post*, the government has however taken several measures in order to ensure *ex-ante* that national laws and certain minimum standards will be observed. These measures were not taken in response to the Convention yet had been initiated long before; but the public attention brought about by the Convention has probably contributed to further develop these measures. The Federal Foreign Office (“Auswärtiges Amt”) had already started in 2003 to issue “circular notes” to diplomats laying down regulations for their employment of private domestic workers. These circular notes were since revised several times and new regulations added (see Sumi/Da Costa Batista 2017: 1f). The most important regulations include the obligation of the private employer to notify the Federal Foreign Office about the employment relationship, to provide their employees with a written labour contract, and to grant them certain minimum standards regarding pay and other working conditions (see below). Moreover, since 2015, the employer’s embassies have to pledge in a verbal note that these minimum standards will be met. The ‘circular note 9/2015’ also states that it deems to continue a process that has been practised by the Federal Foreign Office since mid-2012, “*that of inviting the private domestic staff once a year for an interview upon renewal of a protocol ID(...). On this occasion, the Federal Office will be provided with proof of the employer’s proper payment of wages through bank statements.*” (Federal Foreign Office, Circular Note 9/2015). This practice was mentioned as a good practice example by a recent report to the UN on contemporary forms of slavery (see UN 2018: 14). A recent press report (Nichelmann 2017) however shows that some diplomats’ households still find their ways in circumventing this and other obligations.

Next to informing the private employers about their obligations, the Federal Foreign Office also instructs its German diplomatic missions abroad to conduct a consultation interview with domestic workers as part of the visa application procedure (see Auswärtiges Amt 2019). Workers shall be informed about their rights as laid down in the circular notes; to this end,

⁹ Domestic workers working for diplomats do not receive a regular Visa but a ‘protocol ID’, thus a specific work and residence permit issued by the Federal Foreign Office – not by the authorities usually responsible to issuing residence permits.

the diplomatic missions are asked to hand out information material compiled by the German NGO ‘Ban Ying’ (see Ban Ying 2016). This compilation includes the circular notes by the AA and informs about the relevant rights and further assistance in case of a violation of these rights.¹⁰ The Berlin-based NGO ‘Ban Ying’ has been counselling migrant women affected by human trafficking, violence or exploitation since 1988.

The minimum rights referred to in these information materials are based on statutory rights laid down in German labour law – the national minimum wage of 9,19 € / hour in 2019, to be paid also for overtime hours (excluding board and lodging costs); a minimum of 4 weeks paid holiday; sickness pa = regular remuneration for six weeks in case of illness; regulations of the Working Time Act). For working hours, the information material in accordance with the relevant collective agreement between trade union NGG and the DHH with (see section 4.1 on wages and industrial relations) suggests 38.5 hours/week for “regular working hours” of a full-time employee. These provisions are also built into the model contract of employment that is part of the information material. Employers are not forced to use this model contract but are requested to transmit the employment contract to the Foreign Office as part of the visa application procedure for their domestic staff, so deviations from these regulations in the contract can be detected in advance. Thus in written at least, diplomats employing domestic staff must comply with the regular statutory employment rights for all employees in Germany.

As mentioned earlier, the governments’ means to enforce these rights remain very weak, due to the diplomatic immunity, at least as long as the employment relationship lasts and as long as the diplomat resides in Germany. The only available hard sanction is to deny a visa to the domestic worker when doubts arise during the visa application process that the diplomat will not comply with these laws and minimum standards. According to information provided by the government, it has made use of this option a very few times in the past (5 times, according to the answer given by the government to a question by the opposition, see Bundesregierung 2012a, answer to question 14).

Moreover, the government supports, since 1999, the networking of NGO’s and counselling centers specialized in the field of human trafficking and women who have experienced violence in the migration process (“*Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess*”, KOK e.V.).

Giving domestic workers more bargaining power by allowing them to change their employer and thereby exit an exploitative labour situation, is however currently not on the governments’ agenda. Similar to other migrant workers from outside the EU, the work and

¹⁰ In the beginning of 2020, however, the information brochures available on the Website of Ban Ying date from 2016 (except for the brochure in Spanish language); thus the information given on the minimum pay rates are not up to date as they do not take into account the minimum wage increases in 2017 and 2019.

residence permit of domestic workers automatically ends with the employment relationship for which it was granted. Thus, domestic workers who take their case to the police or to courts face the obligation to leave Germany and thus altogether lose their material security.

4.3 Migrant Domestic Workers: ‘Live-Ins’

The term ‘Live-Ins’ is used in Germany to refer to individuals

- who perform work typically encompassing housekeeping task such as cooking and cleaning and care-giving tasks (such as supervisory, activating, basic care-giving tasks) in private households with elderly persons in need of care;
- who are therefore typically expected to work or to be ‘on call’ long hours – which is why this work arrangement is also called „24 hour-service“ or “around-the-clock” (‘*Rund-um-die-Uhr*’)-service;
- who are working *and* temporarily living in private households, because this allows them to be ‘on call’ during day and night; and because they...
- typically do not move to Germany permanently, but return to their home country between two periods of work (usually two to three months). During this break they are replaced by other ‘Live-Ins’.

Thus the term ‘Live-Ins’ actually denotes a specific model of recruitment and work organization for the support of elderly in need of care who live in their own home. Current estimations on the number of households which host a ‘Live-In’ range from 163,000 (Hielscher et al. 2017: 95)¹¹ to 250,000 (VHBP 2018a).¹² The number of Live-Ins who earn their living in this segment can be assumed to be nearly twice as high, as one household is usually taken care of by two Live-Ins who alternate in the care of the household.

The use of this model started to grow in the 1990s. Before the accession of the Eastern European states to the EU, this was mostly informal work, i.e. Live-Ins typically entered Germany with a tourist Visa and started to work without a residential or work permit; and the cooperation between several carers who take it in turns to work and live in the household was privately organized (see various contributions in Scheiwe/Krawietz 2010; Lutz/Pallenga-Möllenbeck 2010; Gottschall/Schwarzkopf 2010; Emunds/Schacher 2012). Since the Eastern EU Enlargement in 2004, and even more since the last restrictions on the freedom of movement for workers from accession countries were lifted in 2014, there are less reasons

¹¹ Based on a representative survey carried out in 2015/16.

¹² Without providing a source.

to resort to illicit work, and the labour market has become more formalized.¹³ Posted work and solo self-employment are the most important contractual forms used in this market segment. These formal types of work however closely resemble informal types, in the sense that many national labour laws do not apply, either *de jure* or *de facto*; hence the formalization does not necessarily equal improved working conditions (Lutz/Pallenga-Möllenbeck 2010 and also Österle/Bauer 2016 for the case of Austria).

Both the growth of the formalised market segment and the limited application of national labour laws were facilitated by a new type of commercial intermediary agencies which since the beginning of the 2000s have complemented the privately organized transnational ‘care chains’ (Krawietz 2010; Lutz/Pallenga-Möllenbeck 2010). These specialized agencies have established a business in the matching of supply and demand and in devising contractual models that are in line with legal regulations – or rather, as Lutz and Pallenga-Möllenbeck (2010: 424) point out, they operate in a “twilight zone” and “play a key role in the new semi-legal employment forms for domestic workers” in Germany, Austria and the UK.

The transnational recruitment and matching procedure usually involves two intermediary agencies: an agency in Germany acts as the interface to the German customer household and brokers a service agreement between the household and a second agency in an Eastern European country – most importantly Poland – which recruits the domestic worker and sends her to Germany. The European Posting of Workers Directives (PWD) from 1996 in particular has set the framework within which these intermediary agencies operate in Germany – unlike in Austria, where the legalization of the ‘live-in’ model in 2007 involved the creation of a specific status as self-employed workers (Österle/Bauer 2016; Frerks et al. 2018). In Germany, two distinct contractual models are used under the PWD framework, while the third frequently used model, solo self-employment, merely operates under the European freedom to provide services principle.

(1) **Posting of dependent employees:** The first model is based on the regular posting of workers who are employed by a company headquartered in an Eastern European country and who are sent to a German household for a period of a few weeks or months per year, up to a maximum duration of 24 months. In that case, the employer (e.g. the Polish company) and the domestic worker are subject to the home countries’ tax and social insurance laws, and to the labour laws of these countries – except for certain statutory minimum conditions that apply to all employees working in the host country. In Germany, this for instance includes 4 weeks of paid holiday. Until 2015, there was no national

¹³ Informal work still continues to characterize this market segment as well. In a (non-representative) survey among Live-Ins in 2017, 11% reported that they were working on an informal basis (Petermann et al. 2017); yet experts estimate that the real share of undeclared work is still higher.

minimum wage in Germany, and the applicability of the industry specific minimum of care-givers was a contested issue (see section 4.1 above), so employees would typically only receive the national minimum wage of their home country (e.g. € 409 per month in Poland (2015)). Since 2015, the new German national minimum wage however also covers domestic workers who are sent to Germany from abroad.

- (2) **Posting of ‘freelancers’ (in the German debate often referred to as “Mitarbeiter im Auftragsverhältnis”)**: This model uses a specific type of contract based on Polish civil law (colloquially called “umowy smieciowe” (“garbage contracts’)) which establishes a hybrid form of freelance work situated somewhere between dependent employment and solo self-employment. The ‘employer’ is subject to paying taxes and minimum social security contributions, yet other regulations of the Polish labour law (on working time, paid holiday, employment protection and other employment rights) do not apply. Even more importantly, this contractual model can be used in order to circumvent the German national minimum wage and other statutory labour regulations in Germany, by combining it with a specific clause laid down in Art. 18 of the European Regulation on the coordination of social security systems ((EC) No 883/2004)). This regulation applies to individuals who pursue activities in two or more Member States, either as an employee or a self-employed person. They are subject to the legislation of the Member State of residence *“if he/she pursues a substantial part¹⁴ of his/her activity in that Member State”*. In order to use that clause, the contractual arrangement for domestic workers defines as their main activity a task that is to be performed in Poland, such as ‘recruiting other care-givers’; whereas the domestic work in a German household is defined as a secondary task (see DGB Projekt Faire Mobilität 2018c). It is easily conceivable that the model of ‘posted freelancers’ operates in a very dark grey, if not completely black zone of European and national level legislation, since there is usually no ‘substantial’ part of activities of Live-Ins in their home country, but the main or only activity in fact remains household and care-giving work in German households.¹⁵
- (3) Moreover, some of the agencies also broker contracts with **self-employed workers**; this typically involves a “franchise” contract between the worker and the intermediary

¹⁴ According to the Practical Guideline issued by the European Commission on the respective Regulation ((EC) No 883/2004), ‘substantial’ means a share of at least 25% of working time or earnings (*ibid*: 28); only under this condition can the worker remain subject to the legislation of the country of residence or of the companies’ place of business.

¹⁵ See the case described in DGB-Projekt Faire Mobilität (2018c), where the care-giver earned € 1,250 per month during the time she spent in the German household, and a fee of € 25 per month for her alleged task of recruiting other care-givers, during the time she spent in Poland.

agency¹⁶. It remains a contested issue in the German debate whether working as a ‘live-in’ can be regarded as self-employed, given that they often do not fulfill the criteria for self-employment laid down in the German law, as they usually work for only one customer, and have to closely follow the customers’ instructions or ‘wishes’¹⁷.

According to various sources (DGB-Projekt Faire Mobilität 2018b; 2018c; Jensen 2018; Interview 4), there has been a shift from the first model (posted employment) to the third and in particular to the second model (posted freelancers) since 2015. The introduction of the national minimum wage in Germany can be assumed as one important reason behind this shift. Moreover, it seems to be also a response to an increasing reluctance on the part of Polish authorities to hand out the A1 portable document¹⁸ without proper proof that the posting company generates part of its revenues on the Polish market (as is required by the PWD) (DGB-Projekt Faire Mobilität 2018b).

Despite clear indicators that the ‘posting of freelancer’ is operating in a dark grey zone of legislation, the largest business association representing the interests of intermediary agencies (VHBP) still presents this model as a viable legal alternative to the more cost- and regulation-intensive model of dependent employment (see VHBP 2018a and 2018b). In line with this position, the VHBP practical guideline suggests that it is sufficient for the care-giver to spend 5% of her total working time in another EU member states in order to use this model (VHBP 2018b), which is a misinterpretation.¹⁹ Even the German consumer organisation *Stiftung Warentest* (2017) in a recent study describes it as one out various legal models on offer from the intermediary agencies that they have tested, without pointing to the legal risks and protective gaps associated with this particular form. Cases brought to the attention of counselling services, such as those run by the German Trade Union Federation DGB, have repeatedly revealed that the posting companies – apart from the dubious use of the Posting of Workers Directive – further undercut even the minimal regulations in Polish law. For instance, by failing to register the domestic workers with the health insurance, or by declaring their earnings as ‘travel expenses’ and thereby further minimizing employers’ contributions

¹⁶ see Stiftung Warentest 2017a; see also the description of a case brought before a German Court which finally decided that this ‘franchise’ model was legal and not to be classified as dependent employment – OLG Frankfurt am Main, Beschluss vom 07.03.2014 - 1 Ws 179/13.

¹⁷ In its practical guideline for private households, the VHBP recommends private households that want to contract a self-employed domestic worker: “As a consumer, do not give instructions to the caregiver and do not set up shift plans, but let them know your wishes” (VHBP 2018a: 6; authors’ translation). This obviously serves to avoid a classification as bogus self-employment in case of a potential legal dispute.

¹⁸ The A1-form confirms that the posted worker is subject to the legislation of his or her country of residence; it is thus a precondition to be exempt from the legislation in the host country.

¹⁹ According to the above mentioned Practical Guideline issued by the European Commission, the 5%-limit merely serves to single out “marginal” activities and thus to establish whether the employee works in two countries at all; whereas it is required to work a “substantial” part (= 25%) in the country of residence in order to remain subject to the legislation of that country (European Commission 2013: 27f).

to the social insurance funds (see Böning/Steffen 2014; Emunds 2016; DGB-Projekt Faire Mobilität 2018b and 2018c). The already mentioned study by *Stiftung Warentest* also found “clear evidence” for almost all of the 13 agencies tested that employees’ “rights are being undermined, such as working hours and rest periods” (Stiftung Warentest 2017: 88; authors’ translation); and that there was little transparency for customer households about wages paid to employees, i.e. how much of the service fee they pay to the agency is actually forwarded to the domestic workers (*ibid*: 91).

With regard to remuneration, the available sources provide a rather coherent picture: households report that they incur total costs of € 1,800 per month on average, according to the study by Hielscher et al. (2017); most of the 13 agencies tested by *Stiftung Warentest* (2017) charged service fees ranging from around € 1,800 to € 2,500 to the households. For the Live-Ins, a monthly net wage of 1.200 € (i.e. net of taxes, social insurance costs and deductions for board and lodging) was perceived as ‘relatively good’ by employees (Isfort/von der Malsburg 2017); according to counselling staff of the DGB-Projekt Faire Mobilität a wage of € 1,000 per month is not uncommon either (quoted after Stiftung Warentest 2017: 91; and a survey commissioned by the VHBP also notes an average net wage of € 1,175 (Petermann et al. 2017: 21).

This net wage is quite similar to the net wage based on model calculations by the International Placement Services (ZAV) of the Federal Employment Agency for the contractual model they recommend (see ZAV 2018: 4) – thus a domestic worker who is *directly employed* by a German household, is subject to *German tax and social insurance law*, and receives a gross wage fixed in the relevant *collective agreement* between NGG and DHB, and additionally gets *free board and lodging* in the private household (€ 1,092). Similarly, the charity-run project ‘Carifair’ (see below, best practices) brokers contracts under the same conditions as the ZAV and informs domestic workers on their website that their net wage will range between € 1,040 € and € 1,250, depending on family situation (and resulting variable tax deductions). Yet the similarity is rather superficial. This is because, most importantly, the calculation by both ZAV and CariFair are based on a weekly working time of 38.5 hours. As the term 24-hour-care already indicates, Live-Ins typically work, or are on-call, much longer hours.

The long working hours indicated by the term 24-hour-service are facilitated by a clause in the law on working time which exempts employees who live “in häuslicher Gemeinschaft” (= ‘in domestic community’) with individuals and take care of them “eigenverantwortlich” (= ‘on their own responsibility’) (Art. 13, Abs. 1 No. 3 ArbZG). As several legal experts have pointed out, this exemption was actually introduced with a view to a very small and specific group, namely foster parents in SOS children villages whose task is to emulate a family-like situation for children who have lost their parents (see Kocher 2014; Böning 2015; Scheiwe 2015). The

exemption was justified at the time by difficulties to distinguish between working and leisure time in this particular situation. The government however decided to refer to this exemption when implementing the ILO Convention 189, thereby suggesting that at least in some configurations where domestic workers live in private households, this exemption may apply. Despite strong critics from legal experts, the political opposition and NGOs, the Government has argued that “all circumstances need to be taken into account” when assessing whether the exemption applies to foreign Live-Ins (see e.g. Bundesregierung 2012b: 4; Bundesregierung 2013), thereby delegating the decision to private households and intermediary agencies. In practice, this seems to lead to a generous application of the clause, making it the rule, rather than the exemption. For instance, the VHBP, in its information material on legal regulations applying to the different contractual models, refers to this exemption without further specifying that ‘all circumstances need to be taken account’ and thereby suggests that the exemption applies to Live-Ins in general (see VHBP 2018a and 2018b).

This interpretative scope left by the legislation is thus used by the intermediary agencies, as well as by private households, to legitimate working time arrangements that require Live-Ins to work and be on call much longer than the maximum working hours and neglect the minimum rest periods prescribed by the law on working time. Moreover, the lack of clarity apparently also serves to justify a ‘flat-rate’ monthly pay that is meant to cover all hours of work and on-call service. This is despite the fact that in 2014, a ruling by the highest labour Court ruled that hours of on-call work have to be paid at least according to the minimum wage (BAG, ruling from 19.11.2014, 5 AZR 1101/12²⁰; and BAG, ruling from 29.6.2016, AZ. 5 AZR 716/15). The European Court of Justice has recently confirmed this general position, by ruling that even if employees are not sleeping over at their workplace, they are nevertheless entitled to the minimum wage during their ‘standby-time’ if they are obliged to respond to calls from the employer within a very short period of time – as for instance in the case of a professional firefighter (EuGH, ruling from 21.02.2018, C-518/15).

However, this juridical clarification is obviously not perceived as applicable to domestic service work, by intermediary agencies and private households who adopt the perspective that the law on working time does not apply in the case of Live-Ins. This at least can be concluded from available empirical results on working hours and remuneration: According to responses by Live-Ins in the survey conducted by Hielscher et al. (2017), they worked on average 69 hours per week (excluding on-call hours) (Hielscher et al. 2017: 60). This clearly points to massive

²⁰ The ruling related to an employee who was working and sleeping over in a residential home in so called ‘around-the-clock’ shifts, performing both housekeeping and care-giving tasks, just like ‘Live-Ins’ in private households. According to the ruling, she was entitled to the minimum wage for care-givers even for her hours of on-call service.

non-compliance with the maximum hours laid down in the law on working time (48 hours, including on-call hours). Moreover, the average costs incurred by households of € 1,800 per month (including social insurance, taxes, board and lodging) also suggests that “it is hardly a realistic assumption that the minimum wage is paid” (Hielscher 2017 et al.: 97; own translation); and that is, not even for the net working hours, not to mention the on-call hours.²¹

Good practice

A number of initiatives aim to combat the malpractices depicted above:

CariFair: a church-run intermediary agency

The project CariFair (carifair.de) is run by the Caritas, the largest charity of the catholic church in Germany. It offers an alternative to the commercial intermediary agencies, by replacing the crossborder cooperation between two intermediary agencies in the regular model with the crossborder cooperation between two Caritas organisations in Germany and Poland. The project seeks to offer Live-Ins decent working conditions through, firstly, brokering direct *employment contracts* between private households and domestic workers, which gives them full access to the social security system and entitles them to the full employment rights according to the German labour law (except for the law on working time). To this end, the local unit of the German Caritas helps with administrative matters, in particular the rather complicated task of registering employees with social insurance funds. Secondly, the local unit of the Caritas in Germany is involved in a counselling capacity and closely accompanies Live-Ins and households, in particular during the first weeks of the contract, in order to help clarify employees' rights and duties and establish a professional working relationship that is observing both customers' needs and the domestic workers rights. It also acts as a contact person for both employee and household during the contract term, in case of conflicts, or if the care-giver and household require support in terms of additional skills, or in terms of additional services from other service providers. A similar project is run by the Diakonie, the largest charity network of the Protestant Church (VIJ-FairCare; www.vij-faircare.de).

These projects have received a positive echo from both politics and civil society; they are frequently mentioned as good practice examples by the Trade Union Ver.di and DGB

²¹ Another study commissioned by the VHPB by contrast calculates an average of merely 45 weekly working hours (Petermann et al. 2017). This is however based on a narrow definition of working time: It only counts the actual hours and minutes worked, spread over the whole day and night, thus it excludes on-call hours. Moreover, it only adds up the hours domestic workers are able to allocate to specific activities (e.g. basic care, housekeeping), while ignoring their own answer to the question that asked them for their overall working time. This would result in a higher weekly working time (53.7h). The study concludes that “a particular injustice, or even inhuman treatment, could not be determined on the basis of the self-assessments of the Polish caregivers” (Petermann et al. 2017, own translation). The study thus backs up the position of the VHBP.

(Interviews 4, 5), as well as other observers (e.g. Emunds 2016) – albeit with the proviso that the regulations of the law on working time are not clearly enforced by these projects either (see e.g. Böning 2015). The project coordinator of CariFair (Interview 11) acknowledges that in practice, the collectively agreed working hours (38.5h/week) that apply to these contracts are frequently not observed. Domestic workers for instance may accept to be called for help during night hours and do not ask for extra pay if this happens from time to time only. Yet they will be unwilling to work on-call without pay on a regular basis. The project coordinator estimates that many conflicts over working time and deviations from the legal and collectively agreed rules are settled bilaterally between households and domestic workers – including for instance extra pay in exchange for additional hours. Yet in a relevant share of cases support from the local coordinators of the CariFair project is required to find compromises on a case-by-case basis that work for both sides. Although rarely the case, it can also happen that households' flexibility demands and attitudes towards their Live-Ins deviate too strongly from the social and legal norms governing modern employment relationships. In such a case the local coordinator may recommend the domestic workers to quit the job. As demand for Live-Ins is generally high, they can easily be placed to another household, so do not risk losing their opportunity to make a living. Overall, the project coordinator estimates that there is a need to develop more standardized solutions with regard to working hours that go beyond merely fixing 38.5h weekly working hours, that take into account the specific demands of persons in need of care, but that are still socially sustainable from the perspective of domestic workers.

ZAV – a public intermediary service

The ZAV – the International Placement Services of the Federal Employment Agency – also requires households that want to use the services of the ZAV for recruiting a domestic worker from abroad to

- conclude a direct employment contract,
- apply the collective agreement between NGG and DHB (see ZAV 2018), and
- observe the law on working time, or rather the collectively agreed maximum hours of 38.5 hours per week (see ZAV 2018).

This International Placement Service had been introduced in order to handle work permits and facilitate the matching of supply and demand for selected occupations, based on bilateral agreements between Germany and other countries. On this basis, it was legally possible for private households even before the European Eastern Enlargement, to recruit domestic workers from Eastern Europa countries. While this was firstly restricted to 'housekeeping tasks', the Government in 2009 amended the regulation and explicitly included basic care. This was one of the first steps of the government to implicitly acknowledge the increasing segment

of irregular care arrangements; and aimed to "make it attractive for irregular care arrangements to switch to a legally secure route" (Kondratowitz 2010: 231; authors' translation). The decision to restrict their services to employment contracts complying with labour laws and collective agreements can also be seen as an attempt to improve working conditions of domestic workers. However, unlike the CariFair project, the ZAV hardly offered administrative support to households. This, and the relatively high costs associated with the requirements, compared to the other available illegal and legal options, probably explain the very limited use of the ZAV. According to information provided by the ZAV, between 20 and 40 contracts per year have been brokered by the ZAV (Interview 10). Moreover, the ZAV has decided to discontinue its service for domestic workers from 2019 onwards, a decision justified by the aim to focus on ZAVs core business, which is to help German companies to recruit *skilled* labour from abroad in order to combat labour shortages (Interview 10).

'Fair Mobility' – a trade-union run counselling service

The project ,Faire Mobilität' (see <https://www.faire-mobilitaet.de/en>) run by the German Federation of Trade Unions (DGB) sustains a network of counselling agencies in several cities in Germany, where migrant workers can receive legal and practical consultation and support (also via mail or phone) in order to enforce their rights and entitlements. In 2017, 353 (=7%) cases brought to their attention concerned a household help (DGB-Projekt Faire Mobilität 2018a). The most important issue (across all industries) was underpayment / wage theft.

Current policy debates, contested issues

The current political debate, in so far as there is one, centers on the issues of (bogus) self-employment and long working hours – both for their problematic effect on occupational health and safety, and for the low hourly earnings arising from the practice of a flat-rate monthly pay discounting many unpaid working hours. With regard to the question if Live-Ins can be regarded as self-employed, labour court rulings have so far decided that domestic workers on 24h-shifts do not in every case qualify for a classification as dependent employees of *intermediary agencies* (BSG Urteil vom 28.9.2011, B 12 R 17/09; LSG Hamburg, Urteil vom 27.1.2014, S 10 R 971/08), so at least under certain circumstances they can legally offer their services as self-employed. But the rulings have not addressed the question whether domestic workers must be regarded as employees of *private households*; this question was apparently not yet raised before a court. For the intermediary agencies, the VHBP calls for a legal clarification that Live-Ins can be self-employed. By contrast, the DGB and the Trade Union Ver.di since long argue that the only legal and appropriate contractual model for the work arrangement of 'Live-Ins' is a direct employment contract with the private household (e.g. Böning/Steffen 2014; DGB 2016, Interview 4 and 5), which would also mean that they are fully subject to the law on working time. For the same reason, our interviewee of the DGB

(Interview 5) does not perceive the Austrian Model (specific status of self-employment for Live-Ins) as a good practice worth adopting, as it does not solve the problem of working hours. A third proposal in between the two is to clarify that Live-Ins are dependent employees who are in principle subject to the law on working time, yet then to introduce exemptions with regard to both maximum duration and payment of on-call hours (see e.g. Emunds 2016: 159f²² and Hoffer 2010). The most far-reaching opinion was expressed by our interviewees from Ver.di and DGB (Interview 4 and 5) who emphasized that a 24-hour-service provided by just one person is not feasible without resorting to exploitation, and thus is legally not viable in a modern society. This is in line with the conclusion by Hielscher et al. (2017: 97). A clearly legal alternative, thus a 24-hour care service provided by an outpatient service provider with employees working on shorter shifts, is calculated at around € 10,000 per month or even more by several sources (e.g. Stiftung Warentest 2017); and is thus evidently affordable to very few wealthy households only.

Thus, the issue of Live-Ins and the more general question of how to reconcile care needs and working conditions of those providing care remains largely unresolved, despite a widespread acknowledgment of problematic working conditions. In a recent answer to a question from the opposition, the government in principle admits that there is a "*lack of transparency*" regarding the working conditions and task profiles of Live-Ins, and states that "*a clear legal framework (e.g. on-call times, working periods, etc.) and an improvement concerning the information situation for both employers and employees would be desirable*" (Bundesregierung 2019, answers to question 12 and 13; authors' translation). At the same time, and somewhat contradictorily, the statement says that there are currently no plans to introduce any specific regulations addressing the situation of Live-Ins, as they are already protected by legislation. This attitude seems in line with what Lutz/Palenga-Möllenbeck (2010) already ten years ago termed 'semi-compliance' with the status quo, due to a perceived lack of alternatives, and thus a general reluctance to altogether abolish this market segment, even more with the increasing labour shortages in elderly care (see section 4.4).

In the current debate about problematic working conditions and labour shortages in elderly care more in general, the principle of 'partial coverage' has been the object of criticism, as this

²² The suggestion by Emunds (2016) however is illustrative of how far social norms are deviating from equal treatment for Live-Ins: Although Emunds' book (2016) offers a concise analysis and very critical appraisal of the many malpractices in the case of Live-Ins, his suggestion is to introduce a minimum of a 24 hour rest period per week. This could still mean that a domestic worker works or are on-call up to 144 hours per week, hence "570 to 600" hours per month. Emunds calculated that if these hours would be remunerated according to the minimum wage of (then) € 8.50, this would entitle care-givers to a monthly wage of € 4,850 to 5,100. That leads Emunds to suggest that a "sensible regulation" could be to stipulate that a monthly pay for a Live-in shall be "no less than for an employee working 38.5 hours per week" (Emunds 2016: 207). From an equal treatment perspective, it is difficult to see how a sensible regulation can imply that households are only required to pay someone 38.5 hours if in fact he or she works or is on stand-by up to 144 hours per week.

implies a) that households have to pay high contributions out of their own pocket, and b) as this puts high cost-pressure on both outpatient and inpatient care providers in Germany. Arguably, it also restricts private households' ability to offer decent working conditions to someone they employ or contract for 'around-the-clock' care in their own home. Claims to expand the activities covered by the long-term care insurance in order to reduce cost pressures (see e.g. Hoffer 2010; Kondrietzka 2010) have been partly met by reforms of the LTC insurance over the past years. A more far-reaching claim voiced, among others, by the trade unions is to turn the partial into a full insurance that covers all necessary care-related costs (Verdi 2014). The most recent legislative initiative by several Federal States (see Bundesrat 2019) proposes, in a first step, to introduce a maximum limit for the own contributions of private households for their care-related expenses. Like earlier claims for a fully comprehensive insurance, this proposal is not explicitly targeting the case of 24 hour care at home, and it can be assumed that it is not meant to entitle households to an (almost) full reimbursement for the costs of 24 hour care – neither by Live-Ins, even less by much more expensive outpatient care providers. Rather, they are usually based on the implicit premise that persons who require around-the-clock care and supervision are either living in a care home, or are looked after through a combination of family care and professional outpatient elderly care. Political reforms and reform initiatives are thus rather focused on further developing organizational alternatives to individual 24 hour care. Changes to the reimbursement modalities in the LTC insurance have for instance opened up the possibility for a group of elderly persons in need of care to pool their care budget in order to collectively contract outpatient care providers.

4.4 Mini-Jobs in Private Households

According to latest figures, there were 310,680 mini-jobbers working in private households (as of September 2018), the large majority of them women (89%) and the predominantly with German citizenship (Minijobzentrale 2019).

There are a few specific regulations applying to mini-jobs in private households. As part of the '*Hartz-Reforms*', the government introduced regulations facilitating administrative matters as well as tax deductions for private households employing a mini-jobber (the so-called "*Haushaltsscheckverfahren*"). Previously, the tax deductions had been restricted to households employing workers covered by the social insurance system.

The protective gaps for mini-jobbers in private households include social protection gaps as well as gaps in the enforcement of basic labour rights.

Social protection gaps: As explained above, employees in mini-jobs are not covered by the general obligation to pay social insurance contributions and they are exempt from paying income taxes on their earnings. This form of state subsidy for low earnings is granted regardless of other individual earnings or the household income. Employers have to pay a flat-rate contribution to the social security funds on top of the monthly wage; yet this flat-rate employers' contribution does not entitle mini-jobbers to social insurance benefits like health insurance, unemployment benefits or old-age benefits. Since 1999, mini-jobbers can opt-in the statutory pension insurance by adding their employee contribution (around 10% of the wage bill) to the employer contribution; in which case they are entitled to the full pension entitlements resulting from these payments. Even if they opt-in, however, this does not allow them to build up substantial pension entitlements if they stay in this job for several years, due to the low monthly income.²³ The incentive to opt-in is even lower for mini-jobbers in private households, as the specific regulation requires private households employing a mini-jobber to only pay half of the regular contribution to the statutory pension insurance, thus roughly 5% instead of 10% of gross wage. This means that mini-jobbers who opt-in the pension insurance have to contribute a larger share of the employer/employee contributions, thus 15% of their gross wage – in order to achieve the same (low) entitlements as mini-jobbers working in companies. According to statistics provided by the Minijobzentrale (2018), less than one fifth of mini-jobbers (18%) makes use of this option.

The Government in its legislative proposal, as well as in its first report to the CEACR in 2015, has justified this special arrangement for mini-jobbers in private households with the goal to prevent and reduce informal employment, by lowering the financial burden for private households when they act as a formal employer. This goal (reducing informal work), the government argues, is aligned with the objectives of the Convention (see Bundesregierung 2013: 22). In its response to the government's report, the CEACR has confirmed this in principle, yet has nevertheless requested the government "*to indicate the measures taken and their impact in practice to ensure that domestic workers enjoy conditions that are not less favourable than those applied to workers generally in respect of social security protection, including with respect to maternity benefits*" (CEACR 2016, Art. 14). As noted above, the German government has not yet responded to this 'direct request'.

Next to the very limited coverage by social insurance, another protective gap results from enforcement gaps, which are important with regard to mini-jobbers in general. Mini-jobbers are in principle entitled to equal pay and equal treatment by the law, for instance with regard

²³ As a survey shows however, the stepping stone effect is very limited, hence a large share of female mini-jobbers either stay in the job for very long time or change back to inactivity or unemployment after some time (Wippermann 2012).

to paid holiday (statutory minimum of 4 weeks) and sick pay (100% of wage in the first six weeks of a sickness related absence). However, surveys repeatedly documented widespread deviations in practice concerning sick pay and paid holidays (RWI 2012 and 2016; Fischer et al. 2015; Bosch/Weinkopf 2017). Evidence from qualitative studies also confirmed the practice of paying mini-jobbers only for the hours they actually work (Benkhoff/Hermet 2008; Voss/Weinkopf 2012).

Our interviewees from the federal agency responsible to administer mini-jobs (the 'Minijobzentrale') estimate that even with the exemptions from taxes and social security contributions, the incentives for employees to transform their informal into a formal mini-job are very small, because of the limited benefits. As explained above, the cost-benefit relation for opting-in the pension insurance is rather unappealing; and if they do not opt-in pension insurance they do not enjoy any additional social security.²⁴ Our interviewees deem that this one reason behind the rather slow increase of formal employment (Interview 9). The same is true for the enforcement gaps – if domestic workers with a formal mini-job de facto do not enjoy the legal minimum rights, this arguably limits incentives to register as a mini-jobber.

4.5 Employees of Professional Service Companies

Since the middle of the 1990s, several service agencies and companies were established in Germany in order to provide domestic services for private households. This often took place by using public start-up financing and with the aim of creating employment relationships subject to compulsory social security contributions. The target group for employees was primarily the disadvantaged unemployed who have hardly any chance pf working in other areas of employment.

Since the beginning of the 2000s, in a "second wave" of support, household services were included in projects cooperating with temporary employment agencies (e.g. Homepower in Rhineland-Palatinate) and grants were introduced in some Federal States or regions for providing legal household services through companies. One example of this is in the Federal State of Saarland, where for some years agencies providing household work (AhA) could receive a grant under certain conditions. Since the beginning of 2012, the companies were paid a subsidy of € 3.50 per hour for up to ten hours per month per client household. In general, the employment relationship for the employees should be subject to compulsory social security contributions. The company was also obligated to pay their employees the

²⁴ For instance, mini-jobbers cannot access health insurance through their mini-job contract. Most of them are nevertheless covered by the health insurance, either based on derived rights (e.g. as a family member of an employee who is a regular member of the health insurance), or based on another job (if the mini-job is the second job) or based on specific membership statuses (e.g. for students or unemployed).

minimum wage for cleaning services (at that time € 9 gross per hour) (Ministerium für Arbeit, Familie, Prävention, Soziales und Sport Saarland 2011). Similar support had also been available in Hamburg for a short time (until the end of 2011).

As already mentioned in section 2.2.2, a nation-wide survey of Household Service Providers revealed that almost 60% of the companies were small businesses with up to 10 employees who frequently work in part-time.

According to experiences of the service providers, the demand for legally and professionally provided household-related services is relatively high and exceeds the available workforce capacities of the existing service agencies, as illustrated by the company described in Box 1.

Box 1: Example of a company providing household-related services

According to the manager of a non-profit company in a large West-German city, the company has currently 650 customers (predominantly private households and among them around 100 with elderly people) and a waiting list with around 250 additional private households highly interested in purchasing the provider's services (Interview 2).

The main shortage factor, accordingly, is not the willingness of clients to pay € 20 or even more for an hour of service provision but a severe *lack of appropriate and interested employees*. This also has to do with the relatively short hourly working time of the employees. The majority of the employees prefer a working time of between 15 and 22 hours per week and are not willing to increase their working time. This is often due to family reasons, but also has to do with the kind of work (Interview 2). Customer households typically demand for cleaning services that are associated with relatively high physical constraints for the employees.

In this company, the initial hourly pay for the cleaners is the statutory minimum wage of currently € 9.19 € (at the time of the interview) and € 9.41 after the initial probation period. For services provided in the segment of industrial cleaning (offices, other buildings), the company pays its employees the industry specific minimum wage for industrial cleaning (€ 10.56 since 1/2019). According to a survey among members of the most important employer association BH DU, an hourly wage of around € 10 was the most common hourly pay rate for employees of professional service companies in 2017, thus a similar level as the minimum wage for the industrial cleaning sector at that time (Interview 1).

The value of quality and the qualification requirements for developing a market had been (and to a certain extent still are) almost universally underestimated. The underlying reason for this is the widespread assumption that experience of looking after your own household is enough to be qualified to perform household services. The relevant projects and companies had

effectively revealed that not everyone fulfils the prerequisites to perform professional household services. This is even more so the case as many customers attach greater expectations of quality to the services with a view to the prices to be paid – which are, in comparison to the black market, significantly higher (see also Weinkopf 2003).

The classification of household services as 'low skill' jobs is also problematic because it tends to undermine efforts to increase the social value of such services. These are indispensable for at least two reasons: Firstly, this is a mandatory requirement in order to increase the willingness of customers to pay and therefore to allow household service providers to run a cost-covering service. Secondly, the underestimation of the skill requirements for household activities makes them less attractive to employees. On the one hand, this is partly due to the fact that being employed in the household services field provides little variation from the own household duties. On the other hand, it has to be taken into account that in general customers delegate the most unpleasant household tasks such as basic cleaning to external service providers and undertake the more varied activities such as shopping and cooking by themselves.

The assumption that staff requirements are systematically underestimated is also supported by the results of the study by Becker et al. (2012) on behalf of the BMFSFJ. In this survey of companies providing household services, almost two thirds of respondents stated that they already had problems with filling vacant positions (Becker et al. 2012: 56). As much as 41% of respondents described it as a major obstacle and a further 25% said it was a medium obstacle. The results of the survey reveal that this is not due to a lack of applications in the first instance, but because many applicants were regarded as not suitable.

Another important challenge is the availability of household services for families with low household income which cannot pay for household-related services but need some kind of support – for instance during a period of illness or a hospital stay. Health insurances sometimes pay for someone providing support in such a case but typically – according to several experts' assessment – at relatively low rates which frequently do not cover the real costs. The introduction of standardized vouchers covering the usual rates for such kind of services would be a progressive step. Employers could also provide vouchers. In contrast to cash benefits (e.g. for nursing care), vouchers offer significant advantages in that they can only be used for legally provided services.

Current policy debates, contested issues

Education and Training

The German ministry for family, the elderly, women and youth (BMFSFJ) funded several studies and reports on several issues of household-related services since 2004 (e.g. BMFSFJ

2011 – Household-related services for re-entering women; Wippermann 2011 – Household-related services: Needs and motives for re-entering into the labour market; Becker et al. 2012 – Providers of household-related services in Germany – conditions of supply, structures, perspectives). Since 2012, the BMFSFJ has been providing financial support to the competence center PQHD at the University of Gießen. The PQHD has for instance developed a very detailed and elaborated framework curriculum for the education and training for the provision of services in private households. This so-called *dgh-curriculum* is meant to foster the professionalization of services for private households and is seen as an important condition for the expansion of professional household-related services. Supported by the *Deutsche Gesellschaft für Hauswirtschaft* (German association for housekeeping), the aim was to further develop the basic elements for an appropriate vocational training curriculum in the area of the provision of household-related services. The concept of a structured initial training period of up to 12 weeks shall provide easy access for anyone interested and is eligible for funding by the Federal Employment Agency (*Bundesagentur für Arbeit* – SGB III), provided that the trainee is generally eligible for this kind of subsidies. Some service companies use a “probation flat” (*Versuchswohnung*) for the initial training period while others prefer have new entrants accompanied by an experienced colleague during the first few times. This is also meant to provide a high quality of services and support the motivation and satisfaction of new entrants. The curriculum gives service companies the opportunity to check and compare their training facilities against the requirements spelled out in the curriculum.

There are also propositions to develop suitable pathways to a recognised vocational training examination (*Berufsabschluss*) in household-related services via

- (1) a vocational training in the German dual system or
- (2) a school-based training in a *Berufsfachschule* or
- (3) for career changers (*Quereinsteiger_innen*) the option to apply for an admission to join the examination for *Hauswirtschafter_innen* (according to § 45 Berufsbildungsgesetz).

From the perspective of the *dgh*, the next steps should be the development and provision of modular training courses and their scientific evaluation.

Incentives for the demand side: service vouchers for private households

The coalition agreement of the newly elected government, published on 14th March 2018, stated:

“We improve the reconciliation of family and paid work for working parents, single parents, elderly people and caring family members by subsidies for household-related services. At the same time we promote legally provided jobs covered by the social insurance systems, particularly for women.”

This is also in line with recommendations by the Second Expert Report on Gender Equality in Germany (*Zweiter Gleichstellungsbericht der Bundesregierung 2017*). The Commission of Experts made several recommendations on how to improve and extend the infrastructure of PHS-services in Germany: through a regulation of minimum standards under labour law, a development of standards and certifications of good household-related service work and the introduction of subsidized vouchers for household-related services in accordance to the *service voucher system* in Belgium.

Accordingly, the German Federal Ministry for Families, Seniors, Women and Youth (BMFSFJ) is currently considering the introduction of a promotion scheme for household-related services in Germany. The basic idea is to provide subsidized vouchers – similar to the service vouchers in Belgium, but probably not as generous as in Belgium – to families or households in order to facilitate the reconciliation of family issues and paid work. However, by now it is not intended to build up the large capacities of the Belgian voucher system in which around 4% of the whole workforce is involved.

The ministry intends to develop a framework for subsidized vouchers in order to find out whether there will be a sufficient demand for such kind of services in Germany and – probably even more difficult – to attract a relevant number of interested und capable employees to take up regular household-related jobs provided by public or private service companies. This framework will take into consideration the experiences with a Model Project carried out in Baden-Württemberg (see Box 2).

The association *Deutscher Hauswirtschaftsrat* e.V. also supports the introduction of service vouchers, and the idea to tie public financial support to a proportion of at least 51% insurable jobs within companies providing household-related services (see Deutscher Hauswirtschaftsrat 2018). In addition, in its Statement in June 2018, it demands further measures to improve both the attractiveness and the affordability of professional domestic services, such as the establishment of quality standards for service-providers; and the reduction of VAT-rates for service-providers from 19% to 7% or 0%, as well as the standards for the training of employees according to the comprehensive *dgh-framework-curriculum* (see above).

Box 2: Model project for service vouchers in Baden-Württemberg

In order to test and evaluate the promotion of legally provided household-related services, a model project titled “*Fachkräftesicherung über die Professionalisierung haushaltsnaher Dienstleistungen (HHDL)*” was initiated in two cities in Baden-Württemberg in March 2017 for a period of 24 months. The project was funded by a joint initiative of the Federal Employment Agency (*Bundesagentur für Arbeit*), the Diakonie, the Labour Ministry of Baden-Württemberg and the BMFSFJ with the following features:

- Goals: Enabling qualified (predominantly) female part-time employees with children or persons in need of care to extend their weekly working time to 20 or 25 hours by providing them with subsidized vouchers for the usage of household-related services provided by professional service companies (mostly housekeeping tasks).
- Private households received subsidies of 12 € per hour, for up to 20 hours per month.
- The minimum requirement for participating service companies was that at least 50% of their employees should be in insurable part-time jobs.

The model project revealed that private households appreciated the support by service companies for a couple of hours as a big relief. However, despite of the subsidies of initially € 8 and later increased to € 12 € per hour, the private households assessed the price for a service hour as still relatively expensive. Moreover, the application and accounting procedures were experienced as rather bureaucratic (compared to the voucher system in Belgium where vouchers can be purchased online).

Labour supply side: Labour shortages and problems of retention

While service vouchers are intended to stimulate demand and to overcome financial and non-financial inhibitions on the part of private households to make use of professional domestic service providers, the problem of labour shortages has revealed to be an equally important, perhaps even the most important barrier towards a ‘normalisation’ of employment in the domestic service sector. As stated above, according to experiences of the providers of services to private households in Germany, the demand for legally and professionally provided household-related services tends to exceed the available workforce capacities of the existing service agencies by far. The recruitment problems are partly related to the specific regulations for the so-called mini-jobs with monthly earnings of up to € 450. Many employees who prefer a relatively short weekly working-time regard this type of jobs as particularly attractive since there are no deductions for taxes or social security contributions. A rising number of experts

accordingly has been demanding for an abolition of these privileges (e.g. Bosch/Weinkopf 2017) but politicians still tend to be very hesitant in that regard (cf. 4.4).

Next to recruitment problems due to financial disincentives, the service providers also face difficulties in employee retention, due to a couple of reasons:

- According to the experiences of several model projects in recent years, employees in cleaning occupations tend to leave these jobs frequently after a couple of months because they assess this type of jobs as physically demanding and boring – given that cleaning in other households does not provide a real variation of demands and tasks compared to their own household.
- One group of former employees of service agencies turned back to the black market of household-related services, while others seek to take up a job in other relatively “simple” occupations (for instance in hospitality or retail trade) – frequently with the argument that cleaning in private households is very isolated, boring and physically demanding (e.g. Eigenhüller 2019: 60f).
- Even if the alternatives do not provide a higher hourly wage, the workers frequently argue that they prefer to take up jobs in sectors such as retail or hotels and restaurants. The main argument in favour of looking for a job in these sectors is – as already mentioned – that they at least provide the opportunity to work together in a team with colleagues and to communicate with customers, too (*ibid*).

Not least in response to the problems of recruitment and retention, the association '*Deutscher Hauswirtschaftsrat*' has called for broad public campaign for a higher appreciation of household-related occupations and services in order to improve the poor image of the sector (Deutscher Hauswirtschaftsrat 2018). The employer association *Bundesverband haushaltsnaher Dienstleistungs-Unternehmen* (BHDU) likewise estimates that next to an improvement in quality standards and financial incentives, an image campaign is needed in order to overcome problems on both the demand and the labour supply side (Interview 1)

4.6 Platform-based work

Platforms broker contracts between private households and (predominantly) solo-self-employed domestic workers. In the area of housekeeping activities, the most important platforms Helpling (www.helpling.de) and ‘Book a Tiger’ (www.bookatiger.com) started their business in 2014. While Helpling only facilitates the matching of supply of and demand for cleaning in private households and the cleaners are free-lancers, Book a Tiger has changed its employment policies in 2016; cleaners are since employed by the company (see below).

In 2014, the Minijobzentrale also started its own ‘platform’ (www.haushaltsjobboerse.de) in order to facilitate the matching of demand and supply for registered mini-jobs in private households. It explicitly advertises its services as the ‘official’ and free-of-charge alternative to commercial platforms, referring to critics that commercial platforms operate in grey zones of legislation (see Minijobzentrale 2017: 9). The ‘Haushaltsjobbörse’ is more similar to an online blackboard, i.e. it publishes vacancies and job applications but is not involved in the matching process itself and in the conclusion of a contract. It also does not offer any particular assistance to households and domestic workers with regard to the transfer of payments or specific insurances – beyond those offered as part of the services of the Minijob-Zentrale (see section 4.4). There are therefore also no statistics available on how many contracts have been concluded based on the use of the ‘Haushaltsjobbörse’, as this platform is not designed to follow up whether contacts between job seekers and households lead to a mini-job contract (Interview 9).

Another important platform is ‘betreut.de’ (the German branch of care.com) which matches demand and supply for both housekeeping services and care-giving work. Its service is also restricted to publish vacancies and job applications and to establish contacts between the two sides, but it doesn’t follow up if and what kind of contract is concluded between them. A test of several commercial platforms (Stiftung Warentest 2018) concluded that ‘betreut.de’ was among the platforms that do not take any measures to prevent informal work. They found that the helpers mediated over ‘betreut.de’ issued no and often incomplete invoices; this was indirectly confirmed by the website of the portal which admitted that it “*does not verify the identity and personal information*” (quoted after Stiftung Warentest 2018: 72).

According to a survey carried out by BITKOM (2017), the market share of platforms has already reached 16% of all domestic cleaning services for private households in 2016. However, the source of this estimation remains highly questionable – the more so as the size of the total market tends to be far from clear. Another advantage attributed to this type of provision is the instant availability of services (BITKOM 2017). However, according to customers’ reviews, the promise of an instant availability of cleaners is frequently an illusion.

A review of the customers’ assessments of their experiences with Helpling-cleaners and the algorithms of the platform revealed the following issues of customers’ complaints:

- Many cleaners do not show up for booked orders without further notice to the customers (although, in such a case, the cleaner has to pay a penalty of € 10 to the platform).
- It is not guaranteed that the same cleaner as before will serve the customer.
- The quality of the cleaning services is frequently rated as rather low.

- The conditions for customers are not very clear. If someone has ordered cleaning once a week, but is dissatisfied with the service and wants to cancel the booking, he or she has to pay a fee of € 50 (which is not clearly communicated in the platform conditions).

Dissatisfaction with the contractual conditions and actual practices are not restricted to the demand side but are also voiced by employees (see Box 3).

Box 3: Working for a platform – experiences of a Helping worker

According to Helping's self-description, further advantages of the platform are a careful selection of appropriate cleaners and the provision of training for them. In a "Press-Kit" provided by Helping (2016/2017), the company stated that there are local Helping-offices and that all cleaners had participated in trainings and tests. However, the women we interviewed as part of our research for the PHS-project did not confirm these statements. She had never been offered a training provided by Helping nor had she received any instructions on how to carry out the cleaning services (interview 6).

Another critical respectively important issue is the legal registration of service-providers and the coverage of the cleaners by an accident insurance and a third party liability insurance. From the perspective of the customers, these are important issues for their decision to hire a cleaner via the Helping-platform. However, according to the experience of the Helping-worker in our interview, the coverage by insurances is very limited and damages of up to € 350 per damage were to be paid by the cleaners themselves.

Our interviewee has a regular part-time job in a bar and tries to earn some additional money as a freelancer on the Helping-platform. She particularly emphasized the advantage of being able to accept or deny "job offers" provided to her by Helping via an app. As she emphasized, this provides some kind of autonomy as regards the time-schedule of cleaning hours.

However, she also pointed out that there are several problems and loopholes for cleaners matched by the Helping-platform. One critical issue she complained about is the relatively high commission respectively deductions from her earnings which she had to pay to Helping (25-30% of her total earnings). Moreover, she criticized the low transparency of the platform algorithms and frequent changes of the conditions – typically without further notice for the cleaners.

In the first phase after the establishment of the Helping-platform in 2014, all cleaners received the same amount of money per hour (€ 12.90 with a fee of 20% for the platform). Now, the cleaners can individually fix the price they charge per hour, but according to our interviewee's experience, this individual pay demand seems to be not really binding for Helping. She told us that she frequently receives job offers for a lower hourly pay. It is also

not clear for her why she keeps getting job offers that do not meet her preferences, as regards the maximum distance of job offers from her home location, for instance.

According to her experience, the pay and working conditions were frequently changed by Helpling without further notice. She also criticized that Helpling does not provide any information on the size of the house or flat to be cleaned in advance. Accordingly, she cannot negotiate the duration of cleaning and has to do the cleaning in the time for which the customers are willing to pay for.

The worker also emphasized that the customers typically assume that she is covered by all necessary insurances against accidents and damages which is in fact, however, only the case if the amount exceeds a total damage of more than € 350. For damages in customer households below that relatively high threshold, she would have to pay by her own.

She also criticized that she is not allowed to send invoices to her customers by herself but is obliged to use the “service” provided by the Helpling-platform for a comparatively high deduction of her total earnings (25-30%). She would actually prefer to send invoices to the customers by her own and save the deductions by Helpling. In her view, this is by no means in accordance with the predicted status of “Helplings” as free-lancers. She also complained about the lack of direct contacts with other Helplings. She would appreciate this possibility for an exchange of experiences with the platform as well as with customer households.

If private households are in search for a cleaner and enter the Helpling-platform page for their region, a selection of cleaners appears on the screen with their individual hourly rates and the number of “jobs” already carried out via the Helpling-platform and the customers’ ratings (if available). However, our interviewee criticized that Helpling does not provide any information on how or why a particular cleaner appears on the regional starting page or not.

Given these complaints and dissatisfaction on both sides of the matching process, it is questionable whether platforms will develop into a profitable business model. Helpling aims to increase turnover and profits by enlarging its service portfolio (e.g. by also offering relocation services). The company managed to secure another large (“several million Euro”) investment from Unilever Investment in 2017, yet according to press reports is not yet profitable.²⁵ Doubts are also justified not least by the trajectory of the major competitor of Helpling, Book a Tiger (Box 4).

²⁵ <https://www.deutsche-startups.de/2018/06/19/helpling-massiver-personalabbau-senkt-verluste-deutlich/>

Box 4: *Can platforms with better labour standards survive in the market? The example of 'Book a Tiger'*

In 2016, Book a Tiger has changed its employment policies in 2016; cleaners are since employed by the company. More recently however, Book a Tiger has also changed its business model to a focus on commercial cleaning of buildings. This might be due to the experience that in this area the profits are higher compared to the provision of cleaning services to private households (<https://www.tigerfacilitieservices.com/>). In an interview, one of the two founders admitted that they had underestimated the “operative effort” for managing contracts with private households, such as organize training courses for cleaners, laboriously calculating the routes to work for each city or deal with moody customers who cancel appointments at short notice.²⁶

Still, Book a Tiger so far continues to offer cleaning services for private households, and remains the only platform in Germany that employs domestic workers on a regular employment contract. Even though this feature is positively highlighted in several consumer tests comparing platform-based cleaning services (e.g. Stiftung Warentest 2018), a regular employment contract alone obviously doesn't solve the challenges of staff recruitment and retention. At the time of finalising the report (March 2020), overall negative customer reviews on independent rating platforms seem to indicate that book-a-tiger faces severe problems in recruiting enough reliable and skilled staff (see <https://de.trustpilot.com/review/bookatiger.com>; <https://www.putzchecker.de/bookatiger/>). This is all the more remarkable as the customer reviews on the same rating platforms and during the same period are quite positive for Helpling - which continues to work with solo self-employed workers.

Alternative platforms owned and run by worker cooperatives – similar e.g. to the New York City based platform ‘Up and Go’ (<https://www.upandgo.coop>) – have not yet emerged in Germany.

4.7 Employees of outpatient elderly care providers

Overall, employees of outpatient elderly care providers are in a less precarious situation than the others groups of domestic workers analysed so far. The large majority of them are dependent employees of companies, covered by full social insurance, many of them are also covered by collective agreements or at least by similar pay schemes and working conditions (see section 4.1). This however does not equal the absence of problematic working conditions,

²⁶ <http://www.manager-magazin.de/unternehmen/artikel/helpling-book-a-tiger-putz-start-ups-haben-es-schwer-a-1225697.html>

e.g. in terms of a strong time pressure at work, relatively low wages and involuntary part-time work.

- Wage levels are low, compared to other occupations with similar skill levels. According to statistics by the Federal Employment Agency, the monthly median wage for a full-time employed skilled nurse working in elderly care was € 2,621 in 2016; the median wage for a care assistant was € 1,870 (Seibert et al. 2018). In East Germany, the median wages were as low as € 2,211 for a skilled nurse and € 1,662 for a nurse assistant. But even in West-Germany, the median wage for skilled nurses in elderly care (€ 2,737) were considerably lower than the median wage for all employees (€ 3,133) (*ibid.*). Further calculations have shown that wage levels in elderly care are also lower than wage levels in other occupations with the same skill-level (Bogai et al. 2015: 11ff).
- In addition to low hourly earnings, the predominance of part-time work further limits earning opportunities. In 2017, 68.5% of all employees of outpatient care providers had a part-time job, and only roughly half of them (36.6%) worked more than 50% of a full-time job (see Table 5). While some of this is certainly in line with employees' preferences, the main rationale behind companies' use of part-time work is not employees' preferences, but the suitability to closely match staffing levels with variations in the workload (Schildmann/Voss 2018: 14). Accordingly, a large share of part-time workers is working part-time on an involuntary basis; the share is particularly high in East Germany, where around half of part-time workers (46% for skilled nurses, 55% for nursing assistants) in elderly care stated that they worked part-time because they were unable to find a full-time job (Bogai et al. 2015: 10). The share is much lower in West-Germany, where published figures range from 10% to 21% (*ibid.*)
- Time pressure: Around 75% of those working in elderly care report that they are 'very often' or 'often' exposed to time pressures (Schildmann/Voss 2018: 11). This is not least a result of the partial nature of the reimbursement by the LTC insurance, as this translates into strong cost pressures and tightly calculated time slots for the provision of care services, and forces professional care-givers to restrict their support to a narrow set of pre-defined tasks.

Table 5: Employees of outpatient care providers by full time/part-time (2017)

	Employees of outpatient care providers	
	number	in %
Total	390,322	100%
Full-time	109,657	28.1%
Part-time	267,586	68.6%
> 50%	143,050	36.6%
50% or less, but not marginal employment	56,028	14.4%
marginal employment (mini-job)	68,508	17.6%
others (e.g. in vocational training)	13,079	3.4%

Source: Pflegestatistik. Table 'Personal in ambulanten Pflegediensten'. Data retrieved from www.gbe-bund.de

Part of these issues have been addressed by previous reforms: Next to the introduction of the industry-specific minimum wage for care-givers in 2009 (see section 4.1), another legislative change that came into force in 2015 aims to expand the application of collectively agreed wages. The change consists in clarifying that care providers who pay their employees collectively agreed wages (even if they are not themselves covered by a collective agreement) are entitled to a full reimbursement of these costs from the LTC insurance funds.

Moreover, the debate about working conditions in elderly care has gained momentum with the increasing labour shortages in the sector, in particular for skilled work, which is discussed under the label "*Pflegenotstand*" ('nursing emergency'). In the coalition agreement between Social Democrats and Christ Democrats from 2018, the current government has promised to make efforts to further increase the coverage rate by collective agreements as a means to increase the attractiveness of jobs in elderly care. The government consulted with social partners about this issue as part of the "*Konzertierte Aktion Pflege (KAP)*" (concerted action care) (see <https://www.bundesgesundheitsministerium.de/konzertierte-aktion-pflege.html>) which started in 2018. As a first result of the KAP, a law introduced at the end of 2019 ("Gesetz für bessere Löhne in der Pflege" – law for better wages in the social care sector) provides a framework for two measures that are meant to increase wage levels in elderly care. One is the possibility for social partners to conclude a sector-wide agreement and to have this agreement declared generally binding, provided that the agreement is supported by at least part of the church-run providers in the sector. This closely corresponds to a claim voiced by the trade union Ver.di (2017). Yet so far, the strong fragmentation of the collective bargaining landscape, which is not least due to the specific regulations for church-owned charities and welfare organisations (Evans 2016), is an obstacle to both the first and the second step. The (non-church-owned) welfare organisations have responded to this new option by setting up a

new employer organisation (*Bundesvereinigung Arbeitgeber in der Pflegebranche* - BVAP) that has taken up negotiations with Ver.di). These negotiations are ongoing at the time of the study (March 2020). In the meantime, the government has made use of the second option in the new law and set up a wage commission for the elderly cares sector. The commission's task is to replace the industry specific minimum wage (€ 10.55 East-Germany, € 11.05 West-Germany) by two minimum wages – one for nursing/care assistants, one for skilled nurses. Beginning in July 2020, the new minimum wages will be introduced and increased step by step and in April 2020 reach € 12.55 for care assistants (in both East- and West Germany) and € 15.40 for skilled nurses. This wage level would be overruled in case the social partner agree on a higher sector-wide collective agreement that is declared generally binding.

5 Summary and policy recommendations

This report on employment rights in the domestic service sector has taken a closer look at both *housekeeping* tasks, such as cleaning or cooking, and *interactive* work, in particular caring for children, elderly or disabled people. There is a substantial overlap with regard to provider structures, labour supply and demand for these two types of services. This is most evident in the case of households with elderly people as they often depend on support in both areas. This overlap not only poses difficulties for the precise empirical recording of these areas of activity, it also poses challenges for the regulation of working conditions in this sector – for example, when it comes to determining which collective agreements should be applied or, more generally, which remuneration is appropriate for these activities. The challenges and (potential and realised) measures to address them will be summarised more in detail in this policy report.

5.1 Employment forms: From informal work arrangements to a ‘formalisation light’

From the mid-1990s politics at the regional and national level in Germany started to develop policies targeting the domestic service sector. These policies were motivated by a multitude of trends and goals. In an effort to respond to an increase in demand for both housekeeping tasks and caring tasks, they were aimed at increasing labour supply in various ways: by incentivising the aid of family members and neighbours in the provision of care for the elderly; by supporting the transformation of undeclared jobs into formal jobs; and by supporting the professionalization of household services. At the same time, the policies were also meant to support more general political goals, most importantly combating high rates of unemployment and increasing the employment rate of women.

Accordingly, this mix of policy goals also meant that policy initiatives at regional and national level did not only contribute to the creation of regular jobs covered by social security contributions. In parallel, they also supported other ‘atypical’ forms of employment, in particular ‘Mini-jobs’, as well as hybrid forms of work between paid formal and unpaid informal work ('paid voluntary work'). Moreover, they tacitly tolerated the growth of the group of ‘Live-Ins’, thus migrant domestic care workers mostly from Eastern European Countries. The most recent type of atypical work in the household service sector has emerged with specialized platforms which broker contracts between private households and solo self-employed domestic workers, such as helpling.de. As a result, work in the domestic service sector is more often paid formal work than it was 20 years ago. However, in terms of size, the different forms of informal and unpaid work continue to be much more important than jobs in the formal economy, at least in the area of housekeeping services (see section 2.2). Moreover, the formalisation of jobs in the domestic service sector has often been a

'formalisation light' – in the sense that these jobs deviate in various ways from standard forms of employment.

5.2 Protective gaps and recent measures addressing them

Three sources of these deviations or 'exit options' can be distinguished:

- Firstly, they are partly rooted in *general* regulative exemptions and regulative gaps that also exist in other segments of the economy, such as 'Mini-Jobs'. The European legislation on the posting of workers has also provided numerous 'exit options' from the regular framework, as well as legislation and jurisdiction on solo self-employment. These exit options allow households and intermediaries to circumvent German labour laws by resorting to posted work or to self-employment and other freelancers, as in the case of platform-based work and Live-Ins. It is necessary to keep in mind, though, that some of the circumvention strategies are consensual, thus correspond to domestic workers' preferences to avoid having to pay taxes and social security contributions; this seems particularly to be the case for Mini-Jobbers.
- Secondly, other exemptions and gaps are justified with the *specific* characteristics of domestic work – for instance the alleged difficulties to distinguish between working and leisure time in the case of 'Live-Ins' that are referred to in order to justify deviations from the law on working time. Or they may be justified by specific characteristics of the employment relationship – e.g. between family relatives in the case of paid voluntary work.
- Thirdly and finally, measures that were introduced in order to increase the labour supply for domestic work have unintendedly facilitated the growth of new forms of atypical employment. This is the case for the financial scheme used to compensate family relatives or neighbours ('paid voluntary work'), as the scheme can also be used to pay Live-Ins and other allegedly solo self-employed workers working for platforms.

These exemptions often translate into important protective gaps for employees. Several policy measures and other initiatives over the past 10-15 years have sought to close some of these protective gaps. This is most evident with regard to wages. Several legal regulations have diminished the protective gap resulting from a low coverage rate by collective agreements: by declaring some of the relevant CAs legally binding; by introducing the national minimum wage in 2015, and, most recently, by increasing the minimum wage for care workers and setting incentives for social partners to agree on a CA to be declared generally binding for the whole sector (see section 4.1).

Considerable efforts have also been made in order to transform informal jobs into Mini-Jobs and Mini-Jobs into regular jobs covered by social security. This was done mostly through

subsidies to professional service providers, tax subsidies to households, and tax and social security exemptions for employees (Mini-jobs) (see section 4.5). The latter type of subsidy – while being attractive for many employees in the short run – however also bears the risk of material precariousness in the longer run.

The current protective gaps for domestic workers in terms of wages and other working conditions are however not only due to *regulatory gaps* resulting from a lack of collective agreements or legal regulations ('employment protection and social protection gaps') but at least as much due to a lack of mechanisms securing the *enforcement* of minimum rights ('enforcement gaps'). Mini-jobbers for instance are entitled to holiday and sick pay, but according to surveys, a large majority of them does not benefit from these rights in practice. Enforcement gaps are also particularly severe in the case of migrant domestic workers. Their vulnerability is due to the specific status of Diplomats (in the case of migrant domestic workers working in Diplomats' households), the decentralized nature of service provision and thus their isolated work situation and higher barriers (due to language and knowledge gaps) to use available options for self-enforcement (trade unions, labour courts). While the ratification and implementation of the ILO Conventions 189 in Germany has done little to change the legal situation of migrant domestic workers, it has arguably supported – although not initiated in the first place – a number of initiatives aimed at improving the enforcement of labour standards for domestic workers. This includes efforts of the Federal Foreign Office to inform Diplomats and their prospective domestic workers about their minimum rights (see section 4.1). Moreover, a very important organizational infrastructure for domestic workers are counselling services provided by Trade Unions, NGOs and charitable organisations and partly financially supported by the government. These aim to help domestic workers to claim their individual rights and to exit situations of severe labour exploitation (see sections 4.2 and 4.3). Another example of good practice are non-profit intermediary agencies set up by charities as an alternative to for-profit intermediaries that match supply and demand of 'Live-Ins' (see section 4.3).

The following table gives an overview of the most important protective gaps for the different forms of domestic work.

Table 6: Overview: Protective gaps for domestic workers and recent measures addressing them

important protective gaps	Recent policies + other measures addressing the gaps
Migrant domestic worker working for diplomats	
<u>Enforcement gaps</u> , due to diplomatic immunity + limited awareness about employment rights	Various measures of government, mostly to enforce rights <i>ex-ante</i> , by informing employers and employees about statutory empl. rights Counselling infrastructure set up by trade unions + NGOs, partly financed by government
Migrant Domestic Workers ('live-ins')	
<u>Employment protection gaps</u> : Working time issues (max. working hours, rest period); low remuneration; in case of solo self-employed: no entitlements for sick pay + paid holidays <u>Social protection gaps</u> : solo self- employment → no or lower health insurance, pension entitlements <u>Enforcement gaps; Representation gaps</u>	(No change with ILO 189 convention, due to use of exemption) charity-run alternative intermediaries matching supply and demand based on regular employment contracts Counselling infrastructure set up by trade unions + NGOs, partly financed by government
Mini-Jobs	
<u>Social protection gaps</u> : very limited pension entitlements <u>Enforcement gaps</u> (sick pay, paid holidays)	possibility to opt-in pension insurance (but at a higher than regular rate (15% of wage) + resulting in very low entitlements)
Platform based work	
<u>Employment protection + social protection gaps</u> : (bogus) solo self-employment; no entitlements for sick pay and paid holidays, health insurance, pension entitlements <u>Representation gaps</u> : difficulties to organize solo self-employed workers	
Employees of professional service companies	
<u>Employment protection gaps</u> : Low wages	national minimum wage (2015); CA and legal provisions securing the extension of the CA
Employees of outpatient elderly care providers	
<u>Employment protection gaps</u> : Low wages; involuntary part-time work	national minimum wage (2015); legal provisions establishing industry specific minimum wages

5.3 Policy recommendations: Closing protective gaps and beyond

The report has identified important protective gaps for the various groups of domestic workers. Efforts to combat these gaps and to ultimately align employment rights and social protection of domestic workers with the rules that apply to regular employment in other sectors of the economy continue to be important and should remain on the agenda of politics, social partners, NGOs and, not least, customer households. It seems worth reflecting, however, whether a (not at all) ‘simple’ alignment of rights with other segments of the economy will be sufficient in order to effectively achieve a satisfying job quality and thereby also respond to the growing difficulties in recruiting and retaining qualified staff. Several findings raise doubts in this regard:

Firstly, the fact that despite massive efforts to formalise employment in this area, a considerable number of employees seems to prefer informal over formal work arrangements (see section 2.2). Against the background of the ‘formalisation light’, as well as problems with enforcement of the rights that come along with formalised employment, a possible explanation could be that employees feel they don’t gain much if they agree to formalise their job. Moreover, they might feel (and partly rightfully so) that they even risk to lose in terms of immediate material welfare, as the income they can generate through informal work is de facto exempt from taxes and other deductions, and the persistent labour shortages in this segment might allow them to bargain a decent remuneration.

Secondly, as the example of professional service providers for housekeeping services and outpatient care providers illustrates, or the example of the platform ‘Book a Tiger’, offering domestic workers a standard employment contract neither seems to be sufficient in order to attract and retain enough employees willing to work in the sector. In these cases, it would seem that the benefits of a standard employment contract are not perceived as sufficient by employees to offset the physical and mental strains that come along with the tasks to be performed and the specific work environment (e.g. isolated work, work on several sites). Given the general labour shortages even for low skilled occupations, employees currently seem to face less problems than ever if they prefer to switch to jobs in other sectors (e.g. hotels and restaurants) that don’t come along with these strains, as the experiences of model projects and professional service providers suggests (see section 4.5). The modest wages level are not likely to exert a strong binding effect either. Compared to solo self-employment and other forms of formal or informal freelance work, employees might also feel (again, probably partly rightfully so), that they lose in terms of their autonomy with regard to the scheduling of work and the selection of customers. The working time autonomy, thus the possibility to flexibly align job offers with other commitments (e.g. education, family), was highlighted as positive aspect for instance by the solo self-employed Helping worker interviewed as part of

the project, despite her overall critical stance with regard to working conditions offered by the platform.

These observations are not meant to discard claims to legally establish and enforce equal rights for domestic workers – core claims of the ILO Convention 189. As stated above, these remain important. Instead, they are meant to expand the agenda and to draw attention to important aspects of working conditions that need to be taken into consideration in order to achieve *not just equal, but good working conditions*. This is partly needed because there are features that are specific to the work in this segment (although they may also apply to some other occupations) and require more than ‘just’ equal rights. Another implication of these observations is to less exclusively focus on regular dependent employment as a vanishing point for all attempts to improve working conditions in the sector, and instead reflect on possibilities to improve working conditions in others forms of work as well.

These general considerations form the basis for the following policy recommendations.

- A rather straightforward implication of the analysis above is that in order to increase the attractiveness of formal employment it is necessary to raise pay levels in formal jobs in this sector *above* those in the informal economy, as well as *above* (not equal to) those in other occupations with similar skill requirements. Given that hourly minimum wages for both housekeeping and caring tasks are currently at between € 10 and € 11 (as of January 2019), this would mean to substantially increase the current wage levels for domestic workers. At the same time, it is reasonable to expect a rather high price elasticity, at least for households with low to medium income. Hence, demand for these services is likely to decrease and to be limited to a rather small group of high-income households – or else, it will strongly depend on the availability and design of service vouchers subsidising demand. In order to allow for substantial wage increases, these subsidies would have to be substantial in size (€ per hour). Since public budgets are not infinite and service vouchers compete with other public services to be financed, it is therefore advisable to target these public subsidies to households most in need of the services and of most in need of financial subsidies.
- Next to wage levels, another lever to increase the financial attractiveness of these jobs are tax and social security deductions. Compared to Belgium, it is worth mentioning that the deductions for taxes and social security contributions for low-paid jobs in Germany are much higher. A study by Eurofound (2019) revealed that the deductions from the gross wage of a full-time worker paid on the basis of the German minimum wage (currently 9.35 €) reach an amount of 26.09% of the annual earnings, while in Belgium, the deductions reach only 4.25% of the gross annual earnings. Accordingly, full-time employees being paid

on the level of the minimum wage in Belgium (9.65 € per hour) receive 375 € per month more than in Germany.

- It can also be assumed that a broad information and image campaign is needed in order to support both: an increase in demand for professionally organized PHS-services on the one hand and – probably even more important – the recruitment of people interested in taking up a job with more than a couple of working hours per week in this area.
- In the case of platform-based work, an option would be to support the foundation of platforms owned and run by worker cooperatives, modelled after examples like ‘Up and Go’ (<https://www.upandgo.coop/>) in the U.S.A. (see Alinotti 2017; Haas 2019 for more detailed reports about the worker cooperative ‘up and go’). This could offer domestic workers a sustainable alternative to commercial platforms if they prefer the freedoms and autonomy associated with solo self-employment over the benefits and duties associated with dependent employment.
- Another measure improving the situation of solo self-employed – both those working for platforms and ‘Live-ins’ – would be to introduce statutory minimum professional fees (see Bayreuther 2018; Heuschmid/Hlava 2018) for these (and other) occupations – a demand also supported by part of the German trade unions and political parties.
- With regard to migrant domestic workers, a continued public support of the counselling infrastructure run by trade unions, NGOS and charities (see sections 4.2 and 4.3) appears to be an important lever in order to address enforcement problems for this group of workers. Moreover, allowing domestic workers working for Diplomats to change their employer without losing their residence and working permit would grant them more bargaining power to enforce their rights on their own and exit an exploitative labour situation.

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