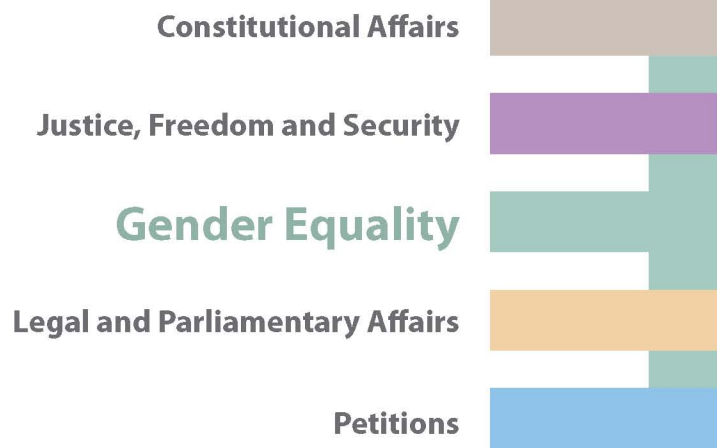


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Abused Domestic Workers in Europe: The case of au pairs

NOTE



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRES

GENDER EQUALITY

**Abused Domestic Workers in Europe:
The case of au pairs**

NOTE

Abstract

This study analyses au pair arrangements in six EU Member States (Denmark, Germany, Ireland, the Netherlands, Poland and Spain) through descriptions of national and international legal frameworks and practices of au pairing. The findings show different patterns of au pair migration and different situations of au pairing as well as different strategies to protect the au pairs. The overall recommendation is to separate current au pair immigration into two programmes: one of cultural exchange and one of domestic and care work.

This document was requested by the European Parliament's Committee on Women's Rights and Gender Equality.

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LIST OF ABBREVIATIONS

A8	Accession countries
CSO	Civil Society Organisation
BMFSFJ	Bundesministerium für Familie, Senioren, Frauen und Jugend
CDCS	European Committee for Social Cohesion
CEDAW	Committee on the Elimination of Discrimination against Women
DRC	Danish Refugee Council
ECAPS	European Committee for Au Pair Standards
FOA	Fag Og Arbejde (Trade and Labour)
FNV	Federatie Nederlandse Vakbeweging (Dutch Trade Union Federation)
IAPA	International Au Pair Association
ILO	International Labour Organisation
INAPA	Irish National Au Pair association
IND	Immigratie- en Naturalisatiedienst /
IDWN	Immigration and Naturalisation Service
ITUC	The International Domestic Workers' Network
KIT	Kirkernes Integrationstjeneste (The Church Integration Ministry)
KULU	Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (The German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration)
MRCI	
NAPO	Kvindernes Ulandsudvalg (Women and Development Network)
NBI	Migrants Rights Centre
NGO	The Netherlands Au Pair Organisation
OWWA	National Bureau of Investigation
PDOS	
POEA	Non-governmental Organisation
SFI	Overseas Workers Welfare Agency

VIJ Pre-Departure-Orientation Seminar
Philippines Overseas Employment Administration

Danish Social Research Institute

Verein für Internationalen Jugendarbeit

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EXECUTIVE SUMMARY

Key Findings

- The Council of Europe's 1969 European Agreement on Au Pair Placement cannot be characterized as a strong mechanism for the international regulation of au pair migration.
- The findings in the six case studies show different patterns of au pair migration in the selected EU countries and radically different situations of au pairing as well as different strategies to protect the au pair
- A dividing line runs between au pairs coming from EU Member States and au pairs coming from non-EU countries, especially from less affluent parts of the world.
- The nature of the specific immigration regulation varies between the three countries that allow third country nationals as au pairs
- According to EU law, EU citizens employed as au pairs are mobile EU workers, but non-EU au pairs stay under precarious circumstances
- Compared to the overall numbers of migrant domestic workers in the EU, the number of au pairs is still small, but the actual total number of persons employed as au pairs is not known
- In 1998 the Philippines issued a ban on au pair migration to Europe to protect Filipinos against abuse as domestic labours. EU countries responded differently to the Philippine ban on emigration.
- Since 1998 Filipinos have in some European countries been among the major nationalities of third country au pairs. In 2010 bilateral agreements with the Philippines have changed in some countries the status of Filipino au pair migrants.
- During the last decade some of the increasing number of au pair agencies in Europe have organised themselves in international and national associations.
- A tendency is found to extend the concept of host family to include elderly people and to perceive au pairs as cheap domestic and care workers.

Background

The study was commissioned by the Committee on Women's Rights and Gender Equality of the European Parliament. The terms were established on the basis of an acknowledgement that some European countries hardly recognize the presence of migrant domestic workers and the existing high demand for their services and their positive contribution to the economic welfare of the societies and a concern that there are cases of people abusively employed as domestic workers.

This study was required to focus on the case of young women employed as domestic workers under the cover of the statute of au pair and had to provide an overview and a comparative analysis of this issue within the EU and with relevant recommendations to handle it efficiently.

In order to establish an understanding of the au pair arrangement in the EU and the use and abuse of the arrangement, au pairing in different national settings has been compared in order to reveal both how the au pair scheme is practised, and how it relates to differences and similarities in migration regimes, welfare arrangements, labour market constructions, gender regimes and the way au pairs are protected by national and international regulations.

The countries covered in this study are: Denmark, Germany, Ireland, Netherlands, Poland and Spain. One country of origin, The Philippines, has also been selected.

The investigation has focused on the legal framework for the au pair arrangement, numbers of au pairs, mechanisms of controlling enforcement of the legal provisions, working conditions for au pairs, and best practices related to the protection of the rights of domestic workers and au pairs and preventing abuse.

The findings

The findings of this study show different patterns of au pair migration in the selected EU countries and radically different situations for au pairs. In some Member States, like Poland, the au pair phenomena seems limited, whereas in other EU countries such as Denmark, the Netherlands and Germany au pair migration is a larger predominantly characterised by temporary immigration from outside the EU. In between these poles are Ireland and Spain which do not allow immigration from outside the EU, but which experience EU citizens being placed as au pairs with host families.

Only two of the countries in this study ratified the 1969 Council of Europe Agreement on au pair placement, namely Spain and Denmark. In general only a few countries have ratified the Council of Europe's Agreement on au pair placement (Denmark, France, Italy, Norway, Spain, (Luxemburg revoked ratification in 2002)). The Agreement was established in another societal context, and does not necessarily meet the need for regulation of au pair migration today.

A dividing line runs between au pairs coming from EU Member States and au pairs coming from non-EU countries, especially from less affluent parts of the

world. In this study, three countries do not allow third country nationals to immigrate as au pairs (Ireland, Spain and Poland) and three countries do (Denmark, Germany and the Netherlands)

EU citizens employed as au pairs are according to EU law mobile workers and have the protection and entitlements granted to EU citizens working in other EU Member States. This implies that the element of work in the au pair placement is already regulated through EU law as an employee-employer relationship.

In Germany, Denmark and the Netherlands, third *country nationals* are allowed to enter *as au pairs*. Most of the migrants in Denmark and the Netherlands are from the Philippines, but subject to different regulation due to the existing ban on au pair migration from the Philippines to Europe and the existence of a bilateral agreement (for Denmark).

Non-EU au pairs are, in these three countries, excluded from protection as an employee, dependant on her residence solely on the host family or an agency, and through the live-in obligation staying in an in-between situation of a work place and (someone else's) private home. In cases of abuse and exploitation it is difficult for au pairs to change and improve her situation because her residence permit is closely tied to the employer and not tied to her as an independent individual.

Au pair migration from the Philippines to countries with no bilateral agreement with the Philippines is covered by a Philippine ban, which increases precariousness in these countries. Furthermore migrant domestic workers in Europe are often from the Philippines and the Filipino women are often seen as domestic workers which raises the possibility of stereotyping and the implicit assumption of an au pair being an inexpensive maid.

Compared to the overall numbers of domestic workers in the EU, *the number of au pairs is still small, but the actual total number of persons employed as au pairs is unknown* because the number of EU au pairs is not registered and because the concept of au pair is also used in various irregular forms of employment.

Different strategies to protect the au pairs have been seen in this study. The European Agreement on Au Pair Placement is one. Other strategies are ethical codes of conduct for the intermediaries and the families as well as the establishment of hotlines and shelters for the au-pairs.

Economic grants for *civil society activities in support of the au pairs* seem to be limited with the exception of Denmark. But NGOs in Denmark, The Netherlands, Germany and Ireland have expressed concern for the situation of especially the non-EU au pairs.

The increasing number of agencies, professionalization of au pair placement, and outsourcing immigration management to agencies in some Member States can indicate a more regulated market for au pairs as domestic workers.

The tendency of *extending au pair schemes to cover domestic and care work* (formulated as cultural exchange activities) in the homes of elderly and retired people is an indication of au pairing developing, in some countries, into an

increasingly normalized privately paid welfare service. Furthermore the introduction of au pair remuneration being covered by public subsidy of home based childcare in some EU Member States, for example Austria, emphasizes the process of normalization of the au pair schemes as legitimate solutions to the lack of public and affordable childcare and work-life imbalances in the EU. There is a *risk of creating a dependency* on this kind of often relatively cheap solution to lack of childcare and work-life imbalances for families in the EU.

The perception of the au pair in political and popular discourse points to a kind of normalization in some countries as if the broader understanding of 'au pair' includes different versions of documented and undocumented migrant domestic workers. This may facilitate an extension of the au pair schemes to new areas of domestic and care work.

Recommendations

Separate au pair schemes and domestic workers programmes

The overall recommendation is to separate current au pair immigration programmes into two programmes: one of cultural and educational exchange with less than eight¹ hours domestic help per week in exchange for food and lodging; and one of domestic and care work on conditions meeting decent working conditions.

Establish an EU observatory on migrant domestic and care work

Acknowledging the complexities in (migrant) domestic and care work and that au pairs often will be included in this complex field it is recommended to establish an observatory on migrant domestic and care work in the EU.

Establish common standards and guidelines

It is recommended to establish, in a first step, a common understanding of a normative concept of au pairs.

As it does not seem to be realistic to draft and negotiate a new European agreement on au pair placement on the level of the Council of Europe, it is suggested that, as a second step, the EU takes the initiative, under the lead of the European Parliament, to establish guidelines on au pairing in the EU that includes recommendations on the immigration status of au pairs.

Strengthen the protection of the EU au pair

It is recommended to disseminate the information of the EU au pair's rights and entitlements to the relevant authorities, agencies and organisations.

¹ According to Council Directive 99/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, an employment relationship is defined as a total duration of more than one month and and/or a working week exceeding eight hours. See chapter 1.

It is recommended to establish a procedure of registration of both host family and au pairs at the national level to ensure the statistical monitoring of this specific kind of EU mobility.

Strengthen the protection of the non-EU au pair

It is recommended that the EU establish a recommendation to Member States or a standard on au pair permits, where the permit is tied to the person being permitted to stay in the country for a specified time as an au pair during the period of time for which the permit is granted. The permit should be a work permit if more than eight hours work weekly is expected. Living-in should be made voluntary for the au pair.

Establish an independent public authority for labour inspections, control of agencies, complaints, monitoring the activities

It is recommended that EU Member States with EU au pairs and/or non-EU au pair immigration establish and fund a national, independent control, counselling and complaint service that can assist in case of problems. The institution should have the possibility to visit the homes of host families prior to placement of the au pair, undertake a follow-up visit and react in case of problems brought forward by the au pair.

Registering of all au pairs and host families

It is recommended to establish an EU data standard for au pair and host family and register both the au pair and the host family for regulation and statistical purposes.

Accreditation and control of agencies

It is recommended to establish independent and reliable mechanisms of accreditation according to ethical standards specifying the relationship between the au pair and the agency. The control and monitoring of agencies is recommended to be conducted by an independent governmental institution, based on transparent and ethical codes of conduct, mechanisms of control and the specific objective of protecting the au pair.

Support NGOs

One of the ways to improve the protection of au pair in the EU could be by establishing general institutions of counselling, support and monitoring of the situations of au pairs which might become an increasing phenomenon in the EU. It is recommended to support NGO activities to improve the situation of the au pairs and contribute to responding to abuse.

Furthermore shelter facilities should be provided, possibly linked to existing shelter facilities, these could include, for example, shelters to protect women in situations of domestic violence.

INTRODUCTION

About this study

The study was commissioned by the Committee on Women's Rights and Gender Equality of the European Parliament. The terms were established on the basis of an acknowledgement that some European countries hardly recognize the presence of migrant domestic workers, the existing high demand for their services and their positive contribution to the economic welfare of the societies. The Committee was concerned about reported cases in some Member States of people abusively employed as domestic workers.

This study has been required to 'focus on the case of young women employed as domestic workers under the cover of the statute of au pair' and provide an overview and a comparative analysis of this issue within the EU (actual description, national legal framework and practices) and with relevant recommendations to handle it efficiently. The study is not thus a comprehensive study on domestic work in the EU or on the experiences of the au pairs themselves.

Methodology

Selection of countries

In order to establish an understanding of the au pair arrangement in the EU and the use and abuse of the arrangement, au pairing in different national settings has been compared in order to reveal both how the au pair scheme is practised, and how it relates to differences and similarities in migration regime, welfare arrangements, labour market constructions, gender regimes and the way the au pair is protected by national and international regulations.

The selection of six Member States for the au pair study has been made according to differences such as welfare regime, size of population, old-new EU Member States, migration regimes, gender dimensions of the labour market. The following Member States have been selected as au pair countries of destination:

- Denmark
- Germany
- Ireland
- Netherlands
- Poland
- Spain

One country of origin has been selected, namely *The Philippines* as it has a special role in au pair migration. Firstly because the Philippines has a long tradition of feminized labour emigration for domestic and care jobs. Secondly, the Philippine government has banned au pair migration to Europe, which has been accepted by some countries and ignored by others.

The investigation

The analysis has focused on five levels:

- An international level
- An EU level
- A national, governmental level
- A national (and transnational) civil society level
- A (transnational) micro-level on lived experiences as au pairs

as well as on the Philippines as a major au pair sending country.

And the following areas of investigation:

- *legal framework* for the au pair arrangement
- *numbers* of au pairs
- *mechanisms of controlling* enforcement of the legal provisions
- *working conditions* for au pairs
- *best practices* related to protection of the rights of domestic workers and au pairs and preventing abuse

The study included a desk study², questionnaires and interviews in order to gather recent data and information as the basis of a comparative analysis.³ Informants from international governmental organisations⁴, non-governmental international organisations⁵; national governments⁶, national NGOs; churches; au pair agencies; au pairs; and researchers have been contacted.

The purpose of combining factual knowledge of the legal framework and numbers, and qualitative research through interviews has been to ensure a broader knowledge of the interplay between regulations, enforcements and social practise in the au pair field.

Compared to the original design of the study however, the application of a more explorative, composite and time consuming approach has been necessary in order to obtain information, given that both official and unofficial information was often spread out and/or not immediately accessible. Furthermore field observation has been conducted in relevant settings such as NGO meetings, au pair courses, annual conferences for au pair agencies etc.

² Legislation, guidelines, reports, research etc.

³ It has however in many cases been very difficult to get access to informants especially in public administration of some of the countries and among large groups of agencies. One reason why some of the ministries did not respond or rejected our questions may be the size of the au pair phenomenon which in some countries is limited. However, it has also been difficult to make the inquiries and interviews in some countries with considerable au pair migration. Regarding agencies many of them, especially those not affiliated with national au pair associations or NGO network have not responded or wanted to respond to inquiries.

⁴ Council of Europe, EU Commission, ILO.

⁵ International Migrant Workers Network; Respect Europe; IAPA; Migrant Forum Asia.

⁶ Labour Ministry, Immigration Service; Foreign Affairs; Regional Administrations; Embassies; and other public institutions.

The structure of the report

International regulations regarding au pairing are addressed in chapter 1. In chapter 2 the special case of the Philippines as an au pair sending country is described and chapter 3 presents the case studies of the six selected countries; Denmark, Germany, Ireland, the Netherlands; Poland and Spain.

Chapter 4 addresses the overall discussion on au pair migration on the basis of this study and list recommendations to prevent abuse of the precarious situation of au pairs.

Au pairs in a context of gender division of housework, labour market, childcare provisions and migration

Au pair migration in the EU is situated in a complex social and legal field of migrant domestic work. This type of domestic work is perceived as cultural exchange with pocket money bordering onto the field of domestic work with pay.

In the EU, there are great variations in the scope and nature of migrant domestic help arrangements in private homes. The organisation of welfare regarding child and elderly care, and women's participation in the labour market, play a significant role. In addition, immigration policy or migration regulations are of substantial importance for the development and extent of domestic help arrangements.

Not all domestic and care workers in private homes are migrants, but an increasing number of domestic workers in Europe are, and migrant domestic workers are working in different types of care and domestic work (childcare, elderly care, cleaning etc.), have different migrant statuses (regular /irregular, permanent / temporary) and different positions (full time/part time, live-out/live-in).

Many researchers have emphasised the increasing presence of migrant domestic and care workers in private homes in Europe. In many countries the tendency to relegate "care work to the private sphere or markets, has (...) led to the concentration of migrant women in low-wage, often exploitative jobs in the care industry' (Anthias 2000 in Timonena and Doyle 2010) and as Galotti states 'migrant women often de facto replace national women in their traditional care and domestic roles (substituting the decreasing institutional and family support). Yet, migrant women seem to be mostly excluded or marginalized from the European policy agendas on gender equality' (Galotti 2009:12).

A growing demand for domestic and care work

A growing demand for domestic help has led to rising feminization of migration into Europe – particularly into Italy, Spain and Greece. In a historical perspective, migrant domestic workers are not a new phenomenon in Europe. Nevertheless, researchers agree that the present migration of domestic helpers or workers has historically specific characteristics (Lutz 2008). The pattern of migration is from East to West, South and North Europe – and from the global South to the global North, meaning from Asia, South America and Africa into the EU countries. The migrant women are more well-educated than their predecessors; they are older

when they migrate, have attained a certain level of skills, they migrate alone – meaning that they leave a family in their home country (Lutz 2008).

Many socio-economic factors affect the domestic labour demand (Galotti 2009); an ageing population, changes in household structures towards an increase of single headed household and weakening of family and networks care capacity, an increasing female participation in the labour market, reconciliation of family-work responsibilities which can be realized through providing affordable public childcare, family friendly policies and/or outsourcing the gendered domestic and care work to another, often migrant woman.

Au pairing

Traditionally au pairing in Europe has been understood as a cultural exchange scheme for young women who stayed with a host family in another Western country to learn language and culture of a foreign country in 'protected' surroundings. However current au pair migration in Europe is part of the highly complex, highly gendered and heterogeneous labour market of domestic work. Au pairs, of whom the great majority are women, are situated in private homes with obligations to perform certain kinds of household chores and care giving work which are in most countries perceived as women's work and au pairs participate in a relationship with the host family in which they are remunerated for these activities.

Although au pair migration must be understood in a context of the general demand for paid domestic and care work in private homes, the case studies in this research also show that the concrete significance and practice of au pair migration differs considerably between the countries studied: Denmark, Germany, Ireland, the Netherlands; Poland and Spain.

An increasing share of women on the labour market

A general tendency in the EU within the past decades has been women's increasing labour market participation. As the EU Commission writes in the 2010 Equality report, 'The female employment rate increased 7.1 percentage points over the last decade and reached 59.1 % in 2008, which is close to the Lisbon target (60% in 2010)'⁷.

The following table shows the increase in employment rates between 2003 and 2008 among women in the countries selected in this study.

⁷ European Commission (2009): Report on equality between women and men 2010 p8. Directorate-General for Employment, Social Affairs and Equal Opportunities.

Table 1 Employment rates between 2003 and 2008

2003-2008	Employment rates women 2003	Employment rates women 2008
EU-27	54.9 %	59.1 %
Denmark	70.5 %	74.3 %
Germany	58.9 %	65.4 %
Ireland	55.7 %	60.2 %
Netherlands	55.7 %	71.1 %
Poland	46 %	52.4 %
Spain	46.3 %	54.9 %

Source: European Commission (2009): Report on equality between women and men 2010

The following table illustrates that female employment in some countries is linked very much to part time employment and that parenthood in some countries is very influential on women's labour market participation, whereas in other countries with high childcare coverage this influence is much less.

Table 2 Part time employment and significance of parenthood among women

2008	Share of part timers among female workers	Employment rates women aged 25-49 with children under 12	Employment rates women aged 25-49 without children
EU-27	31.1%	67.0%	78.5%
Denmark	36.5%	86%	85.8%
Germany	45.4%	68.9%	82.3%
Ireland	32.4%	61.2%	81.5%
Netherlands	75.3%	78.5%	84.6%
Poland	11.7%	68.0%	78.8%
Spain	22,7%	62.3%	72.9%

Source: European Commission: Report on equality between women and men 2010

In Denmark, parenthood does not seem to influence considerably general labour market participation whereas the difference between women with and without children in Ireland is remarkable.

However in general the position of women in the labour market is unequal to that of men. One of the significant factors is linked to gender division of housework and childcare facilities, 'The strong influence of parenthood on employment participation is linked to the traditional gender roles and the lack of childcare facilities' ⁸.

Access to formalized childcare

Access to affordable childcare services is one of the significant factors for women's participation on the labour market especially. Studies have shown a considerable difference among EU countries when hours spent in formal childcare arrangements are compared, which is also reflected among the countries in this study as shown in table 3.

⁸ Ibid p 9.

Table 3 Hours spent in formal childcare / other arrangements for age groups 0-2 and 3- school age in 2006

Country	Formal arrangements *) 0-2 years old	Other arrangements **) 0-2 years old	Formal arrangements *) 3 years to mandatory school age	Other arrangements **) 3 years to mandatory school age
Denmark	73 %	1%	96 %	0%
Germany	16 %	27 %	87 %	30 %
Ireland	18 %	36 %	93 %	34 %
Netherlands	45 %	56 %	89 %	52 %
Poland	2%	36 %	28 %	36 %
Spain	39 %	26 %	91 %	16 %

*) Education at pre-school, mandatory school, childcare outside school hours, at day-care centres.

**) Childcare by a professional child minder, by grand-parents, other relatives (than the parents), friends, neighbours.

Source: European Commission (EGGE)(2009): The provision of childcare services. A comparative review of 30 European countries.

As shown, Denmark is very high on formal childcare arrangements and practically absent regarding use of other arrangements for both age groups. Whereas only a small number of 0-2 year olds in countries like Poland, Germany and Ireland spend time in formal childcare arrangements. In Spain and the Netherlands the numbers suggest a relatively high involvement of either formal childcare services or other arrangements in taking care of the children. Except from Poland, 0-3 years olds in all countries spend time in formal childcare arrangements, which in some countries (the Netherlands, Ireland and Germany) do not exclude a relatively high percentage using other childcare arrangements.

The gender division of housework

Another factor which creates unequal conditions for labour market participation is the gender division of chores and care in private households. One of the studies (Voicu et al 2009) providing information about the time spent weekly on domestic work and the division between men and women in households showed that European countries differ considerably with respect to the sharing of household chores. Northern countries were the more egalitarian and the southern reflecting a more conservative gendered division.

Regarding the countries selected for our study, women spent on average 7.4 hours more than men per week on housework in Denmark; 14.7 hours more than men in Germany; 25.2 hours more than men in Ireland; 13.7 hours more than men in the Netherlands; 16 hours more than men in Poland and 20.4 hours more than men in Spain.⁹

⁹ Ibid. Data analysis based on European Social Survey data, carried out in 2004/2005, housework in this study was defined as cooking, washing, cleaning, shopping, the maintenance of property, but not including childcare*.

Another study (Knudsen and Wærness 2008) ¹⁰ showed the following division in average hours spent weekly on domestic work:

Table 4: Average hours spent weekly on domestic work

	Women's hours housework per week	Men's hours housework per week	Women's share	Total hours of housework
Denmark	12.90	7.03	66%	20
Germany	21.30	8.45	75%	30
Ireland	31.68	8.51	76%	40
Netherlands	17.74	5.71	74%	24
Poland	20.23	12.06	64%	32
Spain	29.38	7.21	78%	37

Source: Knudsen and Wærness (2008)

Depending upon their country of residence women perform between 10-30 hours per week on housework on top of their paid work. Men in contrast perform 7-12 hours a week, but the total number of hours spent on housework differs between the countries - from 20 hours in Denmark to 40 hours in Ireland. This incomplete revolution in the distribution of house work as well as the total number of hours needed add to the increasing demand for paid help in the home.

Paid domestic work in private homes

A general trend that has emerged in Europe in the past few years is a rising degree of market driven services in the social care area and a decline in public-sector provision of care. Subsidies or tax allowances have been introduced, for instance, for the employment of nannies and care helpers in private homes (Williams et al. 2008).

Special conditions

Although domestic and care work¹¹ may be said to be work in a labour market, domestic work cannot be equated with any other job. According to Lutz (2008:1), domestic and care work is not 'just another labour market'. Special conditions characterize the sphere of domestic work:

- The intimate character of the social sphere in which the work is carried out
- The social construction of household chores (and childcare) as 'women's work'
- The emotional and personal relationship between employee and employer, and a frequently high degree of mutual dependency
- The logic and character of the specific work that is performed (Lutz 2008).

¹⁰ The study was based on data from the International Social Survey Programme of 2002.

¹¹ At the policy level, there is no universally agreed definition internationally (Galotti 2009:1) and national legislations in the EU countries reflect different conceptualizations of domestic work. The ILO published a definition of domestic work in 1951, but no international regulations as yet operate from the perspective of a common definition.

High degree of informality/ undeclared jobs

The European Commission voiced concern over the general trend in the EU¹² towards rising possibilities to obtain or carry out undeclared work¹³, and this was in particular due to 'the increasing demand for domestic, child-minding and care services as a result of the socio-demographic changes, perhaps in combination with shorter working hours.'¹⁴

The findings also suggested that 'there is a big market for undeclared work throughout the European Union, particularly in the area of domestic services.'¹⁵

Workers often unorganised

Domestic workers and especially migrant domestic workers and those working in the informal sector are often not organised in trade unions and therefore not represented in the organised labour market. If they do organise it is often through NGOs and self-help initiatives organised around specific interests and an ethnic or linguistic community.

In general, trade unions' interest in migrant domestic workers, especially those working in irregular working status is a rather new phenomenon (Galotti 2009). However trade unions, especially in southern parts of Europe, have dedicated an increasing interest to the problems faced by female domestic workers.

A majority of migrants among domestic workers

Numbers and figures on domestic workers and their employment in Europe are highly unreliable.

The following table shows for the selected countries in this study the official statistical data from the ILO:

Table 5: ILO data on numbers of domestic workers

Spain:	752,000
Germany:	173,000
Poland:	18,000
Ireland:	8,600
The Netherlands:	4,000
Denmark:	No information available.

Source: ILO Laborstat 2008

Inadequate numbers and figures

The official data however is only an indication of the total number of domestic workers given that domestic work is characterised by a high degree of informality, of undeclared work and that a considerable number of domestic

¹² Special Eurobarometer 284, October 2007.

¹³ 'Undeclared work' means paid activities that are per se legal but not reported to public authorities,' COM(98)-219: Communication from the Commission on Undeclared Work.

¹⁴ COM (2007) 628 final: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. 'Stepping up the fight against undeclared work'.

¹⁵ Ibid.

workers in Europe is estimated to work without residence and/or work permit as undocumented migrants. Native and regular migrants working in undeclared jobs as well as irregular migrants working as domestic workers are hidden and difficult to count because of the nature of undeclared jobs and irregular residence. Estimates of numbers and figures are often more or less qualified 'guestimates'.

In Spain in particular, a large group of irregular migrants have been working as domestic and care workers, but the estimated number of irregular migrants has changed during the last 10 years due to occasional legalisation campaigns transforming irregular migrants into regular migrants (Climent, 2011). Furthermore, it is possible in Spain to become regularised on certain conditions which is more or less impossible in other EU countries.

Germany is estimated to have a considerable share of irregular migrants of whom many are working as domestic workers, whereas the guestimates for Denmark assume a small number of irregular migrants.

Au pair migration

Au pair migration can, in some cases, be seen as a solution to lack of childcare places, on general work-life imbalances and gender inequality in families. Immigration restrictions in many EU Member States currently exclude the possibility of legal labour immigration for domestic and care workers, which makes the au pair schemes one of very few options of legal immigration – and a precarious one too. The immigration status of the au pair is linked to the host family and the schemes are often characterised by a low remuneration, exclusion from labour protection, an obligation to live-in and a structural dependency of the employer/host family.

At the same time, the increasing use of the au pair schemes must be understood in the context of the current care squeeze¹⁶ where demands for care are increasing and the supply of care givers are decreasing. In other words insufficient and non-affordable child- and elderly care, increased pressure on the work-life balance and an unequal gender division of care and domestic work in private homes. The au pair has, in several EU countries, become a private solution to these problems. However, even in welfare states with extensive coverage of pre-school and after school care, for example Denmark, au pairs are increasingly being employed.

Au pair migration in academic research

With the rising academic interest in global care chains¹⁷ and migrant domestic workers during the past decade, au pair schemes have been discussed as variations of migrant domestic and care work, both generally, and in more detailed studies of specific au pair schemes (see for example Hochschild 2000; Anderson 2000, 2007; Cox 2003, 2007; Hess and Puckhaber 2004; Hess 2005; Newcombe 2004; Lutz 2002, 2008; Mellini et al. 2007; Morokvasic 2004; Datta et al. 2010; Platzer 2002, 2006; Hovdan 2005; Isaksen 2004); Birkova 2008;

¹⁶ Boje and Leira, 2000; Hochschild, 1995; Knijn and Kremer, 1997, Saraceno, 1997.

¹⁷ The concept of 'global care chain' describes the process when women migrate from the global South to the developed North as care and domestic household workers, leaving their own families behind to be taken care of by either paid or unpaid women.

Oosterbeek-Latoza 2007; Gavanas 2006; McDowell 2006; Williams and Gavanas 2008; Lister, Williams et al. 2007; Stenum 2008, 2010a,b). In Norway and Denmark, governments have requested studies on au pair schemes (Oien 2009, Mygind-Korsby 2010), while a recent study (Búrikova and Miller 2010) investigates specifically Slovak au pairs in the London area. According to several researchers, the au pair programmes are a widely used channel for recruitment of domestic labour, in Great Britain for instance (Anderson 2000, 2006, 2009, Cox and Narula 2002, Newcombe 2004, Cox 2007).

Au pair research can be seen as looking into a part of the domestic work's field, with all its complexities, with the field of research in domestic and care work often divided between different perspectives and not as such comparable. Research into migrant domestic and care work and especially undocumented migrant domestic work is developing but still a minor research field, as research in the phenomenon of undocumented migrant domestic work in Europe is limited.

1. INTERNATIONAL REGULATION OF AU PAIR MIGRATION

KEY FINDINGS

- The Council of Europe's 1969 European Agreement on Au Pair Placement cannot be characterized as a strong mechanism for the international regulation of au pair migration: Only two of the countries in this study (Denmark and Spain) have ratified the agreement and only six, (now reduced to five as Luxemburg revoked it in 2002) European countries have ratified the agreement.
- In 1984, the EU Commission recommended the ratification of the Agreement on au pair placement, and stated that: 'Persons placed au pair constitute a special category which has features of both the worker and student categories. It is therefore appropriate to adopt special provisions in their regard'. The EU has no specific regulation on au pair migration.
- The question of including au pairs as domestic workers has been discussed during the ILO campaign on 'Decent Work for Domestic Workers' and the process of negotiating a convention and/or a recommendation on domestic work. The topic of au pairs is not included in the final text of the recent ILO Convention on Domestic Workers adopted in June 2011. International NGOs representing domestic workers have generally not included the topic of au pairs in the ILO process and international campaigns to improve conditions for domestic workers.
- During the last decade, au pair agencies in Europe have increasingly organised themselves in international and national associations on the basis of the European Agreement on au pair placement. They have focussed their lobbying activities on

1.1. International regulation of au pair migration: Council of Europe, EU and ILO

International regulation of au pair migration to Europe has been an issue and/or discussed in the Council of Europe, the European Union and the International Labour Organisation. In 1969, the Council of Europe adopted an Agreement on Au Pair Placement and in 1984 the European Commission recommended EU Member States to ratify the au pair agreement. In the current process of negotiating a new ILO convention on decent domestic work, the question of au pairs has been discussed.

International organisations have provided different perspectives concerning the question about a need for international regulation of au pair migration. The International Domestic Workers' Network (IDWN) and Respect Network Europe represent domestic workers, of whom many are migrants, and have been very active in the ILO process. The International Au Pair Association (IAPA) that represents organisations and agencies offering au pair placement lobbies to strengthen the significance of the European Agreement and to open more EU countries to third country au pairs.

1.1.1. Council of Europe: European Agreement on 'au pair' Placement (1969) and Recommendation (2004)¹⁸

The European Agreement on 'au pair' Placement, drawn up by the Council of Europe was opened for signature by the Member States of the Council of Europe 24 November 1969 and entered into force after three ratifications 30 May 1971.

The motivations that are given for establishing this agreement are the rise in international travelling among young people and the changing nature of the au pair concept towards one that is seen as an 'uncontrolled development of such temporary migration', for example:

'..A problem of ever-increasing magnitude, as the number of young persons going abroad to improve their knowledge of languages has risen constantly since the end of the second world war.'

'Arranged in the past on a friendly basis between families known to each other, or through mutual acquaintances, it has now become a unique social phenomenon because of the frequency and large number of persons involved. It is now by tens of thousands that the candidates travel throughout Europe and it is quite obvious that the uncontrolled development of such temporary migration cannot be allowed to continue if only in the interests of the parties concerned.'¹⁹

An additional aim of the agreement regarded 'the need to give persons placed 'au pair' adequate social protection inspired by the principles laid down in the European Social Charter' as stated in the agreement itself.

However only six Member States of the Council of Europe have ratified the agreement, namely:

¹⁸ Council of Europe: European Agreement on 'au pair' Placement, Strasbourg, 24.XI.1969.

¹⁹ Council of Europe: European Agreement on 'au pair' Placement, Strasbourg, 24.XI.1969. Explanatory report.

Denmark: 30 May 1971
France: 30 May 1971
Italy: 9 December 1973
Luxemburg: 25 August 1990
Norway: 30 May 1971
Spain: 12 September 1988

Luxemburg has revoked the ratification in 2002.

Belgium, Bulgaria, Finland, Germany, Greece, Moldova and Switzerland have signed the agreement, but have not ratified.

Of the countries covered in this study, Denmark and Spain have ratified the Au Pair Agreement and Germany has signed but not ratified.

The Agreement defines 'au pair' as neither student nor worker and the au pair stay as a temporary live-in arrangement;

'..persons placed 'au pair' belong neither to the student category nor to the worker category but to a special category which has features of both, and that therefore it is useful to make appropriate arrangements for them'.

'Au pair' placement is the temporary reception by families, in exchange for certain services, of young foreigners who come to improve their linguistic and possibly professional knowledge as well as their general culture by acquiring a better knowledge of the country where they are received.'

The agreement also obliges the contracting states to report to the Council of Europe²⁰ on the implementation of the agreement.

However, given that the agreement has not been very successful (only five (originally six) countries ratified and for some (for example Sweden) the rejection of ratification was substantiated in their assessment of a low level of protection), cooperation and evaluation among contracting Member States seemed to have faded away. According to the Council of Europe, the contracting Member States have not been requested information on the implementation of the Agreement as of 1998.

However, in 2004, the Committee on Equal Opportunities for Women and Men of the Council of Europe reported on instances of abuse, noting that 'au pairs are not meant to work as replacement housekeepers or nannies, but some of them end up being exploited in this way or, even worse, violently treated or sexually abused. ... Cases [have] included a girl from Romania who committed suicide after having been forced to work like a slave for €1 a day, a Russian girl forced to sleep on a mattress in the attic, and a Slovakian girl left with huge debts after having been hospitalized without health insurance'.²¹

²⁰ European Committee for Social Cohesion (CDCS) is the committee responsible for the functioning and the implementation of the European Agreement on Au Pair Placement.

²¹ Council of Europe: Committee on Equal Opportunities for Women and Men: Domestic slavery: servitude, au pairs and mail-order brides. Report. Doc. 10144. 19 April 2004.

In 2004 the Parliamentary Assembly in the Council of Europe adopted a recommendation²² to the Committee of Ministers on 'Domestic slavery: servitude, au pairs and mail-order brides' which underlined the common precariousness of the groups addressed, based on difficulties of extracting themselves from their situation in cases of exploitation and abuse. Au pairs are here understood as potential victims of domestic servitude: 'Today's slaves are predominantly female and usually work in private households, starting out as migrant domestic workers, au pairs or 'mail-order brides'.²³ The recommendation also calls for a drafting of a charter of rights for domestic workers; the right of migrants to immigration status independent of any employer; and the right of recognition of qualifications, training and experience obtained in the host country.

The Parliamentary Assembly recommended the following concerning au pairs:

- issue guidelines (...) which would ensure that the distinctive status of au pairs (neither students nor workers) is recognized and safeguarded, their working conditions and social cover are fixed and that the au pair industry is appropriately regulated at national and international level;
- recommend government regulation of the au pair placement industry, through the creation of a system of accreditation by virtue of which agencies that commit themselves to certain minimum standards – such as charging reasonable fees, ensuring au pairs enter into a legally binding contract with their employers which clearly states' rights, responsibilities and duties and providing emergency help in cases of difficulty – would see visa applications put forward on their behalf validated automatically. Accredited agencies should also be committed to doing background checks on both the prospective au pair and the prospective host family to ensure that they do not have criminal convictions, for example for sexual or child abuse;
- ensure regular monitoring by appropriate authorities of the agencies accredited under the 'accreditation' system'.

The recommendation is very much in line with the strategy of the IAPA – the International Au Pair Association²⁴, and in the reply from the Committee of Ministers²⁵ it is also referred that European Committee for Social Cohesion (CDCS) as the committee responsible for the functioning and the implementation of the European Agreement on Au Pair Placement has discussed the future of au pair regulation with both representatives from the IAPA and from governments:

The European Agreement on Au Pair Placement dates from 1969. It contains provisions – now obsolete – on the relations between the host family and the au pair. In view of the small number of ratifications (five Member States), the CDCS

²² Council of Europe , Parliamentary Assembly : Recommendation 1663 (2004) 'Domestic slavery: servitude, au pairs and mail-order brides': <http://assembly.coe.int/Documents/AdoptedText/TA04/EREC1663.htm>

²³ Ibid.

²⁴ See the paragraph on IAPA below.

²⁵ Council of Europe: Parliamentary Assembly: Doc. 10399, 17 January 2005, Domestic slavery: servitude, au pairs and 'mail-order brides' Recommendation 1663 (2004) Reply from the Committee of Ministers adopted at the 911th meeting of the Ministers' Deputies (12 January 2005).

began by considering whether it would be worth revising and updating the Agreement. The replies to the questionnaires it sent to all the members showed that this question excited little political interest and that very few states would ratify the Agreement even if it were altered.

The CDCS then held a meeting between field workers (members of the International Au Pair Association (IAPA)) and government representatives working on quality standards intended to regulate and monitor au pair placements. After a broad discussion, most CDCS members still felt that, although such guidelines were useful, this was not a priority question for the CDCS, and there was no urgent need to revise the European Agreement on Au Pair Placement.

The CDCS will, however, bear in mind the recommendations of the Parliamentary Assembly of the Council of Europe, and will be ready, if required, to resume discussion of a revision of the Agreement if the states so request.'

Thus the committee responsible for the au pair agreement did not recommend a revision of the agreement. In its reply of 17 January 2005 the Committee of Ministers expressed its indignation over the phenomena addressed in the Recommendation and on the question of au pairs referred that the Committee of Ministers shared the views of the CDCS.

1.1.2. EU and au pair regulation

The EU Commission recommended in 1984 the ratification of the Council of Europe Agreement on au pair placement²⁶.

The EU Commission argues on the basis of supporting and improving 'international understanding through the acquisition of knowledge of other languages and cultures.'

Furthermore the Commission has stated s that the 'considerable differences between Community Member States as regards the degree of protection afforded to persons using the au pair placement system' should be abolished through an 'alignment of national measures in respect of persons placed au pair [that] would improve the living and working conditions, education and reception of such persons, thus putting into effect the general aims of the Treaty to promote close cooperation between Member States in the social field.'

The EU Commission defines an au pair as being both worker and student', instead of the emphasis in the text of the Agreement as 'neither worker, nor student', but still as a special category:

'Persons placed au pair constitute a special category which has features of both the worker and student categories. It is therefore appropriate to adopt special provisions in their regard.'

²⁶ COMMISSION RECOMMENDATION of 20 December 1984 concerning a European Agreement on au pair placement sponsored by the Council of Europe (85/64/EEC).

A study commissioned by the European Commission in 2007²⁷ on 'EU quality standards in support of the fight against trafficking in human beings and sexual exploitation of children' describes au pairs as potential victims of trafficking and exploitation and characterizes au pairing as a precarious situation, not least as a result of au pair placements through the internet. The study recommends the establishment of a code of conduct for au pair agencies that should protect the au pair compared to the situation then today.

In 2010, the European Commission, Directorate General Justice, Freedom and Security initiated an impact assessment study on au pairs and possible amendments to Directive 2004/114²⁸. The purpose of the study was to identify the nature and scale of problems related to third country nationals coming to the EU as au pairs, to determine whether EU action is required to facilitate the mobility and entry of au pairs and prevent abuses of au pair schemes. Secondly, the aim was to analyse the transposition and implementation into national legislation of Directive 2004/114 on 'the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service' to determine if amendments to the Directive are necessary. In the event that amendments are deemed necessary, the possibility of including au pairs within the scope of this instrument would also be assessed. The studies have not yet been published.

EU citizens employed as au pairs or for that matter domestic workers are according to EU law mobile EU workers with the protection and entitlements granted to EU citizens working in another EU Member State. This implies that the element of work in the au pair placement is already regulated through EU law as an employee-employer relationship.

The legal position of the EU au pair in the sense of an EU citizen using (his) her free mobility to work as an au pair in another EU Member State is linked to the EU concept of worker and work.²⁹ According to the EU Treaty Article 49 '1, Freedom of movement for workers shall be secured within the Union' and '2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.'³⁰

The concepts of worker and employment, remuneration and other conditions of employment are EU concepts which are defined by EU law and not national law. Although the concept of 'worker' in certain directives can be seen as narrow as in the 1989 Framework Directive on Health and Safety (Council Directive 89/391 EEC), which defines 'worker' as 'any person employed by an employer, including trainees and apprentices but excluding domestic servants' (Article 3(a)).

²⁷ Vermeulen, Gert (2007): EU quality standards in support of the fight against trafficking in human beings and sexual exploitation of children. Antwerp. Maklu.

²⁸ COUNCIL DIRECTIVE 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375 of 23 December 2004, p.12.

²⁹ Nielsen, Ruth and Roseberry, Lynn (2008): Dansk Arbejdsret: (legal textbook on labour law) Jurist- og Økonomforbundets Forlag. Legal experts on EU and industrial relations in Denmark have been consulted on the interpretation (Ph.D and attorney Pia Justesen and Associate Professor Lynn Roseberry, Copenhagen Business School.

³⁰ CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (30.3.2010 Official Journal of the European Union C 83/49).

The European Court has determined a broad concept of worker, covering all persons engaged in economic activities and not only persons with a contract. According to verdicts of the European Court³¹ three conditions must be met to fulfill as worker³²:

- The worker must work for someone else
- The worker must be subjected to someone else's authority of instruction
- The work is remunerated

These three conditions seem to be met in the case of a EU au pair working in the EU and are also the basis for defining and registering her (him) as a legal EU resident. In practice, an employment relationship is defined as a total duration of more than one month and and/or a working week exceeding eight hours.³³

The EU pair has thus to be considered as being covered by EU directives regulating industrial relations and the protection of the EU worker such as:

- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation³⁴
- Council Directive 2003/88/EC concerning certain aspects of the organizing of working time³⁵
- Council Directive 96/34/EC on the framework on parental leave³⁶
- Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship³⁷.
- Council 89/391/EC on the introduction of measures to encourage improvements in the safety and health of workers at work³⁸.

The last mentioned Directive however as mentioned earlier excludes 'domestic servants' from workers covered, thus dependent on whether an au pair is defined as domestic servant or not the au pair is included or excluded from the Directive.

The exclusion of domestic workers from labour law has been a general concern of the ILO. However it has not been addressed by the new convention on domestic workers of June 2011.

³¹ Case 53/81 Levin 1982 and case 66/85 Lawrie-Blum 1986 (Nielsen og Roseberry(2008:269)

³² Nielsen and Roseberry(2008: 270).

³³ Council Directive 99/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

³⁴ COUNCIL DIRECTIVE 2000/78/EC, establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2 December 2000, p. 16;

³⁵ DIRECTIVE 2003/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning certain aspects of the organisation of working time, OJ L 299 of 18 November 2003, p. 9.

³⁶ Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 145 of 19 June 1996, p. 4.

³⁷ Council Directive 91/533/EEC on an employers obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288 of 18 October 1991, p. 32.

³⁸ Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183 of 29 June 1989, p. 1.

1.1.3. ILO – Decent work for Domestic Workers

Within the ILO, the first discussion with a view to elaborating the new instruments on decent work for domestic workers took place at the 99th Session (2010) of the International Labour Conference. In June 2011, the International Labour Conference at its 100th Session adopted a historic set of international standards integrated into a Convention supplemented by a Recommendation on domestic workers.

In the initial report (2009)³⁹, the issue of au pairing was given explicit attention as a question of excluding or including au pairs as domestic workers, 'Given the abuses that can occur against young people working 'au pair', the ILO's constituents may wish to consider 'au pairs' as both workers and young people on a cultural exchange, and to regulate their working conditions appropriately' (Ibid).⁴⁰

In the current ILO process, the question of whether au pairs should be excluded or included seems to attract limited attention seen from the reports⁴¹. However, of interest to this study the government of the Netherlands has explicitly opposed including au pairs based on the following argument:

'...the instrument shall not apply to employees of a company (intermediary). Au pairs working as child minders in a private household (in the Netherlands they work up to 30 hours a week, with free board and lodging and some pocket money), who are employed primarily as part of a cultural exchange should not be covered by all the protection provided under the draft instrument. It is arguable whether workers performing household work just a few half-days per week should be afforded the same protection as regular domestic workers.'⁴²

It should be mentioned that the governments of Italy and Portugal have also explicitly opposed including au pairs in the Convention / recommendation.

The Irish trade unions (ITUC) have explicitly called for the inclusion of au pairs: ICTU (Ireland). 'The Convention should apply to domestic workers regardless of their immigration status. It should also explicitly apply to non-diplomatic locally recruited staff and au pairs performing domestic work on an occupational basis.'⁴³. Also the Norwegian Confederation of Trade Unions has called for an inclusion.

The ILO report⁴⁴ summarizes the positions on au pairs as follows:

Some comments identify as priorities for the ILO instrument(s) issues such as health and safety, social security, the need for awareness-raising campaigns against abuse and the need for strong legal safeguards. In this regard, two respondents stress the need to include domestic workers in pre-existing regulatory structures and to adapt standards to suit conditions in the household

³⁹ ILO (2009): Report IV(1). Decent work for domestic workers.

⁴⁰ The ILO report referred to the statements from the Council of Europe in 2004/2005.

⁴¹ (2010) Report IV(2A) Decent Work for domestic workers; ILO (2011) Report IV(2A) Decent Work for domestic workers, ILO 2011 Report IV(2B) Decent work for domestic workers.

⁴² (2010) Report IV(2A) Decent Work for domestic workers p 62.

⁴³ ILO (2011) Report IV(2A) Decent Work for domestic workers, p.21.

⁴⁴ Ibid.

or particular categories of domestic workers, such as au pairs and babysitters.' (Ibid p. 387)

'Some respondents expressly mention particular groups of workers that need to be included in a standard, for example workers working outside the household but performing the same tasks as they would in the household (for example in hospitals), housewives, undocumented migrants and au pairs.' (Ibid p. 414)

In the ILO Convention as adopted in June 2011⁴⁵, the definitions of domestic work and domestic workers are as follows:

- a) the term 'domestic work' means work performed in or for a household or households;
- b) the term "domestic worker" means any person engaged in domestic work within
- c) an employment relationship;
- d) A person who performs domestic work only occasionally or sporadically and not as a means of earning a living is not a domestic worker⁴⁶.

Based on this definition the non EU au pair who has a residence permit in an EU Member State as au pair but not a work permit seems not to be included from the term 'domestic worker'.

The European Parliament and the ILO convention

In May 2011, the European Parliament adopted a motion for a resolution 'on the proposed ILO convention supplemented by a recommendation on domestic workers',⁴⁷ that supports the rights-based approach to employment promoted in the draft text of the convention and considers that 'the adoption, ratification and implementation of such a convention would address the needs of one of the most vulnerable categories of worker'.

The resolution emphasized the link between access to child- and elderly care and the possibility of formalise and regulate this field as a field of decent, well-paid and sustainable jobs.

The resolution also supports the definition of domestic worker set out in the convention, which seems to exclude au pairs.

⁴⁵ The ILO Domestic Workers Convention was adopted 16th June 2011 after the text of this report was finalised: <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁴⁶ ILO 2011 Report IV(2B) Decent work for domestic workers.

⁴⁷ European Parliament resolution of 12 May 2011 on the proposed ILO convention supplemented by a recommendation on domestic workers.

1.1.4. International organisations

The International Au Pair Association, ECAPS and the Au Pair Agreement

The International Au Pair Association (IAPA)⁴⁸ was established in 1994 out of organisations and agencies working in the field of au pair placement. It presents itself as 'The global trade association for the au pair community' with the objective, among others, to 'protect the interests of au pairs and host families through the Association's Internationally recognised Codes of Conduct and Guidelines; lobby governments to treat au pair programmes as cultural exchange programmes; increase public awareness to the need of reputable and established au pair agencies and promoting the formation of national au pair organization'. As a 'trade association' IAPA emphasizes the interest in functioning as what they call a 'self-regulating industry' on the market for au pair placement.

National au pair associations in Europe, which most often include commercial au pair agencies, have furthermore organized the 'European Committee for Au Pair Standards' in 2005⁴⁹ to promote an ethical code and guidelines on the basis of the European Agreement on Au Pair Placement.

The European Agreement on Au Pair Placement is considered by the Committee for Au-pair Standards as a framework for the activities of au pair agencies, and guidelines for the practice of the au pair agencies are added: An agency must be located in an office which is a minimum of a secure room used primarily for the purpose of au pair business; the agency can be contacted during regular working hours at least 10 hours per week; agencies must have an emergency telephone number available 24/7; agencies must provide information on rules and procedures on au pairing; screen host families and au pairs; provide support service to both au pair and host family; ensure insurances are in place; have a replacement policy; be member of a national au pair association.⁵⁰

For the IAPA it is important that an au pair is not defined as a worker and that the activities taking place at the host family is not defined as work.

It is also important for the association that more European countries open for entry of third country nationals as au pairs in order to expand the idea of au pairing and the market for au pair placement.

NGO responses

The International Domestic Workers Network (IDWN) presents itself as 'an initiative of domestic workers' unions together with support organisations. The objectives of the network are: to assist in the organisation of domestic workers' unions where they do not yet exist; to serve as a clearing house for the exchange of information; to organise mutual support and solidarity; to advance common

⁴⁸ The International Au Pair Association (IAPA) was established in 1994 and is a sector member of the World Youth Student and Educational Travel Confederation (WYSE). The IAPA is according to their web site represented in 45 countries with more than 170 member organisations. Members include organisations engaged in sending and/or receiving au pairs, organisations offering services to au pair programmes and national au pair associations (www.iapa.org).

⁴⁹ European Committee for Au Pair Standards' (ECAPS): www.ecapsweb.eu. National au pair associations cover Spain, Austria, Germany, United Kingdom, The Netherlands, Latvia and France. Both the IAPA and the national au pair associations are organized as "self-regulating" industries.

political aims (international standards, national legislation); to represent domestic workers at international level; and to secure the support of the wider labour movement for each of these objectives' ⁵¹

Asked in this study about the issue of au pairs, the representative from the International Domestic Workers Network (IDWN) referred from discussions in the ILO workers' group that the stands on au pair are that they agree with the employers and governments that the definition should not include 'au pairs'. Au pairs should not be considered as workers. 'In fact, we think that 'au pairs' should not 'work'. It is a very special scheme and our approach is that what is happening to au pairs is a violation of this scheme.'

At the same time, the informant from IDWN emphasized that they have not looked into details with regard to au pairs, partly because it seemed to them on a global scale to be a marginal problem and a very European one.

The Respect Network ⁵² presents itself as 'a European network of migrant domestic workers' self-organization, trade unions, NGOs and supporters that campaign for the rights of all Migrant Domestic Workers in private households, both women and men, regardless of immigration status'.

The Respect Network works as an NGO with the rights of domestic workers at the European level and has also in this study been asked on their position on au pairs and the Network has formulated a recommendation on the issue of au pair in Europe.

In the statement it is emphasized, that it is the 'experience of the RESPECT Network that the 'au pair' system is increasingly misused as a way of ensuring that families have access to low cost domestic labour, to fill in the huge demands for domestic workers that is not met by a national or European working force' and that au pair schemes 'place young persons in situations that are extremely vulnerable to abuse and exploitation. Au pairs from the global South are employed for domestic work such as cleaning, baby sitting, cooking, doing shopping, etc., without the protection of their labour right or their basic human rights.'

But as they state, 'Au pairs who perform domestic work are workers - they are not au pairs - and they need to be recognized as such, in labour laws and in immigration laws.' And as domestic workers, not as an abused au pair, the domestic worker should be protected by rights and regulations as any other worker.

Specifically they recommend;

- The European governments to recognize/accept the results of all the research done over the last years showing clearly the need for domestic workers in private households and address the consequence of it;

⁵⁰ <http://www.ecapsweb.eu/definitions5.htm>.

⁵¹ <http://en.domesticworkerrights.org>.

⁵² <http://www.respectnetworkeu.org/>.

- The governments and policy makers to recognize the significant difference between migrant domestic workers and au pairs;
- The governments to issue 'domestic workers'- visa to migrant workers working in the private households in the European countries, that guarantees and protect the labour rights and basic rights of such workers just like any other national worker;
- The governments to recognise and implement the ILO conventions that protect the labour and fundamental rights of any workers including migrants who are working in a private household;
- The governments to endorse the upcoming ILO Convention Decent Work for Domestic Workers.

International NGO's representing domestic workers thus have generally not included au pairs in the ILO process and international campaigns to improve conditions for domestic workers, given an au pair in their opinion should not perform domestic work.

2. AU PAIR AND THE PHILIPPINES

• KEY FINDINGS

- The Philippines has a long tradition of managed labour emigration, and Philippine labour migrants are working all over the world, many of whom are women working as domestic workers. The Philippines has a special position regarding au pair migration to Europe. The Philippines issued in 1998 a ban on au pair migration to Europe to protect Filipinos against abuse as domestic labour and instead encouraged European countries to negotiate bilateral agreements on migrant domestic workers programmes.
- However since 1998 Filipinos have in some European countries been among the major nationalities of 3rd country au pairs.
- EU countries did respond differently to the Philippine ban on emigration; some rejected Filipinos as au pairs because of the ban (for instance Sweden) and others (in this study Denmark, Germany and The Netherlands) continued accepting au pair immigration from the Philippines. The Filipino au pairs thus migrated as illegal emigrants excluded from rights and entitlements in the Philippine 'labour exporting' system.
- In 2010 Denmark agreed with the Philippines on a bilateral au pair agreement implying a new system similar in many respects to the organisation of domestic workers programmes from the Philippines.
- Philippine au pair migration to Europe is now a mixed picture; some countries do not allow Filipinos to enter as au pairs; some allow Filipinos to enter as au pairs on the basis of a bilateral agreement with the Philippines; and some European countries allow Filipinos to enter as au pairs in spite of the Philippine ban and as

2.1. Au pair migration and the Philippines

The Philippines has more than 25 years of comprehensive migration management.⁵³ The country has systematically been exporting labour to North America, the Middle East, Europe and Southeast Asia. In 2001, Filipinos abroad sent home more than six billion dollars via formal channels, equivalent to 8.4% of the Philippines GDP.⁵⁴ In 2005, remittances increased 25% over 2004, to more than 10 billion dollars⁵⁵ and in 2010 more than 20 billion dollars were remitted.⁵⁶ Census data from 2000 showed that more than 800,000 households in the Philippines, equivalent to 5.2% of all households, had at least one family member who migrated abroad to work⁵⁷. Between 1979-2009, more than 30 million Filipinos left the Philippines as labour migrants, most of them being women.⁵⁸

The Philippines has a special history and practice concerning au pair migration to Europe. In the 1990s an increasing number of Filipinos were going to Europe – especially to the Netherlands and Scandinavia – as au pairs.

2.1.1. Philippine ban on au pair migration

In 1998, the Philippine government enacted a ban on the employment of Filipino migrant workers under the so-called au pair program in Europe. The media had reported on cases in Europe of exploitation, working excessive hours, abuse, discrimination and prostitution. The Philippine government reacted so as to prevent Filipino youth from migrating as au pairs.

The ban was issued by the Philippine Embassy in The Hague. The reported cases of abuse apparently took place in The Netherlands and other European countries 'in particular Scandinavia' (Anderson 2000).

The Philippine Embassy reported that 'the concomitant irregularities and complaints have come about, such as under-compensation, excessive hours, over-work, culture shock, etc. There have been reported cases of abuse, discrimination, runaways and even prostitution' (ibid.:24).

The Philippines Embassy in the Netherlands stated in 1999 that 'the au pair, as far as Filipinos are concerned, has been understood to mean domestic helper – not cultural exchange visitor as originally envisaged by the 1969 agreement' (Anderson 2000: 25).

The Philippines government announced that the ban could be lifted if the European countries would negotiate bilateral agreements on migrant domestic worker's programmes instead of au pair migration.

The responses to the ban from European countries were different. Some countries accepted the Philippine ban (for example Sweden and Switzerland) and stopped issuing visa to enter the countries as au pairs and others (for

⁵³ Stenum(2010a).

⁵⁴ O'Neil 2004.

⁵⁵ POEA: 2005.

⁵⁶ The World Bank (2011): Outlook for Remittance Flows 2011-13. Migration and Development Brief 16. Migration and Remittances Unit.

⁵⁷ Parrenas 2001, Yamanka and Piper 2005, Oishi 2005.

⁵⁸ IOM:2009.

example Denmark, the Netherlands, Germany, Belgium and Norway) continued to issue au pair visa and the number of au pair migrants increased considerably after the ban was established.

The effect of the ban for Filipinos going to Europe on an au pair visa

To exit the Philippines with an au pair visa for Europe⁵⁹, the au pair will have to pay bribe. The corruption is highly organised and only a few exit without paying this bribe. Often the au pair will have to borrow the money to pay the bribe and she will therefore start her career as an au pair indebted.

The implications for Filipinos who choose to migrate as au pairs to Europe are that they are not covered by the administrative umbrella of the POEA (Philippines Overseas Employment Administration).

Such illegal emigrants cannot formally appeal to their embassies abroad in case of abuse without risking being placed on the list of workers banned from migration via POEA. If they overstay or for other reasons are deported from Europe to the Philippines, they risk facing difficulties in obtaining new travel documents by the Philippine authorities.

The effect of the ban for those still wanting to travel to Europe on an au pair visa was (and still is for some) first and foremost that the au pairs have to travel to Europe as illegal emigrants. They can apply for an au pair visa to those European countries allowing Filipino au pair migration despite the ban, but when they are approved as au pairs, they cannot leave the country legally as au pairs, which in practice gives them the choice of either paying a well organised bribe to make the airport officials look the other way or travelling via Singapore (which does not require visa from Filipino citizens).

According to previous studies (Stenum 2008, 2010a, b), the majority of the au pairs coming to Denmark (and Norway) before the ban was lifted (see paragraph below), paid a bribe to leave the Philippines without the authorisation of the POEA (Philippines Overseas Employment Administration). Leaving without authorisation and membership of the OWWA (Overseas Workers Welfare Agency) furthermore prevented them from eligibility to certain rights and they often strongly felt that they did wrongly and could not expect any help from the Philippine embassies, given their position as illegal emigrants (Stenum 2008, 2010a,b).

2.1.2. 2010: Lifting the au pair ban for some European countries.

In 2010 the ban on au pair migration to Europe was lifted for three European countries: Switzerland, Norway and Denmark, in that order. A bilateral agreement was signed between the Philippines and each of these three countries. According to these bilateral agreements, Filipinos leaving as au pairs are now included in the labour emigration system of the Philippines organised by POEA.

For the au pairs, this means in general that in order to get their 'exit

⁵⁹ Since 2010 excluded Switzerland, Norway and Denmark – described in the following.

clearance' from the Philippines, they are required to attend a one day pre-departure-orientation seminar organised by OWWA, to pay a member fee to OWWA which gives them some rights to pension and the possibility to contact OWWA when they are abroad and in need of assistance. They are also required to attend a medical examination in order to get a health certificate.

For the European countries which have not negotiated a bilateral agreement with the Philippines, the ban is still effective, and the Filipino au pairs have to emigrate as illegal emigrants, paying a bribe at the airport. According to informants from the Department of Foreign Affairs in the Netherlands negotiations are going on between the Philippines and the Dutch authorities on a bilateral agreement on au pair migration.

NGOs and Civil Society Organisations in the Philippines

NGOs and CSOs have been rather active on the issue of both domestic work within the Philippines and migrant Filipino domestic workers outside the Philippines.

Many female Filipinas go abroad to work as domestic workers. Given that the great majority of domestic workers are women, gender issues related to women (especially around mothers leaving their children behind) have played a significant role the public debate in the Philippines.

Filipino NGOs/CSOs were very active in organising the NGO/CSO sessions at the Global Forum on Migration in Manila in 2008 and they are participating in international – regional or global - discussions and advocacy to support their views on what need to be done to improve the situation and conditions for migrant domestic workers.

The issue of au pairs going to Europe was in all the interviews conducted in the frame of this study in the Philippines with government officials, researchers or NGOs/CSOs, closely related to issues concerning migrant domestic workers. Au pairs were widely perceived as a kind of domestic workers. Going to Europe as an au pair was, in the interviews, often compared with migrating as domestic worker to the Middle East. The latter was many respects seen as risky, dangerous and hard.

2.1.3. Bilateral agreements

The three bilateral agreements having been agreed upon so far differ, and although Switzerland and Norway are not part of the target group of this study we have chosen briefly to describe the bilateral agreements. Firstly because it is a new phenomenon in regulating au pair migration, and secondly because it shows two different models of managed migration; one based on what in the Philippines is called 'agency hire', putting an employment agency at the center of labour migration regulations and the other 'name hire', which puts the employment relation between the migrant (employee) and the employer (in the receiving country) at the center of regulation.

Despite differences some elements are common in the three Agreements:

- The au pairs must attend a Pre-Departure-Orientation seminar and undergo a medical examination
- The host families shall cover all travel costs
- The au pair is responsible for all costs related to documentation necessary for her file (passport, birth certificate, medical examination etc.).

Version Switzerland – agency hire

60

Prior to this agreement Switzerland did not allow Filipinos to enter the country as au pairs.

Switzerland was the first country to negotiate an agreement with the Philippines in January 2010. Regulation of recruitment and deployment of au pairs is central in this agreement. Au pair placement is only possible through a licensed agency and other kinds of au pair placement (organising the contract privately etc.) is 'strictly prohibited since au pairs can be recruited only through entities authorized by Swiss Federal Office.' According to Swiss embassy in Manila 50-60 au pair visa were issued from March 2010 to December 2010.

The Agreement is defined in 'Guidelines on the recruitment and deployment of Filipino au pairs to Switzerland'. The guidelines regulate the activities organised between au pairs, host families and 'principals' (defined as 'foreign person, partnership or corporation hiring Filipino au pairs through a licensed Philippine recruitment agency').

The elements in the Agreement are first and foremost a system of licensing Swiss agencies by both Swiss and Philippine authorities, and the administrative procedures to facilitate and control this authorisation.

The requirements of the agency to qualify for the license are: visit the home of Swiss employer prior to hiring an au pair, conduct follow-up visits to host families, give orientation to employer on Philippine culture prior to arrival of the au pair; only recruit au pairs from the Philippines, not third countries; 24 hours hot-line; meet the au pair upon arrival; orientate the au pair and bring her to the employer; assist in case of dispute; assist the employer to secure the appropriate residence permits; ensure free airfare to and from the Philippines; no fee from the au pair; ensure that the au pair contract is followed in accordance to Swiss regulations; ensure that the au pair attend language school; maintain database on au pairs and employers; ensure the psychological and moral fitness of the employers; provide Philippine agencies with information including picture of the employer solely for documentation purposes; not accept any fee from its Philippine agency; provide counseling to the au pair.

The guidelines furthermore include a range of administrative procedures to

facilitate, authorize and sanction agencies.

So far, only one agency has been licensed. The agency in question apparently has been involved in activities concerning the establishment of the Agreement. The requirements concerning licensing listed above could be a specific 'working mode' of one agency which has now become as standard. However the list could serve as inspiration for establishing recommendations for other bilateral agreements. In particular, the part of assessment of the employer / host family and the home visits and follow up visits could ensure more transparency of the home as both a workplace and a temporary home of the au pair.

Other regulations stated in the Agreement are:

- Requirements to be considered as an au pair: being single, 18-25 years old, must be at least high school graduate and certified to have attended the OWWA Pre-Departure-Orientation Seminar (PDOS) for au pairs.
- Requirements regarding the contract involve specification of: names, monthly allowance, duration of contract; regular working hours; regular schooling hours with allowance for public transport; regular days off; free airfare to the Philippines; workers custody of her passport; responsibilities of the au pair and the employer; food and accommodation; insurance coverage – health and accident; vacation and sick leave; termination of contract; dispute settlement.
- Fees: Employer shall cover all expenses related to hiring an au pair (visa fees, airfare, POEA processing fee OWWA membership; training if required by employer. The au pair is responsible for the cost of passport, NBI clearance (criminal record), birth certificate, medical examination, Phil-health insurance and similar documentation costs.

Version Norway and Denmark- Name hire⁶¹

Norway

The bilateral agreement between Norway and the Philippines was the next agreement to be adopted on au pairs from the Philippines, published in a circular from POEA the 24. May 2010; 'Guidelines and the selection and deployment of Filipino au pairs to Norway'.

In this agreement the au pair is defined as a 'young Filipino between 18 and 30 years of age, unmarried and without any children, placed under a cultural exchange arrangement with a Norwegian host family for a maximum stay of two years for the purpose of immersion in cultural and language training.

⁶⁰ The Philippine labour emigration system distinguishes between agency hire (labour emigration involving agencies as intermediaries between employee and employer) and name hire (labour emigration on the basis of an individual contract between the employee and employer).

⁶¹ The Philippine labour emigration system distinguishes between agency hire (labour emigration involving agencies as intermediaries between employee and employer) and name hire (labour emigration on the basis of an individual contract between the employee and employer).

During this immersion the au pair is enrolled in a school to learn the Norwegian language, shall live with the host family at par (au pair) or on an equal basis with the immediate members of the host family, shall be given pocket money, share in child care, light household chores and responsibilities previously agreed upon in an au pair placement contract between the au pair and the host family'.

These provisions more or less reflect the Norwegian au pair regulations. Compared to Switzerland, Norway, prior to this agreement, allowed Filipinos to enter Norway as au pairs.

The administrative procedures outlined in this agreement differ from the Swiss agreement in a number of ways. In this agreement au pairs are to be administered by the POEA as 'name hire' – that is on the basis of individual contracts between the au pair and the host family and not through an agency. However there are also a number of similarities with both the Swiss agreement and the general system of processing exit clearance for domestic workers.

- The au pairs must attend a Pre-Departure-Orientation seminar and
- Undergo a medical examination ('valid fit to work medical examination result') before being the clearance can be approved.
- The Norwegian host family shall cover all travel costs specified as; cost of the visa; POEA processing fee (100\$) OWWA membership contribution (25\$) and airfare.
- The au pair is responsible for cost of passport, NBI clearance, birth certificate, medical examination, Phil-Health insurance and other documentation costs (it is furthermore mentioned that the au pair due to the exit clearance from POEA is exempted from travel tax (PHP 600) and airport terminal fee (PHP 750).

The last paragraph concerns the obligation of the host family to cover the cost of repatriation of the au pair in case of death or serious illness/injuries while staying as au pair in Norway.

Denmark

The bilateral agreement between Denmark and the Philippines was published the 6. October 2010, under the headline, 'Guidelines on the selection and deployment of Filipino au pairs to Denmark'.

The agreement is more or less a duplicate of the Norwegian agreement, but a paragraph of 'settlements of disputes' has been added:

'Should a breach of the contract occur and in case counseling and mediation is not sufficient, the au pair may lodge a case in Danish courts. Depending on the dispute the au pair may request the assistance from the Danish Refugee Council to help mediate with the host family through its Au Pair Support. The Danish Refugee Council is a private humanitarian organisation.'

Comparing the two versions of bilateral agreements shows that more measures to protect the au pair and impose obligations on the employer are put forward in the Swiss agreement and the provisions are more similar to the protective measures suggested by the Philippine government related to domestic workers programmes, but in an adjusted 'au pair-version'.

In all cases, the bilateral agreement gives the au pair a legalisation of emigration, and extended services from the POEA/OWWA. The travel costs are explicitly defined as the responsibility of the host family.

The provision on the employer's duty to cover the expenses of repatriation in case of serious illness, injuries or death is known in the POEA provisions for domestic workers in other countries (for instance Hong Kong) and might be related to specific cases in Denmark about disputes about repatriation of an au pair killed in an traffic accident (Stenum 2008) and of an au pair who died from cancer.

The Pre-Departure-Orientation-Seminar

One of the extended services given to a pairs going to Switzerland, Norway and Denmark now is the attendance in a Pre-departure-orientation-seminar (PDOS).

The arrangement of the PDOS for au pairs is still in its initial stages. It is organized as a one day seminar in Manila at the Overseas Workers Welfare Agency (OWWA) for au pairs going to Switzerland, Norway and Denmark and the participants are at the end of the day given a certificate as 'Informed Overseas Worker', which is necessary in order for the au pair to leave the Philippines as a legal au pair migrant.

The thematic structure of the course attended the 8. February 2011, which was one of the first offered to au pairs, was as follows:

- Migration in general and labour migration specifically
- Country specific information
- Health
- OWWA – Overseas Workers Welfare Agency
- Social security
- 'Financial literacy'
- Travel and airport tips

The seminar is obviously a mixture of standard labour migrant information and country specific information.⁶²

Rights are clearly an issue at the seminar, but much time is also spent on obligations to the family and the Philippine nation, the host family and the

⁶² The day I observed the seminar approx. 30-35 au pairs attended. Almost all of them were going to Denmark and a smaller group going to Norway and Switzerland. It was an almost all female group and most of the attendees were leaving the Philippines for the first time. A couple of the future au pairs however had been to Denmark and were now heading for Norway.

host country, possible threats while travelling and staying abroad, challenges of adjustment and implicit expectations to stay out of trouble (including sexual relationships), refrain from complaints and endure difficult situations and period of times during their stay abroad.

2.2. Au pair migration from the Philippines nowadays: division between legal and illegal emigration, and between allowing entry or not allowing entry of Filipino au pairs

Now the legal situation for au-pairs differs in Europe can be categorised into three different kinds:

Not allowing entry

The ban on Filipino au pairs going to Europe is still effective for European countries without bilateral agreement with the Philippines. Some European countries (for example Sweden) that generally allow third country nationals to enter as au pairs, still consider the Philippine's ban as an immigration ban.

Legal exit – allowing entry

Given the bilateral agreements between the Philippines and Switzerland, Norway and Denmark, au pair migration to these countries is now legal and regulated according to the above description.

One of the immediate effects of these changes has been the increasing disappearance of the (unofficial /informal) bribe previously necessary for au pairs going to Norway and Denmark without exit clearance from the POEA. Since the ban was lifted the Norwegian/Danish Embassy in Manila has not received complaints about au pairs not being allowed to leave without paying the bribe, and according to newly arrived au pairs in Denmark the information on new rules has been passed on, to a certain degree, to the airport officials.

Even though the Philippine government officials and NGOs/CSOs see the legalisation of the au pair migration as a strengthening of the au pair position in general, the NGOs do not see it as a sufficient protection of the au pairs. According to them, even if the situation of au pairs in Europe is better than the domestic workers in the Middle East (common comparison), Filipino au pairs essentially face the same basic precariousness than all the other Filipino migrant live-in domestic and care workers.

Allowing entry in Europe – illegal exit from the Philippines

Some European countries allow entry of Filipino au pairs despite the ban and without bilateral agreement, among them two of EU Member States selected for this study: the Netherlands and Germany.

Given that the Netherlands, like Norway and Denmark has had a considerably Filipino au pair migration, and that Germany also allows Filipino au pairs to enter, the situation for Filipinos going to the Netherlands and Germany is still one of illegal emigration, opening up the opportunity/necessity of paying bribe

to leave the Philippines and producing vulnerability for the au pairs staying there as illegal emigrants.

However negotiations are presently going on between the POEA and the Dutch Department of Foreign Affairs on a bilateral agreement on au pair migration.

3. CASE STUDIES: AU PAIRS IN DENMARK, GERMANY, IRELAND, THE NETHERLANDS, POLAND AND SPAIN

KEY FINDINGS

The findings in this chapter show different patterns of au pair migration in the selected EU countries and radically different situations of au pairing. In some Member States, like Poland, the au pair phenomena seems limited, whereas in other EU countries such as Denmark, the Netherlands and Germany au pair migration is a larger phenomenon predominantly characterised by temporary immigration from outside the EU. In between these poles are Ireland and Spain which do not allow immigration from outside the EU, but where EU citizens are being placed as au pairs with host families.

- **Differences between EU and non EU au pairs**
A dividing line runs between au pairs coming from EU Member States and au pairs coming from non-EU countries, especially from less affluent parts of the world. Of the countries examined in this study three countries do not allow third country nationals to immigrate as au pairs (Ireland, Spain and Poland) and three countries allow third country nationals to enter as au pairs (Denmark, Germany and the Netherlands).
- **EU au pairs as mobile workers**
According to EU law, EU citizens employed as au pairs are mobile workers with the protection and entitlements granted to EU citizens working in another EU Member State. However information on these broad EU employment rights does not seem to be common knowledge among au pair agencies and au pairs. A general concern expressed by some informants is that an unaccounted number of EU citizens from the less wealthy countries in the EU work as au pairs having poor working conditions and not being treated as workers with rights.
- **Non EU au pairs in precarious situations**
Germany, Denmark and the Netherlands allow third country nationals to enter as au pairs.
In these three countries, non EU au pairs are subjected to immigration rules that imply that:
 - Their residence permit is tied to a specific host family (In the Netherland this dependency will shift to an agency according to the coming implementation of the new Modern Migration Act)
 - They must stay as "live-in" in a private home.

- Their residence permit is not a work permit.

These three conditions of residence as a young third country national in the EU form a risk of abuse. Coming from outside the EU, an au pair is excluded from protection as an employee, is dependant for her residence solely on the host family or an agency, and through the live-in obligation she stays in an in-between of a work place and a private home. In cases of abuse and exploitation experience shows that it is difficult for the au pair to change and improve her situation because her residence permit is closely tied to the employer and not tied to her as an independent individual.

- **Philippine au pairs as illegal emigrants**

Au pair migration from the Philippines to countries which has no bilateral agreement with the Philippines is covered by a Philippine ban. This ban increases au pairs precariousness in these countries (Germany and the Netherlands in this study).

- **Variation in rules**

The nature of the specific immigration regulation varies between the three countries that allow third country nationals in as au pairs. Denmark closely regulates the status of the au pair (age, civil status, children, pre-migration history, family related to the host family, educational level or labour market experience, number of prior placements) and increasingly adds more selection mechanisms. Germany focuses on language skills as a primary selection mechanism and the Netherlands will transfer responsibility and control of the au pair and the host family to private au pair agencies.

In Germany, the host family must consist of a minimum of one child under 18 years, whereas elderly retired couples in Denmark or just a couple in the Netherlands can employ an au pair, which expands the definition of host families and draws au pairing even closer to the context of domestic and care work in private homes.

Ireland and Spain link a version of au pairing to secondary employment for students and casual work for working holiday youth, but do not administer specific rules for EU au pairs.

- **Numbers and figures uncertain**

Compared to the overall numbers of domestic workers in the EU, the number of au pairs is still small. However the actual number of persons employed as au pairs is not clear because EU au pairs are not registered and because the concept of au pair is also used in various irregular forms of employment. Furthermore, some au pairs overstay their au pair visa and continue, typically, to work as irregular domestic workers, but given the nature of irregular residence the number of overstayers is not clear. However the number of registered non EU au pairs has increased in Denmark and the Netherlands, whereas it has decreased in Germany after the introduction of the German language skills requirement.

Numbers and figures regarding domestic work and domestic workers are in general subjected to a large degree of uncertainty.

- **The au pair as one solution among others to answer the domestic help demand**

In all the countries included in this study (as discussed in the Introduction chapter) the employment rate of women has increased during the past decade and the division of household chores in families has remained uneven (Esping-Andersen, 2009; Voicu, Voicu and Strapcova, 2009), although the total number of hours spent on household chores varies considerably among the six countries. Furthermore, the supply of childcare facilities varies among the six countries and in many countries the tendency to 'relegating care work to the private sphere or markets, has (...) led to the concentration of migrant women in low-wage, often exploitative jobs in the care industry' (Anthias 2000).

These conditions have contributed to an increasing demand for domestic and care work in private homes and the employment of an au pair can be seen as one solution among others in the labour market of domestic and care work.

As the study shows, au pair employment has to be regarded within this context and complexity. In Spain with a large supply and traditions of employing regular or irregular migrants as domestic and care workers, the pressure on au pairs as domestic workers seems less than in other countries. In Germany, an au pair can be regarded as a legal solution to childcare compared to employing an irregular migrant. In Denmark, which has a high degree of childcare and the high employment rates of women, an au pair is most likely seen as a solution to the stressful everyday life of two full time working parents who need domestic help for tasks such as cleaning, washing and cooking more than childcare. A straightforward link between, for instance, high female labour participation and the numbers of au pairs cannot be established, but seeing the au pair as one of the solutions or one of the types of domestic and care workers in many EU Member States can clarify both the general position of the au pair and the specific conditions created in a specific national context.

- **Different strategies to protect the au pairs**

Working alone in a private home is a situation of potential vulnerability and dependency and this goes for au pairs as well. Different strategies to protect au pairs exist. The European Agreement on Au Pair Placement is one. Other strategies are ethical codes of conduct for the intermediaries and the families as well as the establishment of hotlines and shelters for the au-pairs. In Germany an ethical code of conduct has been established to regulate and control the intermediaries of au pair placement. In Denmark grants have been given to NGOs working with counselling, sheltering and supporting the au pairs and in Ireland a Code of Practice for Protecting Persons Employed in Other People's Homes establishes certain protection criteria.

- **The need for hotlines, shelters and NGO support**

In the Netherlands, the immigration authorities have run a hotline for au pairs since 2004 and in Germany and Denmark NGOs are responsible for hotline services. It is however difficult to evaluate the effect, the character

and amount of calls to the hotlines. In Spain and Ireland agencies offer hotline support and in all countries with au pairs voluntary networks and individuals offer assistance to au pairs in problematic situations. None of the countries in this study offers shelters for run away or dismissed au pairs, but sheltering is sometimes organised through personal networks or through replacement by an agency.

Economic grants for civil society activities in support of the au pairs seem to be limited with the exception of Denmark. But NGOs in Denmark, the Netherlands, Germany and Ireland have expressed concern for the situation of non EU au pairs in particular.

- **Variance in number of intermediaries**

The use of agencies varies in the countries covered here as well as the numbers and divisions between commercial and non-commercial agencies. In Denmark agencies are most often one person intermediaries operating as a more or less informal placement agent, whereas most placements seem to take place through personal networks among both au pairs and host families and through websites. In Germany many agencies have emerged (an estimate puts the number at 360) and among them both small agents and large companies offer au pairs along with other domestic and care services. In the Netherlands, the significance of the agencies will be strengthened through the new obligation to use an agency. In Ireland au pair placement agencies seem to be emerging, but on a relatively small scale. In Spain, au pair placement through agencies is often linked to language and cultural studies, and in Poland au pair agencies are primarily preoccupied with outbound placement of Poles as au pairs.

In general, the field of agencies within the EU is complex, containing very different types of agencies, approaches and business strategies including what kind of service is offered (placement, hotline, visits in the homes of host families, training, screening, testing etc.) and at what price (do both parties pay fees or only one of them, the size of the fee, discount in case of more placements, replacement fee etc.). It goes beyond the limits of this study to report tendencies at this level.

- **Initiatives to regulate intermediaries as a business**

In Germany it has been found valuable to establish independent and reliable mechanisms of accreditation according to ethical standards specifying the relationship between the au pair and the agency, and between the agency and the host family.

Control over the agencies based on transparent and ethical codes of conduct can improve the credibility of the accreditation system and increase the chance of detecting and excluding abusive agencies.

3.1. Au pairs in Denmark

Summary

In 2010, 2,649 residence permits were granted to au pairs of whom 80% were Filipinos.

As a Nordic 'woman friendly' welfare state (Hernes, 1987), Denmark is characterised by a high proportion of full time female participation on the labour market, a very high supply of public childcare, and access to childcare being defined as a social right. Paid domestic work in private homes is mostly organised as part time cleaning jobs and live-in domestic workers have been an unknown phenomenon since the 1970s. Despite parental leave and political gender equality discourses, gender gaps on the labour market and gendered divisions of domestic and care work in families are common. Immigration restrictions aimed at third country nationals have, during the last decade, increased considerably and migrant domestic workers programmes do not exist. A relatively small but estimated to be increasing number of undocumented migrants and migrant workers live in Denmark.

Denmark has experienced an increase in the number of au pairs coming from non-EU countries and often from less wealthy parts of the world. Since 2004, the Philippines have been the major sending country and the Filipino au pairs have until 2010 migrated in spite of the Philippine ban on au pair migration to Europe. In 2010, Denmark agreed with the Philippines on a bilateral agreement on au pair migration to Denmark. There seems also to be a number of au pairs coming from the EU, who are not registered as au pairs. Au pair placements are first and foremost taking place through private/personal networks or through the internet. No major agency exists in Denmark.

The au pair scheme in Denmark is primarily organised as an immigration regulation, based on the European Agreement on Au Pair Placement ratified in 1971, and during the last decade supplemented several times with new rules. Au pair regulation in Denmark is characterized by a lot of rules and procedures of control especially of the au pair and of the stay. Furthermore sanctions against host families in cases of abuse have been introduced.

Mechanisms of controlling enforcement of the legal provisions are primarily based on random checks (through interviews with au pairs) conducted by the Immigration Service, exit control conducted by the police and follow ups on reports of abuse and the violation of rules. Sanctions regarding the irregular use of the au pair scheme concerning the au pair are fine, prison and deportation and, regarding the host family, fines, prison and blacklisting. The random checks do not seem to reveal any abuse, which may result from the fact that the au pair will lose her residence permit if the agreement is terminated by the host family, and termination may often be a consequence of complaining to the authorities.

No structural access for making complaints other than civil law is possible for au pairs.

A few cases of abuse have been taken to court and three host families have been blacklisted by the authorities since 2007.

Private initiatives established to protect au pairs and to enforce their rights have since 2007 primarily been organised in the so-called 'Au pair Network' established as a cooperation between one trade union (FOA), the Filipino community NGOs, churches, a language school and individuals, who have been volunteering support and counselling services for the au pairs and advocating and lobbying to improve the situation of the au pairs. In 2009, the government granted the NGO Danish Refugee Council funding to open a counselling service. In 2010 funding was granted to the Au Pair Network (KIT and FOA) for support activities.

Best practice in Denmark related to protection of the rights of au pairs and preventing abuse is primarily identified by the governmental funding of NGOs supporting au pairs and the successful and focussed cooperation between NGOs and civil society organisations. This has positively contributed to the improvement of the situation of the au pairs, although it has not fundamentally changed the precarious situation. But it has contributed to raising awareness of abusive situations and the position of an au pair as a vulnerable migrant, and it has strengthened practical support and provisional shelter facilities.

3.1.1. Context of welfare, gender and migration

In Denmark childcare services form an essential part of social policy. The provision of childcare services is rather extensive and the number in Denmark of children being taken care of in formal arrangements is very high (for example 73 % of all children between 0-2 years are in formal childcare arrangements).⁶³ All municipalities have to offer a childcare guarantee when the child is six months old and most formal childcare services are used for 30 hours or more. A typical Danish day-care unit has opening hours ranging from 6.30 a.m. to 5.00 p.m. from Monday to Thursday and to 4.30 p.m. on Friday. This corresponds to traditional working hours in the trades, industries and offices.⁶⁴

Home-based child minders and family/friends play a limited role in the childcare arrangements for children in Denmark.⁶⁵ In fact there is a tendency to see childcare as much as an offer to the children in their development as democratic citizens, as an offer to the parents to have their children cared for while they are working.⁶⁶

Gender equality, while often labelled a 'Danish value', especially when linked to immigration issues, is often, in the political discourse, in which it is assumed to be a reality in Denmark. Men with immigrant backgrounds are frequently singled out as one of the few problems left to be dealt with in the area of gender equality and respect for women's rights.⁶⁷ However, research studies and the

⁶³ European Commission's Expert Group on Gender and Employment Issues (EGGE) 2009.

⁶⁴ European Commission's Expert Group on Gender and Employment Issues (EGGE) 2009.

⁶⁵ The state subsidises child minders in private homes to take care of children under three years as an alternative to public day care, but child minders are not supposed to perform domestic work. However, in May 2011 the government suggested a tax deduction of maximum DKK 15,000 (EUR 7,000) for paying domestic workers and tradespersons.

⁶⁶ European Commission's Expert Group on Gender and Employment Issues (EGGE) 2009.

⁶⁷ The Minister for Gender Equality (2007). Annual Report (2006) / Perspective and Action Plan for (2007). The section on actions regarding 'Employment, participation and equal opportunities' suggests several initiatives towards changing attitudes within the ethnic minority group. Responding to criticism repeatedly from the EU Commission for not meeting the requirements in the EU equality directive, the Danish Minister for Equality, Inger Støjberg, stated in 2009 that: 'Yes, by and large I think we have gender equality in Denmark, but there is one area lagging enormously behind, and that concerns immigrant women.'⁶⁷

Government's own White Paper on gender equality (SFI 2004) both conclude that gender equality has not been yet achieved in Denmark.⁶⁸

Furthermore, the Danish labour market is heavily divided along gender lines. Denmark is ranked 8th on the World Economic Forum's Gender Gap Index 2007 (World Economic Forum 2007), well behind the other Nordic countries (Sweden, Norway, Finland and Iceland ranked, respectively, 1st, 2nd, third, and 4th). In 2009 and 2010 Denmark ranked 7th.⁶⁹ Time spent on domestic work has increased. Hence, in 1987, 281 minutes per day were spent on domestic work with women accounting for 65% of this time. By 2001, the amount of daily domestic work had increased to 356 minutes, with women carrying out 59% of this work (SFI 2002:53).

Another study by the Danish Social Research Institute (SFI) (Deding et al. 2006) showed that in almost half of families with children 44% of the women and 39 % of the men find their daily life stressful and in eight of ten families, both parents have a job.⁷⁰

Although, during the 1997-2006 period, the Danish labour market developed in the direction of being less gender segregated than earlier (Emerek & Holt 2008), gender segregation, both horizontal and vertical, is still manifest, being reflected in social constructions and expectations that affect both paid work on the labour market and unpaid work in private households (Deding & Lausten 2008, Bloksgaard 2008). The gender division of labour on the labour market is closely connected to the division of labour within the household. Men still spend more time on wage work in the labour market, and women still spend more time on unpaid work in the household than men (Deding & Lausten 2008).

In Denmark labour immigration from non-EU countries has mainly been limited to highly skilled professionals. Other forms of non-EU immigration such as family reunification and asylum have been restricted considerably during the last decade in parallel to restrictions on regulations concerning permanent residence permits and citizenship.

Domestic worker labour immigration has never existed in Denmark in the form of a special programme. Au pair and trainee immigration (often as trainees from Ukraine working on Danish farms) are currently the only two options on the labour market for non-EU low skilled immigration.

⁶⁸ Examples: The difference between male and female salaries is 12-19%; in 2005, 80-82% of top executives in public administration were men (Minister for Equal Opportunity 2007). Until end 2009, Denmark had been one of the few EU countries without an institutionalized monitoring of gender equality.

⁶⁹ The Global Gender Gap Report's index assesses 134 countries on how well they divide resources and opportunities amongst male and female populations, regardless of the overall levels of these resources. The report measures the size of the gender inequality gap in four areas:

1) Economic participation and opportunity – outcomes on salaries, participation levels and access to high-skilled employment. 2) Educational attainment – outcomes on access to basic and higher level education 3) Health and survival – outcomes on life expectancy and sex ratio. 4) Political empowerment – outcomes on representation in decision-making:

structures <http://www.weforum.org/>.

⁷⁰ Rasmussen and Nielsen: Familie- og Arbejdslivskommissionen: Chance for Balance – Et Fælles Ansvar. Hovedrapport, May, 2007.

The report 'Au Pairs in Denmark: Cheap Labour or Cultural Exchange'⁷¹ (2008) was the first study on au pairs published in Denmark and based on a qualitative study on the experiences of 24 au pairs, six host families and eight key informants interviewed in the period of October 2007 and June 2008. The report concluded:

'That the au pair programme in Denmark today should work first and foremost as a cultural exchange programme is a social construction which it is increasingly difficult to sustain. This study supports the assumption that, to a dominant degree, the purpose of practising the au pair arrangement today is not the cultural exchange. (...)

The au pairs in Denmark are often here in a role as sole supporters or co-supporters of a family and they come here because the au pair programme is an opportunity (though a restricted one) to work and earn money.

The host families who take in an au pair will often give the reason that 'a helping hand' in the home will make it possible for both parents to balance work and family life. The families mention that an au pair in the home means less stress in their daily life, fewer matrimonial rows over the household chores, more flexibility in relation to bringing and fetching children and having sick children and it means greater security in the children's daily life, etc'⁷².

3.1.2. Au pair regulation

In 1971 Denmark ratified The Council of Europe's 1969 'European Agreement on 'au pair' Placement'.

In Denmark immigration regulations⁷³ allow nationals from non EU/EEA countries to enter on a specific au pair visa/residence permit. EU nationals working as au pairs are covered by EU regulations on free mobility and do not need a residence permit to work in a private home, but will have to register with the authorities.⁷⁴

Au pair placement in Denmark is primarily organised through personal networks and/or through the internet, using au pair web-sites such as www.ung-i-huset.dk or www.aupair-world.net where au pairs and host families post their profiles. Intermediaries work in Denmark but most often as one person businesses. There is no official regulation on how au pair placement should be performed and no mechanism to control or monitor agencies.

The requirements for being an au pair are:

- All nationalities can be au pairs according to visa regulations. The age must be between 17-29 years.
- The au pair must not be married ('may not be married, have been married in the past, or currently be living with a partner')⁷⁵ and s/he is not allowed to have children.

⁷¹ Stenum (2008).

⁷² Ibid p 58.

⁷³ The Aliens Act; The Danish Integration Ministry (2010; 2011).

⁷⁴ See chapter 1 on international regulation of au pair migration.

⁷⁵ THE WEBSITE OF THE MINISTRY FOR REFUGEE, IMMIGRATION AND INTEGRATION AFFAIRS: NEW TO DENMARK. DK - WWW.NYIDANMARK.DK.

- The au pair must have completed the equivalent of nine (eight) years of schooling. However if the applicant has completed further education and worked for several years may result in a rejection of application.
- The au pair must have knowledge of either Danish, Swedish, Norwegian, English or German.
- Must not previously have had two or more au pair stays in other Western countries and must not previously have held a Danish residence permit.
- Family relations between the au pair and the host family are not allowed and the au pair must not have the nationality as the au pair.
- The au pair must not previously have stayed in Denmark for more than one year as an au pair with different host families.

The requirements of the host family are as follows:

- The host family must include at least one parent and one child under the age of 18 living at home.⁷⁶
- If the parents are not living at the same address both families have to meet the requirements for being a host family.⁷⁷
- At least one parent must be a Danish citizen, except for EU citizens living in Denmark or for long term third country nationals.
- The family must not receive public assistance as the primary means of support under the terms of the Active Social Policy Act.
- The host family must not have been given a penalty period as a result of previous abuse of the au pair scheme. All adult members of the host family must declare that they have not been convicted of violence or similar against an au pair in the last ten years, and that they have not been convicted of illegal employment or similar of an au pair in the last five years. The host family declares this by signing a statement in the application form. Furthermore, the host family may not have been registered by the Immigration Service on a special 'Au pair register' as a result of other abuse of the au pair scheme (e.g. disregarding the limitations regarding an au pair's tasks and duties, maximum work hours, accommodation, and minimum allowance).
- The host family and the au pair must not be related.

The au pair residence with the host family is regulated as follows:

- A written contract is obligatory, and the au pair contract cannot be changed to the disadvantage of the au pair without the written consent of the Immigration Service.
- Change of host families is possible within the first 12 months of the maximum of 18 months stay⁷⁸.
- It is not allowed for more than one au pair to stay at one host family.
- The host family must make sure that the au pair is registered as a resident at their address with the Danish Civil Registration System and that s/he is

⁷⁶ After the research in this study was completed the rules were changed 20. May 2011 extending the group of host families to include; divorced parent with one 'part time' child and married senior citizens who are well. (The Danish Integration Ministry 2011).

⁷⁷ After the research in this study was completed the rules were changed 20. May 2011 extending the group of host families to include; divorced parent with one 'part time' child and married senior citizens who are well. . (The Danish Integration Ministry 2011).

⁷⁸ As the above-mentioned note, the duration of the au pair stay was extended to 24 months.

covered by the Danish National Health Insurance and unregistered again when s/he leaves the country.

Furthermore the host family is responsible for three types of insurance covering the au pair: insurance for work-related injuries, insurance covering leisure time and accidents, and insurance covering the costs of returning the au pair to his/her homeland in case of death or serious illness or accident.

The definition of the position and tasks of the au pair is formulated thus: 'You should assume a role as a member of the family. This means that you should contribute to the household by carrying out chores related to the family's daily housekeeping, such as babysitting, cleaning and washing clothes.'⁷⁹

The au pair must be given a monthly allowance of DKK 3,050 (€ 400), minimum, as well as free food and lodging. The allowance is taxable.

Working hours are from three to five hours per day, six days per week, i.e. 18 to 30 hours per week.

Living-in is obligatory.

The au pair must have her own bedroom in the family's home. In addition, the host family must also have a common living room, as well as one bedroom for every two people registered at the residence.

In families with a single parent, the parent must have his/her own bedroom which cannot be shared with a child. If the host family's building is occupied by several families, there may only be two members of the same family per bedroom. Both the common living room and all bedrooms must be approved for living in.

The au pair is entitled to one full day off every week, and is covered by the 'Vacation Act'⁸⁰, which guarantees the au pair five weeks' paid holiday annually and the reception of a holiday supplement of 1 per cent of the pay.

The au pair is entitled to 'sufficient time off to follow language courses and pursue cultural and professional interests, including participation in religious events.'⁸¹

The host family is obliged to pay for the home trip if the au pair is a resident of a country outside Europe and if the au pair changes host family, the new host family assumes the responsibilities relating to the payment of the trip home.

It is the responsibility of the family to provide the au pair with free food and lodging as well as appropriate care would s/he fall ill.

⁷⁹ (ibid).

⁸⁰ The Ministry of Integration: 'As the relationship between you and your host family is regarded as an employer/employee relationship, it is subject to Danish regulations covering the right to holiday and holiday pay.' http://www.nyidanmark.dk/en-us/coming_to_dk/au_pairs/au_pairs.htm and The Danish Pensions Agency(2008): <http://uk.penst.dk/en/English/Publications/~media/PST/Files/UdenlandskeFiler/Engelsk/Publicationns/aupairqbjuli2008pdf.ashx>.

⁸¹ (ibid).

Termination of the contract can be effected with a two weeks' notice both ways.

Control of abuse of the au pair scheme

State funds are given to various NGOs to support of au pairs (hot line, information etc), but there is no formal access to a public authority for complaints.

Violation of regulations, for example regarding part time employment outside the host family, or more than 30 hours of work per week, can lead to sanctions according to the Aliens Act. For the au pair this can imply fines, prison up to one year⁸² and deportation. For the host family this can imply fines, prison up to two years⁸³ and blacklisting for future au pair contracts. If a host family is listed on the register they will be excluded from employing a third country au pair for a period of two years if the Immigration Service has investigated and decided that the host family violated rules regarding working hours and type of work performed by the au pair; the paid pocket money being below minimum or the failure to offer the au pair a room of her own. The host family will be blacklisted for a period of five years if it is convicted of illegal employment of a person staying as an au pair and ten years if the family is sentenced to a term of imprisonment for more violations related au pairs. By the end of this research (May 2011), three host families had been black listed since the register was established in 2007.

Random checks (through interviews with au pairs) are conducted by the Immigration Service, exit controls are conducted by the police and both authorities follow up on reports of abuse and violation of immigration rules. The random checks do not seem to reveal any abuse, which may result from the fact that the au pair will lose her residence permit if her employment is terminated by the host family. Termination may be the consequence of reporting violation of rules to the authorities.

The coverage by some of the labour laws is unclear given the position of the au pair being considered employee in some respect (insurance of work-related injuries, must pay tax⁸⁴, covered by the Vacation Act) and not in other.

⁸² The Aliens Act §59 subsection 2 on illegal employment.

⁸³ The Aliens Act §59 subsection 4 on illegal employment.

⁸⁴ The au pair must pay tax on both pocket money and the value of free room.

In practice her tax will be the social security tax of 8% = DKK 2,880 (EUR 386).

A calculation of her hourly pay will always be a fiction because the conditions of being an au pair are quite different from a normal employee on the labour market. But one calculation could be a summation of the minimum rate of pocket money of DKK 3,000 (EUR 402) per month, DKK 36,000 (EUR 4,828) per year plus the value of free board and lodging. According to the tax authorities (Bekendtgørelse om værdiansættelse af fri kost og logi gældende for 2010) this amounts to: 34,665 (EUR 4,649). Based on both the pocket money and the value of free board and lodging and a working week of 30 hours the hourly salary would be DKK 49 (EUR 6.50).

The hourly pay for regular domestic workers in Denmark according to collective labour market agreements with the trade union FOA is DKK 116 (EUR 15.50).

3.1.3. Statistics

Residence permits to non EU/EEA au pairs have increased in the last decade as shown in table 6.

Table 6 : Denmark : Au pair residence permits 2004-2010

Nationality	2004	2005	2006	2007	2008	2009	2010
The Philippines	475	569	955	1.510	2.163	2.165	2.140
Ukraine	198	191	170	105	104	84	87
Russia	82	87	79	80	75	53	40
Brazil	34	43	41	49	57	38	-
Thailand	23	23	39	34	40	38	39
Other	688	558	509	429	498	395	343
Total	1,500	1,471	1,793	2,207	2,937	2,773	2,649

Source: The Ministry of Refugee, Immigration and Integration Affairs and The Danish Immigration Service⁸⁵

More especially the shares of Philippines nationals among the au pairs increased considerably:

Table 7: The share of au pairs from the Philippines

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Au pair-															
Filipino				21	45	83	157	246	490	612	979	9	3	5	
All au pairs	318	438	478	528	865	8	56	3	00	1	93	5	39	3	
Filipino %				4	5	8	14	20	33	42	55	68	73	78	

Source: The Ministry of Refugee, Immigration and Integration Affairs and The Danish Immigration Service⁸⁶

Only au pairs with a visa/residence permit are statistically visible, au pairs from other EU countries are not.

Au pairs who are EU nationals need to apply for an EU residence document and register at the 'Statsforvaltningen' ('State Administration'), if the stay in Denmark will last more than three months. When the registration certificate is received, the au pair can obtain a civil registration number (CPR number) and a health security certificate. Citizens of Finland, Iceland, Norway or Sweden do not need to apply for a registration certificate.

At the 'Statsforvaltningen' an EU au pair will be registered as an employee, but the kind of employment will not be registered and thus 'au pair' is not a statistical category.

According to NGOs the number of overstaying au pairs is increasing. Some stay to work typically as domestic workers in private homes or small businesses and some leave Denmark to work as undocumented workers in other European

⁸⁵ Tal og Fakta 2006 - 2010. We cannot explain differences between sums of nationality groups and the total number.

⁸⁶ Variations in numbers between table 1 and 2 may have resulted from various administrative corrections.

countries. Third country nationals, who overstay their residence permits as au pairs and continue staying in Denmark as undocumented migrants are in the nature of things not recorded statistically. Very few estimates have been made of the population of undocumented migrants. One study suggested that there were 1-5,000 undocumented migrants of overstaying tourist, student and au pair visa ⁸⁷.

3.1.4. Stakeholders in the au pair field

Media and politicians

The public discussion on au pairing in Denmark has been divided between a perspective of seeing the au pair placement as a win-win situation or as seeing the au pair situation as one of cheap labour.

During the period between March 2007 and April 2008, 'the au pair' and 'having an au pair' was promoted by several (female) ministers and the Mayor of Copenhagen as a political and private solution to problems of gender inequality.

In a much debated newspaper interview in March 2007,⁸⁸ the Danish Minister of Family Affairs, Carina Christensen, commented on au pairs in relation to the position of Danish women in families:

"There are too many expectations of families these days. Many have the image of the perfect mother, who bakes bread rolls and always attends to everything. Why isn't it OK to hire an au pair? (...) You could pay for some cleaning help. It should be OK to have an au pair".

The interview promoted the overall message that women in Denmark should raise three children because the current reproduction rate of 1.8 was too low. The interview started a huge public discussion in the media and among politicians, but it took the form of a criticism of the state ordering people to reproduce at a specific rate. There were no comments about the au pair proposals made in the interview.

In November 2007, a critical TV programme⁸⁹ was sent on national TV showing Filipino au pairs being exploited and harassed by Danish host families. This created much attention and was followed up in newspapers and led to an investigation and later conviction of the employers.

From 2007/2008 and onwards coverage in the media and debate about the nature of au pairing has been intermittent.

In the spring 2010, several female au pair employers spoke out in interviews and via letters to newspapers in what can be characterised as public defence of the au pair arrangement, engaging in an increasing struggle over definitions and constructions of the au pair. This kind of visibility has occurred alongside a growing normalisation of the au pair system, but also alongside the exposure of

⁸⁷ Undocumented Worker Transitions (2007): Country Report Denmark. EU Sixth Framework Programme, Prepared by Roskilde University, July 2007.

⁸⁸ Bjarne Steenbeck, 'Familieministeren har selv travlt til børn – andre skal have tre.' *Berlingske Tidende*, 7 March 2007.

abusive employers and a few political hints about the elimination of the au pair scheme.

In the Danish daily newspaper *Information*, in connection of the 8 March 2010 International Day of Women's Struggle, several Danish middle and upper-class women expressed their enthusiasm for the au pair scheme and offered various views on how they coped with the relationship between themselves and the au pair.

The interviewed employers rejected the view that the au pair carried out 'real work'.

'Our au pair is like a teenage daughter. There are also some duties which come with having a teenage daughter. As a host family, you are, for example, responsible for what they do in their free time.'

The importance of the au pair in relation to the emancipation of the Danish woman on the labour market was emphasised:

'Danish women achieve a more unhindered and equal access to the labour market and career by hiring an au pair as a household help. Whether this is equality, I don't know. It is about purchasing freedom on the home front.'

Among the answers to the interviews were also some remarks such as:

'I am rich, she is poor. That is the essential thing.' (...) 'She obtains a better [life] working for me than in her home country' and the Danish au pair arrangement was by some commentators promoted as 'the world's most effective development aid'.

The 'effective development aid' rhetoric was furthermore given prominence in mid-2010 and again in 2011 by Denmark's minister for development who himself has an au pair caring of his children.

In the summer 2010, over a three to four weeks period several newspapers, magazines and news stations ran articles and news on the question of au pairs being abused and the general situation of, especially, Filipino au pairs. Several stories were published about Filipinos being well educated migrant workers and some of them mothers leaving their children behind to come to Denmark and work as au pairs and to support their families.

In popular media (sit coms, comedy) and self-help books on women and careers, au pairs now often occur as tacit status symbols or necessities for the modern middle class women with career ambitions, which points to the increasing normalisation of 'having' an au pair in a private home.⁹⁰

⁸⁹ Task force, DR 22.11.2007.

⁹⁰ For example: Inger Berneke(2010): *Kvinde Kend Din Karriere*. L & R Business.

NGOs

The au pairs do not have 'their own' NGO which is dedicated to working for them in Denmark. However there is an Au Pair Network which was established in 2007 on the initiative of the trade union FOA (Trade and Labour), KULU (Women and Development Network) and Babaylan (The Philippine Women's network in Denmark) and soon grew to be the main NGO initiative on au pair issues in Denmark. The network today consists of the trade union (FOA), churches, church based NGOs of which KIT (The Church Integration Ministry) is the largest, several Filipino community organisations, a language school and individuals, all joined under the headline of improving living and working conditions for au pairs. The network is loosely organised with meetings and events but is not considered as an organisation. Opinions, goals and strategies vary between the different organisations, but during the last four years the involved participants have succeeded considerably in lobbying and advocating the improvement of the au pair situation on a collaborative basis. Furthermore the network has also in the meantime gathered experiences and coordinated voluntary counselling, sheltering and support.

In 2009, the government granted € 135,000 per year over a four year period to the NGO, the Danish Refugee Council (DRC) which at that time did not have any experience with the au pair field or collaboration with the NGOs working voluntarily with au pairs. The Danish Refugee Council is not a member of the Au Pair Network. On 1st November 2009, the 'Au Pair Support' was established by the Danish Refugee Council as a counselling service for both au pairs and host families.⁹¹

In 2010 the government granted another € 135,000 per year over the next four years to NGO activities within the au pair network, officially as an organisational cooperation between KIT and FOA. Initiatives are still being negotiated with the Integration Ministry, but the present plans are as follows:

- Preventive efforts: information meetings and welcome bags with information material handed out to all newly arrived au pairs.
- A Drop In centre and networking among au pairs.
- Shelter facilities for urgent cases, for example related to change of family, conflicts, abuse.
- Counselling and legal aid. Including the training and organising of 10 counsellors countrywide.
- The establishment of a non-profit au pair placement agency.

The project is in its initial phase and reflects a division of both labour and opinions within the network. Organisations in the network do not agree on the idea of establishing a non-profit agency. The trade union FOA and Babaylan oppose the idea, but KIT is in favour.

⁹¹ Opening hours (telephone) from 9 to 15 Monday to Friday and two hours face-to-face counselling on Fridays.

The counselling service is not yet formally established but is still running as primarily a 24/7 KIT activity. In the future, counselling services will be divided according to different areas of responsibility and capacity in the network; for example the legal cases on violation of rules will be the responsibility of the trade union.

The trade union FOA decided in 2005 to include au pairs as potential members, but has recently introduced at a more practical level the opportunity for au pairs to become members for a special reduced membership fee (approximately € 3), but with full membership rights within the union to participate in the democratic process, being covered by collective insurances etc. The initiative has not yet been promoted among au pairs and thus it is too early to be evaluated.

3.1.5. Abuse, counselling, shelters, cases

Research

The first study of the au pair situation (Stenum 2008) emphasized that au pairs experience very different kinds of placements. On the one hand, some au pairs are given a relatively high salary, feel respected and included in the family and are staying on conditions far better than those stated in the contract. On the other hand, other au pairs are definitely exploited they are not paid their salaries or given their holiday pay, they have long working hours, a difficult psychological work climate, and face unreasonable restrictions on their private lives etc. And there are all the varieties in between.

The report confirmed the assumption that the majority of au pair placements take place through informal personal networks with the limited influence of intermediaries such as agencies or recruiters. However later research has indicated a rise in the use of intermediaries in placements of au pairs.

In 2009, the National Board of Social Services in Denmark initiated a study aiming to determine whether there was human trafficking, or elements of human trafficking, in the situations and experiences of a group of 27 au pairs mainly from the Philippines⁹².

This report concluded that:

'Some recruiters exploit the lack of knowledge, vulnerability and desire to work in the West of prospective au pairs by charging them exorbitant amounts to establish contact with a host family.

This places the au pair in a debt situation which affects large parts of the au pair stay, and potentially also the au pair's future activities. The recruiters and their role in the au pair system thus increase the vulnerability of the au pair's situation. All of the report's informants entered the country voluntarily to work as au pairs. They came to improve their own possibilities and those of their families. It was the dream of Europe and better future opportunities that brought them to Denmark, and their reasons for coming to the country were almost identical to

⁹² Twenty-one of the au pairs were from the Philippines, one from Ukraine, one from Belarus, one from Serbia, one from Nepal and two from Kenya. Korsby(2010).

the dreams of a better future which are often heard from victims of human trafficking exploited through prostitution.

On the basis of the above review of the various indicators of human trafficking, it is assessed that there were no concrete cases of human trafficking among the 27 informants in this study. (...) the overall assessment is that human trafficking cannot be said to have taken place. Rather than human trafficking as such, the stories of the informants reveal grey areas with instances of exploitation of a vulnerable and fragile group.' (Korsby 2010:70).

Therese Marie Miranda Baba, who was herself a Filipino au pair in Denmark and is now a master's student at Aalborg University in Denmark⁹³ made her own research on the perception of au pairs among Filipino au pairs in Denmark in 2010. She concludes that among her informants the expression an 'au pair-au pair' often came up as a concept to distinguish au pair placements in which the au pair felt considered as part of the host family, well treated and participating in a cultural exchange program from au pair placements in the sense of a domestic helpers program. This reflects both the ambiguity of the au pair scheme being both a working and a cultural scheme and the variety of experiences with host families.

NGOs

In the first report from the *Danish Refugee Council (Au Pair Support)* to the ministry⁹⁴ on experiences and recommendations based on the first eight months of their counselling service, they reported that they had an estimated 500 calls a year.

In the report, the calls are not divided between those coming from au pairs and those coming from host families. There is also no breakdown in terms of nationality.

For this study the DRC inform that they now expect 1000 calls per year, 60% from au pairs and 40% from host families. They do not register nationality but assume that the majority is from the Philippines, but also nationals from Ukraine, Thailand and countries in South America and Africa are among the users.

The problems reported by the Danish Refugee Council are about changing host families (which is often an indication of disagreements and problems between the au pair and the host family), questions of pocket money, work load, rules about holiday, advice to new host families, helping au pairs to find social networks, questions about other kinds of residence permits and problems concerning the return ticket.

In the report special problems are emphasized:

⁹³ Baba, Therese Marie Miranda (2010): 'Au pair' Au pair? The program as seen from the Filipino Au Pairs in Denmark. Master program in Culture, Communication and Globalization, Aalborg University Fall 2010

⁹⁴ http://www.aupairsupport.dk/fileadmin/uploads/Erfaringer%20og%20anbefalinger%20-%20%20Brev%20af%205.%20juli%202010_1.pdf (12.04.2011).

- Lack of disbursement of pocket money – the Danish Refugee Council suggests that it is made obligatory to pay the pocket money into an au pairs' bank account
- Lack of payment of the return ticket – the DRC suggests that it is made obligatory for the host family to deposit the money for the return ticket at the beginning of the residency
- The two weeks' notice of termination of the contract is not realistic given that the host family most often will dismiss the au pair immediately, which leaves her with few opportunities to find a new host family and apply for a new residence permit. The DRC suggests that the rules should be clarified and that host families which do not comply with the two weeks' notice requirement and do not pay the salary for those two weeks should be officially blacklisted.

For this study, the DRC reports on the current calls being about vacation rules, tax rules, change of family etc. and problems are experiences around withholding of the possessions of the au pairs, lack of payment and pregnancy. Among the most urgent problems is the lack of payment for the return ticket by the host family, entailing that the au pair becomes an irregular resident with the risk of being apprehended and sanctioned by a Schengen re-entry ban.

The *Babaylan*⁹⁵ welcomes the lifting of the Philippine ban on au pair migration in 2010 and the new obligatory insurance on repatriation of au pairs in cases of death, serious illnesses or injuries. This is to be paid by the host family. The organisation suggests and discusses changes in current regulations as follows:⁹⁶

- Although it is appreciated that the host family is now responsible for the return ticket it is suggested that a new host family should refund the return ticket if the au pair changes host family.
- There is a need for a shelter for au pairs who are dismissed by the host family, eventually organised as access to Danish Crisis Centres for women
- Applying for an exit clearance/residence permit as au pair should be less bureaucratic.
- Agencies should be prohibited, given that the au pair scheme is a cultural exchange programme not a domestic workers programme. Direct contact can be made through the internet and assistance of independent NGO's. They point to the risk of being exploited, paying expensive fees and raising the expectations among host families to the au pair being a domestic worker.
- The pre-departure orientation seminars (PDOS) in the Philippines are criticized for being irrelevant and supporting the domestic worker agenda. Instead, the PDOS should be organised in collaboration with NGO's and on issues such as gender equality, transparency in governance and democracy.
- They want to change the perception of a Filipina au pair reflected in the Philippine media calling au pairs domestic assistants, nannies, domestic

⁹⁵ Babaylan-Denmark. The Philippine Women's Network in Europe. www.babaylan.dk.

⁹⁶ ABAKADA Winter 2011: [http://www.scribd.com/doc/51702974/ABAKADA-Winter-Edition-2011\(03.03.2011\)](http://www.scribd.com/doc/51702974/ABAKADA-Winter-Edition-2011(03.03.2011)).

workers, and in Denmark reflected in the media focussing on the abusive side of the au pairing and too little on the cultural exchange aspects.

- At the same time, the organisation calls for the recognition from Danish women 'who indeed profit from the scheme, usually young mothers who are able to continue their career, or even save their marriages because the au pair lifts the physical burden of their daily battle with their husbands, small children, work, hobbies, and other leisure time interests' (Ibid).

The statistics below supplied by *KIT* are made by the existing counselling service. The counselling service is not promoted officially, but continues to work through, primarily, the Filipino-Danish network. Registration from the first three months of 2011 indicates current issues relevant for counselling and support.

Table 8: Hot line : January - March 2011 statistics

The number of calls, emails, sms, Facebook & personal meetings in KIT

Registration of Information Inquiries - Au Pair Cases

Types of Case	Au Pair	Host Family	Acquaintance/ relatives/friends
Inquiries related to the au pair situation			
Question about the au pair's rights	28	0	10
Change of host family	25	1	5
Question about the visa status	10	2	2
Eviction of the host family	6	0	5
Abuse/Exploitation	2	0	0
Au pair from Denmark wants to go to Norway	50	0	22
Au pair from Norway wants to come to Denmark	39	0	14
Wants to be au pair in Denmark	46	0	10
Serious Illness	3	0	0
Long working hours	10	0	7
Loneliness	10	0	3
Economic crisis affects the host family	18	0	7
Au pair/ host family networking	34	7	14
Miscellaneous/others	90	15	15
Total number of inquiries =	371	25	114

January 2011 total number of inquiries	111
February 2011 total number of inquiries	187
March 2011 total number of inquiries	212
Total inquiries Jan-Mar 2011	510

Most of the inquiries have come from au pairs from the Philippines, but also au pairs from Myanmar, Thailand, Germany, Sweden, Brazil, Taiwan, Hungary,

Denmark, Nigeria, Kenya and Venezuela are among those seeking assistance in the informal counselling service in 2011.

In April and May 2011 the pattern seems, according to KIT, to mostly concern holidays and holiday payment, change of host family and long working hours. Questions about rights and regulations seem to cover more than a fourth of the inquiries. However questions on au pair migration to Denmark and between Denmark and Norway occupy almost a third of the inquiries.

Other Filipino community NGOs have offered counselling and support to au pairs on a voluntary basis, such as Filipino Association in Denmark, Pinoy Radio, Babaylan Bayanihan and others.

The Media have intermittently reported cases of abusing au pairs and a few of them have led to court cases, but typically the au pair reporting abuse only wants to do so anonymously. In general, it is very difficult to take cases of au pair abuse to court – both because the burden of proof can be difficult when the alleged abuse takes place inside a private home, and secondly because the au pair will often have left the country before the trial takes place.

However a few cases of abuse have been taken to court. One case followed TV coverage of a divorced couple who exploited the au pair in 2007 subjecting her to long working hours and a heavy work load and threatening violence. The husband was, in 2009, given a fine and suspended sentence and the wife was fined approximately EUR 9,300 in 2010 and given a five year quarantine as a host family.

In another case of abuse, a host family was accused of 'letting' their Thai au pair work 14 hours a day, but at the first court hearing they were acquitted of all charges of abuse because the au pair did not show up in court.

In a recent case, supported by FOA, a Filipino au pair did not need to go to court to be compensated. She had been recruited to and formally placed in one family, but she found out that in reality she had to do domestic works for long hours at the host family's (mother's) employer. With the help of KIT and FOA, which wrote to her employer, she was eventually paid according to collective agreements for domestic workers.

Even though it has been possible to take cases to court, FOA finds it very difficult to bring cases of abuse forward. The burden of proof is difficult to carry given that the au pair most often works alone in a private home, that she finds it difficult to document abuse and violation of rules and the fact that the au pair will not be most likely in the country at the time of the trial.

Not only Filipino or non-EU au pairs are at risk of exploitation. During interviews for this study it was reported that especially Eastern EU nationals working as au pairs often do not know their rights as EU workers and are also exposed to unreasonable working and living conditions.

Some of, especially Filipino, au pairs migrate to different EU countries as au pairs. Typically this migration is between Denmark, Norway and the Netherlands, as long as the au pairs meet the requirements.

Some of the au pairs overstay in Denmark or go to another European country to continue to work as undocumented migrant workers.⁹⁷

3.2. Au pairs in Germany

Summary

In 2009, 5,364 persons were granted an au pair visa for Germany. The largest groups of nationality were from Russia, Ukraine, Georgia and Kenya. 52 were Filipinos.

Germany is characterized by an increased participation of women on the labour market, but also an unfilled demand for public childcare, especially for children under the age of three. German women are still understood to be mainly responsible for reproductive work such as cooking, washing, cleaning, shopping and childcare, and domestic and care work is still gendered as female.

The number of privately employed domestic workers has increased considerably over the last decades and these are to a large degree female migrant workers.

Germany has signed the European Agreement on Au Pair Placement, but did not ratify it. However, many of the rules in the agreement are also found in the German immigration regulations concerning au pairs.

Germany has deregulated au pair placements during the last two decades. In 1994 the government changed the prior monopoly of the church based NGO's to place au pairs and in 2002 abolished the obliged agency placement of au pairs. Furthermore, a German language skills requirement was introduced in 2006 to strengthen the cultural exchange aspect and prevent au pairing from becoming a domestic workers scheme. The number of au pairs has decreased after the language requirement and EU mobility were introduced, the latter abolished the demand for visas for EU citizens travelling to Germany.

The largest nationality groups are from Georgia, Russia and Ukraine. EU citizens are also au pairing in Germany and in fact Germans are, according to the IAPA, very active in au pairing in other European countries.

It is estimated that there are 360 agencies placing au pairs operating in Germany. Some of the agencies offer 'Au pairs' as a commercial service for the *mother* of the household along with other services (private nurses for elderly people, part-time cleaning etc.). A severe criticism of the deregulation of au pair placement has been made by the church based NGOs, women's NGOs and by agencies that want to base their business on an ethical code. In particular, websites without an agency back-up are targeted as dubious and risky.

Control mechanisms. The enforcement of the legal provisions are primarily aimed at controlling compliance with immigration rules. Should there be complaints or the need for advice, the government guidelines (Merkblatt) provide an emergency number which can be used when no agency is accessible. The hotline is run by the 'Gütegemeinschaft Au Pair' in cooperation with Telefonseelsorge which is a

⁹⁷ UWT (2007), Stenum (2010a).

religious organisation, and offers emergency help. No reports on the number of telephone calls, the character of the calls etc. are required by the authorities, and no common and structured gathering of information seems to go on through the hotlines themselves.

In cases of conflict between an au pair and a family, the guidelines (Merkblatt) suggest the involvement of an au pair agency. No blacklists or other sanctions are available against host families by the authorities. No court cases concerning abuse are known by the authorities.

An ethical code for au pair agencies has been established to protect the au pairs. The au pair placement as such is not formally regulated by the state and takes place both through private networks and through commercial or religious au pair agencies. Some of these agencies are organised in associations on the basis of an ethical code founded as the "Gütegemeinschaft".

The "Gütegemeinschaft Au Pair e.V. was founded with the assistance of the Federal Ministry of Family Affairs, Senior Citizens and Youth, aiming to improve the quality and transparency of accommodation in host families and to give young people interested in a home stay under an au pair scheme, a better chance to know what to expect'.

To join the Gütegemeinschaft, agencies must comply with a code of conduct and certain criteria to be met by the agencies.

Some agencies and NGOs offer counselling and support services for the au pairs.

3.2.1. Context of welfare, gender and migration

The context in which the au pair scheme is operating in Germany has been characterized as a 'conservative welfare regime' (Finotelli, 2008), based on a male-bread winner model and 'an evident lack' (ibid) of public care. Women's participation on the labour market has increased during the last decades. The share of employed women with children increased from 42.3% in 1975 to 63.1% in 2001 (Ibid) and in 2008 the employment rate for women was 65.4%. This can be compared to the EU-27 female employment of 59.1%. Nonetheless a limited public care sector has been organised. According to Spindler and Lenz (2008), the German state has withdrawn from its function as provider of welfare services and made private households compensate instead.

A considerable difference still exists between East and West Germany in regards of childcare availability, in particular for children under the age of three (Muehler 2010).

'Whereas in the five federal states of former East Germany on average 41% of the under three-year-olds attend a child care center or public day care setting, this share is considerably lower in West Germany with around 12%' (Ibid). According to Muehler, the market for child care is characterized by excess demand, and a national family policy that aims at increasing child care availability before 2013 so that the estimated (overall) demand of 35% will be met. Childcare coverage increases considerably when children reach the age of three and become legally entitled to child care. Around 91% of the German children in this

age group attend a child care center or public day care (Statistisches Bundesamt 2010 in Muehler 2010). Even though women's participation on the labour market has increased, German women are still understood to be mainly responsible for care and domestic work (Lutz 2007).

Informal labour has been a common form of employment in private households. Despite official statistics only indicate a limited number of people working as domestic workers (148,000 in 2004, Finotelli 2008), researchers estimate that the total number of private employed domestic workers has increased dramatically during the last decades. The numbers are estimated to have increased from 1.3 million families having paid for domestic or care work in 1986 (Hatzhold 1986 in Finotelli 2008) to 4 million in 2002 (Schüpp 2002 in Finotelli 2008).

During the past 20 years, several forms of labour market instruments have been implemented to transform undeclared jobs into regular jobs (tax-advantages for employers of regular domestic workers in the beginning of the 1990s; initiatives to facilitate unbureaucratic registering of domestic workers in social security and tax systems (household checks and 'minijobs') and professionalization of domestic work through pilot schemes subsidising 'service pools' in order to create regular full and part time jobs for domestic workers (Spindler and Lenz 2009).

However, according to researchers (Lutz and Pelenga-Möllenbeck 2010; Spindler and Lenz 2009) none of these initiatives seem to have challenged radically the competition from the 'black market', still offering lower pay and higher degree of flexibility to employers.

The supply of domestic and care labour has to a large degree consisted of low-paid female migrant workers, who have made paid domestic work affordable for German families. Private households provide an important labour market for irregular migrants and the most important labour market for irregular migrant women (Rerrich 2006, Lutz 2008, Lutz and Pelega-Möllenbeck 2010, Cyrus 2009).

Thus the gender dimension of domestic work has been supplemented with an ethnification through delegating domestic and care work to the migrant woman (Spindler and Lenz (2008). According to Lutz and Palenga-Möllenbeck (2010), the majority of migrant domestic workers originate from Eastern Europe, particular Poland although they have also migrated from various regions of the world including Latin America and Asia.

The high degree of informality in household work combined with the fact that household work is performed not only by migrant workers without a legal status but also by native and legal migrant workers makes it difficult to estimate the total number and the composition of the workforce. There is no clear estimate about the volume of irregular migrant workers undeclared employed in the household sector (Cyrus 2009).

A frequently quoted study also mentioned earlier (Schupp 2002 in Cyrus 2009) found that about '2.9 million private households employ a domestic helper on a continuous basis and additional 1.1 million households occasionally. While 4 million households employ – mainly on a part-time basis - domestic helpers more

or less continuously, only about 40,000 persons were officially registered to perform a job as domestic helper liable to social security.’ (Cyrus 2009:59).

This discrepancy between the officially registered number of domestic workers and the estimate of the real number emphasizes that the German market for domestic and care work is characterized by a high degree of informality.⁹⁸

One of the elements that historically has enforced this informality has been the general management of migration in combination with a growing market for private paid domestic and care work. This has resulted in the presence of migrant domestic workers, who have often been working and residing without authorization. Germany has been characterized by a lack of legal immigration channels for low-skilled domestic labour. Nonetheless in 2002 and 2004 limited attempts were made to ‘import’ domestic labour. In 2004 the exemption from the general immigration closure was given to ‘persons living alone and in need of care, who can employ a foreign domestic worker in their household for a maximum period of three years per worker’ (§21 BeschV 2004 in Finotelli 2008:61). Migrants from the A8 states were given the opportunity to enter Germany as domestic workers according to this programme in an attempt to legalise the large number of undocumented and undeclared migrant domestic workers from Eastern Europe. However the programme has not been successful (only 1,000-3,000 domestic workers have been recruited annually⁹⁹(Lutz 2010).

Parallel to the restrictive labour immigration policy, a substantial number of tourist visas were issued in 1998 – 2004 (approximately 2.5 m per year, Finotelli 2008) of which some or many most likely have been given the opportunity of legal entry and a subsequent recruitment to employment in private homes.

Thus, in practice, the migrant domestic workers, both regular and irregular migrant domestic workers might have provided an alternative solution to the lack of public services. However it is estimated that the greater share of these migrant domestic workers was lived-out and worked part time in different homes.

The legal migration arrangement of the above-mentioned elderly care scheme and the au pair scheme might in that respect be marginal exemptions to the general tendency on the German market towards privately paid domestic and care work, in that they are both legal and live-in. Not much research has been done on live-in irregular domestic work (Karakayli 2009: 42). However Sabine Hess has undertaken comprehensive research on au pair migration¹⁰⁰ she states that ‘While it was the live-in character that made an au pair so appealing as a category of the German host families, the live-in situation was the most difficult and negative aspect for the au pair’ (Hess 2008:142).

Migration regulations have changed due to the enlargement and EU policy which has had implications for the mobility of Eastern European citizens, and added another element in the highly heterogeneous situation for domestic and care

⁹⁸ The general lack of reliable data on migrant domestic and care work has been criticized as a result of ‘an intentional official ignorance of migrants’ presence in private care on the one hand, and blind spots in data collection on the other are reinforcing each other’ (Lutz and Palenga-Möllenbeck 2010:421).

⁹⁹ 1,574 domestic helpers were recruited in 2009 (Heimeshoff 2011).

¹⁰⁰ Hess (2005, 2008).

workers in Germany in terms of residence status, working conditions, recruitment, network, nationality etc. (Spindler and Lenz 2008).

The au pair scheme is furthermore used as a legal immigration entry for third country national domestic workers (Paral 2009), although not designed to function as a labour programme but a cultural exchange program. Nonetheless researchers suggest that the au pair scheme might be used as an employment arrangement and that a considerable number of au pairs overstay their visa and are recruited and integrated into the informal labour market of domestic and care work as undocumented migrants (Lutz and Palenga-Möllnback 2010, Paral 2009, Hess 2005, 2008).

3.2.2. Au pair regulations¹⁰¹

The Council of Europe's "European Agreement on 'au pair' Placement' 1969

Germany signed the Council of Europe's Au pair agreement 2nd October 1976, but has not ratified the agreement. In 1984 Germany rejected the recommendation from the EU Commission to ratify the Council of Europe Agreement. According to a parliamentary document (Drucksache 16/5508 des Deutschen Bundestages, 2905.2007), three reasons for rejecting to ratify the 1969 au pair agreement are mentioned:

1. The age limit, because the scheme should be for young people only.
2. The reason for upholding the time period of one year instead of two years has been to avoid the au pair relation from developing into a domestic help program.
3. The third reason is described as a conflict between the requirements in the agreement of health insurance of the au pair, which does not comply with the German social-insurance legislation.¹⁰²

Though not having ratified the Agreement, Germany in its regulations copies many of the provisions of the Agreement, for example on the allowed daily working hours, working days per week and maximum of two nights per week baby-sitting. This situation of not ratifying on the one hand, and following many of the provisions on the other is also mentioned in a parliamentary report of 2005 (Deutscher Bundestag 2005, Drucksache 15/4791). Hess (2005) notes that Germany, on other issues such as the requirement of a written contract, differs from the European agreement. In 2011 however a written contract between the au pair and the host family has become a requirement for residence permit being granted.

¹⁰¹ Bundesagentur für Arbeit(2010): Merkblatt 'Au pair' bei Deutschen Familien und Bundesagentur für Arbeit(2010): Information für Gastfamilien Au-Pair-Beschäftigung.

¹⁰² "Ein Grund dafür, dass das Übereinkommen nicht ratifiziert worden ist, liegt in dem in Deutschland seit jeher nicht gesetzlich geregelten Versicherungsschutz von Au-pairs. Das Übereinkommen fordert eine Versicherungspflicht zur Absicherung von Krankheit, Mutterschaft und Unfall von Au-pairs. Aufgrund des Status der Au-pairs in Deutschland als Nicht-Beschäftigte besteht jedoch keine Versicherungspflicht. Sie haben dementsprechend auch keine Ansprüche im Leistungsfall aus der Sozialversicherung. Eine freiwillige Versicherung in der gesetzlichen Kranken- und Unfallversicherung ist nicht möglich. Daher müsste eine gesetzliche Verpflichtung zum Abschluss von privaten Versicherungsverträgen durch die Gastfamilien geschaffen werden, was mit dem geltenden deutschen Sozialversicherungsrecht nicht vereinbar ist." (Drucksache 16/5508 (2007):2).

De-regulation

Au pair regulations have, during the last ten years, undergone several changes, one of which has been the deregulation of the framework for activities of au pair agencies and another major change being the introduction of a more strict control of language skills.

(The history of de-regulation of au pair placement is explained more thoroughly later in paragraph 3.2.4).

Entry as an au pair

Au pairs from non-EU/EEA countries or Switzerland need a residence/working permit that explicitly allows them to enter and stay in Germany. The visa for entry is submitted to the competent Germany mission in the country of origin (embassy/consulate). However citizens of the following countries can enter without a visa: Australia, Israel, Japan, Canada, New Zealand and the USA. An approval of the Federal Employment Agency is necessary for the grant of the residence permit. The local immigration authorities are responsible for issuing the residence permit for the purpose of employment in accordance with the agreement with the Federal Employment Agency.

Au pairs from the EU Member States of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, Czech Republic, Hungary, Rumania and Bulgaria do not, due to the rules of free movement, need a visa or a residence permit, but au pairs from these countries are, due to special regulation for EU accession countries, required to possess an EU employment permit, requested before the work commences.¹⁰³ Au pairs from other EU / EEA countries will be issued a certificate of the right of residence on the background of making an application to the immigration authorities.

The requirements for being an au pair are the following:

- The age limits are from 18-25 years with the exception of Swiss nationals (minimum 17 years).
- The au pair is expected to have basic German language skills. Visa procedures were made more restrictive in 2006, requiring the au pair to have a language certificate from the Goethe Institute at A1 (European reference) level. The language certificate is to be paid for by the au pair.¹⁰⁴
- The au pairs are, due to requirements from insurance companies (and re-required by the agencies, but not formally the immigration authorities), required to have a health certificate documenting that they do not have any chronic diseases.

¹⁰³ Bundesagentur für Arbeit(2010): Merkblätter für au pair; für au pair Familien: <http://www.arbeitsagentur.de>.

¹⁰⁴ According to informants from au pair agencies, this might be an expense that prevent some from applying, and according to one informant au pairs from Poland, Slovakia and Latvia must still prove language skills to the local authorities in spite of the EU free mobility.

- The au pair is not allowed to have any family relations to the host family.

Contrary to other countries (for instance Denmark and the Netherlands) an au-pair can be married and there are no specific restrictions on having children.

The requirements of the host family are as follows:

- The family can be one of married couples, unmarried couples, registered same-sex-partners and single parents, but at least one child under 18 must be part of the family.
- To be host family for au pairs from outside the EU/EEA/Switzerland, the family is required to speak German as a mother tongue or being adult relatives of German nationals/families of EU/EEA/Switzerland.
- The host family must not be family related to the au pair.

Contrary to other countries (for instance the Netherlands) a host family in Germany must consist of at least one child under 18 years.

A range of conditions **must be followed in order to process and authorise the au pair residence at the host family.**

- The host family must pay the insurance of the au pair against illness, pregnancy and birth and accidents.¹⁰⁵ Abortion is normally not covered.
- A standard contract must be signed before a residence permit is granted and besides that the host family has to fill out a questionnaire and sign it.
- Re-registration (re-application for residence permit) as an au pair is possible within the 12 month period. Re-registration is possible once or twice, but according to the informants after that it becomes difficult. The simultaneous employment of two au pairs in one host family is allowed.
- Au pair agencies, based in Germany, are not allowed to charge the au pair more than EUR 150. Complaints can be addressed to 'Bundesagentur für Arbeit'. Government guidelines recommend using an agency, which can be held responsible for the au pair placement and assist in case of problems or conflicts.

The au pair residence with the host family is regulated in the following way:

Residence and work permits are granted to au pairs who are third country citizens, and residence permit granted by local authorities and a work permit limited to au pair employment by the Bundesagentur für Arbeit (Federal

¹⁰⁵ This obligation seems in contradiction with the parliamentary document describing one of the main reasons for not ratifying the Au Pair agreement being that an obligation to pay for insurance of the au pair was non-compliant with German Social Insurance legislation. Whether this apparent contradiction is due to change in these regulations since 2007 is not clear.

Employment Agency). The employment is however not defined as work according to tax law and the pocket money is not taxable.¹⁰⁶

The duration of the stay is a minimum of six months and a maximum of 12 months.

Re-registration (re-application for residence permit) as an au pair is possible once or twice is possible within the 12 months.

The purpose of the stay is defined as language improvement and cultural understanding and the position of the au pair is part of the family or 'integrated in the family'.

The work of the au pair is described as 'light domestic work', and childcare including babysitting.

Remuneration is defined as 'not a work salary', but pocket money of a minimum EUR 260 a month (last regulated 1. January 2006¹⁰⁷). The remuneration is not taxable due to the definition of au pair work as non-employment and the pocket money as non-salary.

Working hours must be of maximum six hours per day and 30 hours a week. Employment outside the host family is not allowed.

The au pair must live-in, live-out is not allowed. The au pair is entitled to her own, separate room and food and lodging are provided by the host family free of charge. She is expected to participate in family meals.

The au pair must have minimum one day off per week, and at least one Sunday a month, and four evenings per week. She is entitled to four weeks of paid holiday for one year (two days for each full month). The au pair must be allowed in her leisure time to attend language training or other educational and cultural activities at the au pair's own expense. Au pairs must also have the possibility to attend religious ceremonies and cultural events. Transport to and from the host family is paid by the au pair and private health insurance is to be paid by the host family.

In case of termination of contract both parties have to give two weeks' notice.

In case of complaints or need of advice, the government guidelines (Merkblatt) inform about an emergency number in case no agency is accessible. The hotline is run by the 'Gütegemeinschaft Au Pair' in cooperation with Telefonseelsorge which is a religious organisation and offers emergency help. No reports on the number of telephone calls, the character of the calls etc. are required by the authorities, and no common and structured gathering of information seems to go on through the hotlines themselves.

¹⁰⁶ Informant in the Bundesministerium für Familie, Senioren, Frauen und Jugend; 'Bei einem Au-pair-Vertrag handelt es sich nicht um einen Arbeitsvertrag. Daher besteht kein Dienstverhältnis nach § 19 Absatz 1 des Einkommensteuergesetzes (EStG). Das von der Gastfamilie gezahlte Taschengeld stellt somit weder steuerpflichtigen Arbeitslohn noch sonstige steuerpflichtige Einkünfte nach dem EStG dar. Das Taschengeld wird in Deutschland nicht besteuert'.

¹⁰⁷ Bundesagentur für Arbeit: Merkblätter für au pair; für au pair Familien: <http://www.arbeitsagentur.de>.

In cases of conflict, the guidelines (Merkblatt) suggest involvement of an au pair agency.

No blacklists or other sanctions are available against host families by authorities. No court cases are known by the authorities on abuse.¹⁰⁸

3.2.3. Statistics¹⁰⁹

No complete registration of the number of au pairs in Germany exists. The statistics on au pairs in Germany 2001-2010 shown here is based on the number of visas issued during this period of time, which means that au pairs who do not need visa to enter Germany are not reflected in the following.¹¹⁰

2001-2003:

According to the parliamentary report, Deutsche Bundestag (2005), the number of au pair visa issued were

2001: 2002: 2003:
19,074 18,478 17,028

Table 9 : Germany: Major countries of au pair visa issued 2001-2003

The major 'sending countries' at that time were:

	2001	2002	2003
Ukraine	2,581	2,176	2,437
Slowakia	2,552	1,784	1,255
Poland	2,248	2,931	2,890
Rumania	1,655	1,257	913
Russia	1,467	1,476	1,561
Georgia	1,116	1,265	1,259
Tschechien	983	862	1,002
Lithuania	739	598	367
Bulgaria	734	678	622
Belarus	593	751	590

Source: Deutscher Bundestag, Drucksache 15/4791, 2005

In the following years the total numbers of au pair visa issued have decreased to a level of approximately 5-6,000 since 2007:

¹⁰⁸ See later on the KOK(2008) report and the reference to a court case on labour trafficking.

¹⁰⁹ Deutscher Bundestag (2005) 2001-2003 and The Federal Foreign Office 2004-2010.

¹¹⁰ In 2006 the number of all au pairs in Germany was estimated in Die Welt (10.06.2006, and linked on the www.Gütegemeinschaft.de) to be 30.000, and this number is referred to also in KOK(2008).

Table 10: Germany: Major countries of au pair visa issued 2004-2009

Country 1)	2004	2005	2006	2007	2008	2009
Brasil	353	299	321	342	250	258
Bulgaria	366	200	120	0	2	0
China	45	90	196	287	325	308
Georgia	1068	1254	982	546	517	549
Indonesia	95	108	98	87	113	140
Cameroun	245	99	13	19	20	13
Kenya	182	365	466	450	352	453
Kirgisistan	200	239	257	413	285	219
Marokko	212	34	26	21	36	20
Mexico	47	42	63	96	126	97
Moldau	144	132	116	126	82	86
Mongolia	206	168	138	77	63	39
Peru	191	124	181	213	117	94
The Philippines	76	70	44	40	45	52
Poland	733	0	1	0	0	0
Rummania	683	393	241	0	0	0
Russia	1,478	1,458	1,263	1,135	892	876
Slovakia	286	0	0	0	0	0
Czech Rep.	223	0	0	0	0	2
Ukraine	2,296	1,571	1,324	1,191	906	906
Usbekistan	118	135	123	91	95	78
Belarus	323	43	0	27	149	123
Subtotal	9,570	6,824	5,973	5,161	4,375	4,313
Other countries	1,183	750	665	808	882	1,051
Total	10,753	7,574	6,638	5,969	5,257	5,364

1) The number of au-pair visas is not split up into the nationality of the applicants but reflects the number of au pair visas issued by German consular posts in specific countries.

Source: The Federal Foreign Office, 2010

A significant decrease in the number of au pair visas is seen in new EU Member States such as Poland, Czech Republic, Slovakia in 2005 and Rumania and Bulgaria in 2007 because of EU free mobility where visa no longer are required. But visas issued in Russia, Ukraine and Georgia have also decreased significantly. Apart from China and Kenya where the number of visa has increased, the number of au pair visa has either been stable or decreasing.

The tightening of language requirements in 2006 could be one reason, the opening up of the labour market in other areas during an economic upturn could be another.

3.2.4. Stakeholders in the au pair field

The placement of au pairs is not formally regulated and it takes place both through private networks and through commercial or religious au pair agencies.

Some of these agencies are organised in associations on the basis of an ethical code established as the 'Gütegemeinschaft'

On 8th November 2009 the German Women's Council (Deutscher Frauenrat¹¹¹) adopted a resolution proposed by the 'Evangelische Frauen in Deutschland e. V.', requesting the government to re-introduce the requirement for au pair to go through agencies.

In the original proposal, it was stated that au pair placements facilitated through the internet by uncontrolled and 'unprofessional' agencies were open to the possibilities of abuse of au pairs as cheap domestic labour, other kinds of abuse and fraud.

In 1994 the monopoly of au pair placement by the two religious organisations, (In Via, Caritas, the Catholic Church, and VIJ, Verein für Internationalen Jugendarbeit, Evangelische Kirche) was lifted and thereafter registered employment agencies could, when authorised, place au pairs in host families.

The background for the German Women's Councils request for the re-introduction of this 'agency-obligation' was the deregulation of the authority of agencies to place au pairs which was decided in 2002. The Verein für Internationale Jugendarbeit (VIJ) which made the proposal is one of the major religious organisations which, among other youth activities, facilitates contacts and placements of au pairs in German families. Since the deregulation and abolition of the monopoly of au pair placement, this activity has decreased considerably among the non-profit organisations.

The VIJ does not have data going back to 2001, but 29 au pairs were placed in 2009 and 95 in 2010. Of the 95, 91 were from non-EU/EEA countries hereof 70 from Eastern European countries. The reason for the decrease in au pair placements is, according the VIJ, the rise in internet placements, EU-free mobility and a decreasing demand for German language skills in general.

The VIJ states that it is a consequence of the 'liberalisation of the au pair market in Germany in 2002, where parents were given the opportunity to recruit their own au pairs from non-EU countries. Internet agencies have been established and other non-NGO agencies opened. And young people have a wider range of possibilities to go abroad'.

In 2002 the VIJ criticized the deregulation of the 'agency-obligation': 'Through the modification of the monopoly of public employment service in 1994, the doors have become wide open for unserious au pair agencies since March of this year, where the regulations to protect the au pair relations were fully invalidated. Through this, the risk has increased substantially of changing the au pair relations to a façade for sexual and economic exploitation, to illegality and trafficking' VIJ 2002 in Hess (2005: 106).

¹¹¹ The Deutscher Frauenrat is the national council of more than 50 nation-wide women's associations and organizations. The members are professional and religious associations, women's groups from political parties, trade unions and the German Sports Federation, as well as non-partisan organisations with a diverse array of social and political objectives. It is a non-profit association, primarily based on public funding. The Deutscher Frauenrat is recognised as a non-governmental organisation (NGO), and has special advisor status at the Economic and Social Council of the United Nations, and is a member of the European Women's Lobby (EWL).

Also In Via which, according to their own statistics places a decreasing number of au pairs,¹¹² suggested in our interviews that the agency obligation of au pair placements should be re-introduced in order to ensure the conditions of the placement for the au pair. VIJ repeats its recommendation to re-introduce the agency obligation on au pair placements.

A report from KOK (2008)¹¹³, also suggests the re-introduction of agency obligation in order to minimize the risk of exploitation and abuse.

Until 2002 religious NGOs were often in charge of au pair placements, but after the deregulation a number of commercial agencies have established themselves, and among commercial agencies there seems also to be big differences in size and profile of the agencies.

Finally placement is also taking place through the internet by agencies or web sites either operating internationally or rather informally in Germany. The KOK (2008:9) report refers to information gained from au pair agencies that at least 360¹¹⁴ au pair agencies were operating in 2007.

Several associations have been established since 2002 in order to ensure a minimum standard in the quality of services that the agencies deliver and to establish a quality mark on the market. The de-regulation of employment agencies and the increased labour mobility in the EU raised political concerns about the increasing possibilities for abuse of au pairs. A parliamentary motion (antrag) on behalf of a political majority¹¹⁵ labelled 'For the improvement of the private au pair placement aimed at effective prevention of abuse and exploitation' stated that the group of au pairs given their young age had a specific need for protection and that the examples of exploitation and illegal employment underlined the need for regulations. In this context, the German language requirement was suggested as a means to ensure that the au pair, should problems arise, would be able to ask for assistance in Germany.

Another proposal was the establishment of a standard of quality for au pair agencies.

¹¹² The IN VIA experienced a considerable decrease in au pair placements in the period 2001 – 2009: 2001: 1738, 2004: 842, 2008: 328, 2009: 204. Of the incoming au pairs in 2009 through In VIA the nationalities were: Europe: 14,71 %, Middle and Eastern Europe: 64 %, Africa: 9,31 %, Asia: 4,9 %, Latin America: 3,92 %, Others: 2,94 (Interview IN Via).

¹¹³ KOK describes itself as: 'The German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration' is a registered non-profit organisation. We are active on a regional, national and international basis. Our goal is to combat trafficking in women and we actively pursue the realisation of human rights for female migrants. Being the only network in Germany that focuses on these issues, the KOK sees itself as a crossroads, bringing together counselling centres, political spheres, the public at large as well as relevant partners involved in the same field of work.'

In 1987 the KOK e.V. was founded by a group of counselling centres and today there are 37 member organisations within this one umbrella organisation. We have: counselling centres for victims of trafficking; specialised counselling centres for women ; projects for female migrants ; women's homes ; counselling centres for prostitutes; lobbying organisations. <http://www.kok-buero.de>.

¹¹⁴ Interview with vij: "more than 300 agencies'.

¹¹⁵ (SPD, CDU/CSU, Bündnis 90/Die Grünen, FDP, Drucksache 15/1315(2003)).

The ethical code (Gütegemeinschaft)

In 2004 initiatives were taken to establish the current major initiative on quality standards in au pair placement, the 'Gütegemeinschaft', which was established formally in 2006 through a cooperation between the major religious au pair NGOs (VIJ and In Via), Au Pair Society, which is an association of private commercial agencies¹¹⁶, and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend). On their web site it is stated that 'Gütegemeinschaft Au pair e.V. was founded with the assistance of the Federal Ministry of Family Affairs, Senior Citizens and Youth, aiming to improve the quality and transparency of accommodation in host families and to give young people interested in a home stay under an au pair scheme, a better chance to know what to expect.'¹¹⁷

To join the Gütegemeinschaft agencies must comply with a code of conduct and meet certain criteria.

The code of conduct is based on the compliance with existing au pair regulations supplemented with provisions such as:

The definition of an au pair is:

'An au pair is like a temporary part of the family, staying in a fair balance between giving and receiving. The au pair stay serves as youth education, personal development and an intercultural encounter in accordance with societal and youth political aims.'¹¹⁸

The agencies commits include:

Providing documentation of the practical childcare experiences of the au pair
Ensuring that services offered to the au pairs concerning information, counseling and placement is free.

Advising host family and au pair to communicate by telephone before deciding upon the placement.

Being available for counseling and conflict resolution during the time the au pair stay with the host family and assist in case of re-placement.

¹¹⁶ In the parliamentary document (Drucksache 2007:2) the "International Au Pair Association' – I.A.P.A is mentioned as organisation of cooperation. The Au Pair society is a member of I.A.P.A, which is primarily an association for commercial agencies. The standard ECAPS – European Committee for Au Pair Standards is a standard developed within the I.A.P.A.

¹¹⁷ <http://www.guetegemeinschaft-aupair.de>.

¹¹⁸ Ein/e Au pair ist wie ein Familienmitglied auf Zeit, in einem fairen Gleichgewicht von Geben und Nehmen. Ein Au-pair-Aufenthalt dient der Jugendbildung, der Persönlichkeitsentwicklung und der interkulturellen Begegnung und verfolgt ein gesellschaftliches und jugendpolitisches Anliegen. Er ermöglicht der Gastfamilie die Vereinbarkeit von Beruf und Familie. Das vorrangige Ziel eines Au-pair-Aufenthaltes ist es, die Sprachkenntnisse zu vervollständigen. (Gütegemeinschaft (2005): Güte- und Prüfbestimmungen fürVorbereitung, Vermittlung und Betreuung von Au-pair-Aufenthalten).

Ensuring written information to host families about the nature of the au pair scheme and establish personal contact with the host families before the au pair is placed.¹¹⁹

Certain criteria concerning the nature of the agency are formulated as for example availability on the phone at least 10 hours a week and five days a week, transparent information on the website, compliance and knowledge on the legal basis for au pair placement, production and dissemination of information for au pairs and host families and during the au pair stay, the au pair and host family assist on questions and conflicts, and collect information on the evaluation from both the au pair and the host family.¹²⁰

As mentioned earlier the emergency telephone is organised through a cooperation between Gütegemeinschaft and Telefonseelsorge (NGO).

Au pair society – regulated commercial agencies

The Au Pair Society is an association of approximately 50 private agencies that was founded in 2001. They have adapted the ECAPS (European Committee for Au Pair Standard)¹²¹, which is a European quality standard for commercial au pair agencies.

To be a member of the Au Pair Society, the agency has to fulfil the quality standard and audits. The association offers training for agencies, lobbying and an emergency hotline. The Au Pair Society is also the national chapter of the IAPA (International Association of Au Pair Agencies).

In Germany an estimated 360 au pair placement agencies exist. Some of the agencies are seemingly rather big companies which offer au pairs as one choice of child care / domestic service among others. For example, the agency 'Familienservice' which brands itself as 'Your partner for Work-Life Balance. Diversity and Inclusion', states under one of the headlines, 'Flexible Child care solutions'; 'Private care: we offer a wide-ranging spectrum of private care solutions – child minders, nannies, au-pairs, babysitters, emergency care, homework tutoring and private lessons as well as numerous vacation programmes'¹²².

Furthermore the company's website has over five pages comparing the au pair solution with other of their services according price, flexibility, live-in/live-out, procedures, skills, pros and cons.¹²³

¹¹⁹ Ibid.

¹²⁰ However, it has been difficult to get in touch directly with the organisation and its coordinator for further information in spite of several e-mails and telephone calls. However we were told by NGO's and board members that the organisation is still active.

¹²¹ See more on ECAPS in chapter 1.

¹²² www.Familienservice.de.

¹²³ www.Familienservice.de.

3.2.5. Abuse, counselling, shelters, cases

Sabine Hess,¹²⁴ who has undertaken comprehensive research on au pair migration in Germany points to the public image of the au pair as a 'big sister' and "part of the family' and not a domestic worker as a factor that 'heightened the au pair woman's acceptance of being exploited as housemaids' (Hess 2008:144). She emphasised that often the au pair in the beginning of the stay was content, but after some or a long time experienced the au pair placement as exploitation.

Asked about the amount and character of cases of abuse our informants have not been able to deliver specific information. Apparently the emergency telephones / hotlines do not register this information, but the character of abuse reported includes working long hours, not receiving the agreed pocket money, not being allowed to go to language classes, not having days off, holidays, not having a written contract, sexual harassment and conflicts with the host family.

Asked about her impression of the nature of abuse, the coordinator of the Au Pair Society said that it mainly concerns cases where au pairs have found their host family through the internet. When the host families complain, it is mostly again 'internet-placements', when the au pair does not arrive, despite having travel expenses covered, or the au pair did not exist, or somebody else arrived. Others take the chance to come to Germany and then leave the family quickly.

Solutions to au pair abuse are, according to the Au Pair Society, most often placements with another family – and the suggestion to host families is to 'find the next au pair through a qualified agency'. The possibility of making a formal complaint or to enforce sanctions to the abusive host family is very limited. The Au Pair Society does not find that a shelter is necessary, because agencies in the network cooperate quickly to find another host family.

A questionnaire among member organisations on their experienced cases of au pair abuse between 2004 and 2007 was included in the KOK (2008)¹²⁵ report. In the report 56 cases are mentioned and analysed. Among the 56 cases, the au pairs came from both EU/EEA countries and non-EU countries, but as the report states, only one case concerns an au pair from a Western European country. All the other cases are about au pairs coming from Eastern European countries and Non-European countries. Thus it is stated that 'It could be assumed that people who want an au pair for exploitative purposes are more oriented towards persons from countries with difficult living conditions'¹²⁶.

The majority of cases in the KOK report are about the exploitation of labour (working more than 30 hours per week, no holidays, days off, heavy work load and not 'light domestic work' (working in the family firm, painting etc.), withholding of pocket money) and a few cases were about sexual harassment and

¹²⁴ Sabine Hess (2008) (2005/2009).

¹²⁵ KOK: 'THE GERMAN NATIONWIDE ACTIVIST COORDINATION GROUP COMBATING TRAFFICKING IN WOMEN AND VIOLENCE AGAINST WOMEN IN THE PROCESS OF MIGRATION' (BUNDESWEITER KOORDINIERUNGSKREIS GEGEN FRAUENHANDEL UND GEWALT AN FRAUEN IM MIGRATIONSPROZESS E.V.) [HTTP://WWW.KOK-BUERO.DE](http://www.kok-buero.de).

¹²⁶ 'Es könnte vermutet werden, dass Menschen, die ein Au-Pair Verhältnis für ausbeuterische Zwecke missbrauchen wollen, sich eher auf Personen aus Ländern mit ökonomisch schwierigen Lebensverhältnissen orientieren.' KOK(2008:11).

exploitation. Other forms of abuse were mentioned as withholding passports and personal documents, instant termination of the contract and leaving the au pair 'on the street', physical violence, forced isolation, and illegal employment.

The report discusses whether some of these cases are trafficking-criminality and even though it is very difficult to prove and go to court with these cases, the conclusion is that the crimes defined within the trafficking legislation are also taking place in au pair relations (KOK 2008:12). One case is mentioned specifically. A woman had employed two au pairs from Mongolia and severely exploited their labour. She was penalized by the trafficking legislation (KOK 2008:24-25).

VIJ mentioned issues such as cultural conflicts between the au pair and the host family, but also conflicts due to the withholding of au pairs' passports, irregular and long working hours, heavy workloads, responsibility for impudent children, withholding of the pocket money, discrimination, sexual harassment and abuse, too much babysitting, the placement of au pairs in cold basements etc. The VIJ wonders how the same host families which undertake abusive practices repeatedly get new au pairs.

The VIJ has an emergency room, which is used for au pairs in distress until a solution is found. According to this organisation, cases of abuse are often found in direct placements through the internet. However the organisation has not taken any cases to court. Although the organisation assess that the great majority of au pairs are content with their stay and their host families, the organisation is concerned about what they see as a change in the attitude by some host families who do not take upon them the responsibility to treat the au pair properly.

The Au Pair Society suggests that internet placement should be prohibited in the future and that placements should only take place through a licenced agency that follows the ethical code of conduct formulated in the Gütegemeinschaft. They also find that the language requirements are too strict and too expensive for the au pairs.

In Via, VIJ and KOK suggest the following changes of the au pair scheme

- Au pairs should be culture and language students
- The re-introduction of obligatory au pair placement through a certified agency
- Extended financial support to civil society activities supporting the welfare of the au pairs (for example non-profit agencies such as In Via and VIJ)
- Strengthen the cultural exchange priority of the au pair scheme and provide more information more about rights, the framework and cultural exchange (including awareness of xenophobia and discrimination) and how to avoid exploitation and abuse
- The BMFSFJ (Bundesministerium für Familie, Senioren, Frauen und Jugend) should- as in other youth programmes – assist organisations in offering seminars and pedagogical assistance

- Extra time for travelling in Germany after the stay at the host family and before the au pair return to her country of origin should be introduced
- Foreign students should have the possibility of working more than the current 90 days, to prevent illegal employment
- Legal emphasis on cultural exchange and removal of legal link between au pairs and labour market regulations
- Improvement of the processing of application for visa/residence permits
- The age limit should be changed to 27 year, and the possibility to extend the au pair stay to 24 months should be introduced so as to make the au pair stay more attractive

3.3. Au pairs in Ireland

Summary

Third country nationals are not allowed to enter as au pairs and the number of EU citizens employed as au pairs is not known.

During the last 15 years, an increasing share of women in Ireland has become active on the labour market equalling the EU-27 average of female employment rates in 2008.

Childcare in Ireland is organised both as public day care and through the employment of child minders in private homes. Public spending on childcare has been low, but the government has adopted a programme to improve the childcare infra-structure.

In the past decade, Ireland has experienced a transition from a country of emigration to become a country of immigration and from a system allowing extensive labour immigration to a system characterised by growth in immigration restrictions especially linked to the worldwide economic crisis. This has resulted in immigration restriction on migrants working as nannies, child minders and domestic workers.

However the experience of being a country with considerable labour immigration has resulted in various labour market initiatives reflecting also the situation of the migrant workers, including migrant domestic workers who are employed in private homes.

The National Employment Rights Authority disseminates information in different foreign languages on rights and entitlements concerning the labour market and has the possibility also to monitor employment in private homes. As a part of the 'Towards 2016 social partnership agreement', the Labour Relations Commission in consultation with various stakeholders drafted a '*Code of Practice for Protecting Person's Employed in Other People's Homes*' in May 2007. This Code has now been adopted and can also be seen as addressing the complexity of living and working in one's employers' private home.

Ireland has not ratified the European au pair agreement and does not grant visas or residence permits on grounds of au pairing for non EU citizens, but 'au pair work' is allowed as casual work for third country nationals residing on study or working holiday permits.

Au pair agencies in Ireland offer au pair placement to EU citizens and often do it in a context of addressing the needs of childcare, using concepts on their web sites such as 'flexible childcare'. Three agencies have established themselves in 2010 as the national branch of the IAPA, and advocate for ethical au pair placement based on ECAPS¹²⁷ and for prohibiting placement without the assistance of an agency. Furthermore they are interested in opening up Ireland to au pairs outside the EU. NGO activities have not yet been focussed specifically on au pairs, but the Migrants Rights Centre (MRCI) plans to investigate the broad concept of au pairing further. Indications show that 'au pair' can refer to various forms of undocumented migrant domestic and care work.

3.3.1. Context of welfare, gender and migration

More women joined the labour market

Between 1998 and 2007 almost 300,000 women joined the Irish labour market. In 2007, two out of three women were active in the labour market (*McGinnity and Russell 2008*).

The increasing share of women on the labour market in Ireland has been one reason why the government has launched an expansion of the childcare infrastructure. This initiative was called 'The National Childcare Investment Programme 2006 – 2010 and €575 million were allocated to the 5 year programme. It was anticipated that the programme would create up to 50,000 new childcare places, with the objective of assisting parents to access affordable, quality childcare.'¹²⁸

Childcare in Ireland is organised both as variations of public day care for preschool / after-school children and as child minders' care, where the children are looked after in the minder's own home. A Child minder is a self-employed person who minds other people's children in her/his own home. A child minder can care for up to five children under six years of age (including the child minder's own). The service is usually offered for the full working day or for different periods during the day. Parents and child minders arrange their own terms and conditions. In addition, there is a *child minder's tax relief* for people who mind up to three children in their own home. No tax is payable on their child minding earnings provided the earnings are less than €15,000 per year.¹²⁹

¹²⁷ The organisation European Committee for Au Pair Standards, www.ecapsweb.eu. See chapter 1.

¹²⁸ Department of Children and Youth Affairs: National Childcare Investment Programme 2006 – 2010:

<http://www.omc.gov.ie/viewdoc.asp?fn=%2Fdocuments%2Fchildcare%2FNationalChildcareInvestmentProgramme2006.htm&mn=chiy&nID=2>.

¹²⁹ Ibid.

The employment rate of women in Ireland increased from 55.7% in 2003 to 60.2% in 2008, which is just above the EU-27 average of 59.1%¹³⁰ and Ireland met the Lisbon target of 60% employment rate of women in 2006.¹³¹

However, as stated in an OECD working paper (Cournède, 2006), public spending on child care in Ireland compared internationally has been very low until this programme was established. As a result of public spending being low, parents faced the highest level of childcare costs among OECD countries in 2001 (Cournède, 2006). Furthermore only a small percentage of children under three years were registered in child care.¹³² The Childcare Investment programme targeting an extra 50,000 childcare places aimed at reaching the OECD average of 29% of children in registered child care. The OECD working paper points to the lack of child care as a key reason for the relatively low participation rates of women at the labour market.

New figures from Eurostat 2009 show however that female participation on the labour market is, in spite of participation having increased among women with pre-school children from 54% to 60% (*McGinnity and Russell 2008*), relatively more affected by having children than in other EU countries.

In their research, Frances McGinnity and Helen Russell conclude that the distribution of paid and unpaid work is still highly gendered; men spend considerably more time than women on paid employment and women spend substantially more time on caring and household work (76% according to Knudsen and Wærness 2008). In terms of housework women spend a far greater amount of time on core domestic tasks such as cleaning, cooking and shopping, while men's contribution comes more in the form of house repairs and gardening. Women are disadvantaged in the allocation of tasks, contributing disproportionately to routine household tasks (McGinnity and Russell 2008:70). Compared to some of the other countries in this study, the number of hours spent by women on domestic work is high. Irish women spend 31 hours weekly (Knudsen and Wærness 2008) on domestic work which is more than twice as much as Denmark (12 hours) and almost twice as much as the Netherlands (17 hours)

From emigration country to immigration country

In the past decade Ireland has established a system of managed migration primarily aimed at labour migration. Ireland has adopted and implemented several provisions on labour immigration and integration (the following description is based on Walsh and O'Shea (2009) p 34-37).

The Employment Permits Act 2003 provided a revised legislative basis for work permits, including penalties for employers for illegal employment of non-nationals and made preparations for the implementation of free movement of workers from the new EU Member States in 2004. *The 'habitual residence' requirement* was introduced into social welfare legislation on 1st May 2004, to limit the access of non-Irish nationals (including EU nationals) to many social welfare payments, with the intention to prevent alleged 'welfare tourism' within the EU.

¹³⁰ European Commission (2009: Report on equality between women and men 2010.

¹³¹ European Commission's Expert Group on Gender and Employment Issues (EGGE) 2009.

The Employment Permits Act 2006 made work permits generally only available, except in exceptional circumstances, for persons earning a minimum salary of €30,000 per annum and based on a labour market needs test¹³³. The work permit lasted for two years, with the first year fixed to a specific employer, and could be renewed for a further three years. Certain occupations were ineligible for work permits, but these occupations did not include care workers, who were defined as child minders, nannies, but not as domestic workers. Studies (e.g. MCRI (2004)) have shown that though permitted as a care worker, the migrants often experienced that the employment implied domestic work as well.

Revised Arrangements for Employment Permits

In response to the economic downturn, revised arrangements for employment permits were introduced on the 1st of June 2009 affecting both new work permits and green card applications in the future. Additional occupations were added to the ineligible list for work permits. While these did not include care workers, they did include domestic workers. The minimum salary criterion of €30,000 for work permits has been reinforced and the labour market needs test has been extended to eight weeks with six days advertising in national media.

In 2008 the National Employment Rights Authority (NERA) was established and agreed under the Social Partnership Agreement 'Towards 2016'. This body has information in 13 languages on employment rights and entitlements as well as powers of enforcement and prosecution. Its team of 90 labour market inspectors can carry out inspections of all places of employment including private homes under certain circumstances and can target such places by sector or geographical area. NERA carry out inspections as a result of complaints received of alleged breaches of employment rights, as a result of targeted inspection campaigns and as a result of routine inspection enquiries.¹³⁴

Aside from certain protective elements built into the employment regulations for hiring migrant workers, there are no specific regulatory structures in Ireland for the protection of foreign workers. There are, however, several general but relevant regulatory standards that aim to protect the rights and entitlements of an employee for example the Code of Practice for Protecting Persons Employed in Other People's Home.

The NERA inspection services enforce aspects of employment legislation that include working hours, national minimum wage, and protection of employment for both Irish and foreign workers. As a part of its remit, NERA targets specific industry sectors, but has yet to focus on the health and social care sector. NERA inspectors have the power to enter premises on the basis of a complaint. The remit of NERA also extends to private dwellings provided that the latter belong to registered employers. The difficulty then is not only identifying any breaches in

¹³² In 2006 the share of use of formal childcare arrangements for 0-2 year olds were below 20% (ibid)

¹³³ Labour market needs test: In Ireland a new application for a work permit must be accompanied by documentary evidence that a labour market needs test has been carried out. From 1 June 2009 the test requires that the vacancy must have been advertised with the FÁS/EURES employment network for eight weeks (previously four weeks) and in local and national newspapers for six days (previously three days). This is to ensure that, in the first instance an EEA or Swiss national or in the second instance, a Bulgarian or Romanian national cannot be found to fill the vacancy. (www.citizensinformation.ie).

¹³⁴ National Employment Rights Authority: Guide to Inspections. www.employmentsrights.ie.

employment legislation in a private setting, but if the employer is not registered, then the employee can be in a very isolated and vulnerable position. A study by the Migrant Rights Centre Ireland (2004) into the experiences of migrant domestic workers noted the potential for racism and other discriminatory behaviour in home employment settings.

In May 2007, as a part of the 'Towards 2016 social partnership agreement', the Labour Relations Commission in consultation with various stakeholders drafted a '*Code of Practice for Protecting Person's Employed in Other People's Homes*'. The Code encourages the adherence to relevant employment legislation and sets out good practice with regard to employment standards (e.g. rates of pay, hours of work and list of duties). The Code is particularly important for migrant domestic workers, as it marks the first step in addressing the complexity of working and living in a private home of an employer.

The purpose of the code was to

- Set out certain employment rights and protections for persons employed in other people's homes;
- Encourage good practice and compliance with the law concerning the employment of persons in other people's homes; and
- Increase awareness of the application of relevant legislation and codes of practice with regard to the sector to which this code applies.

The provisions of the code imply:

- The employer shall supply to the employee a written statement of terms and conditions of employment, as required under the Terms of Employment (Information) Acts 1994 to 2001, setting out clearly the following: Hours of work, rates of pay, list of duties, periods of annual leave place or places of work, commencement date and breaks.
- The employer shall respect the dignity and privacy of the employee and shall take all steps necessary to safeguard the dignity and privacy of the employee working in the home.
- The employer shall provide a private secure room with a bed. If employees are required to share a bedroom with fellow employees, this should be clearly agreed in advance.
- The employer will require the employee to carry out the duties specified in the written statement of terms and conditions of employment. Additional duties will only be carried out following clear agreement between the employer and employee, or as already provided for in the written statement of terms and conditions of employment.
- Details regarding the place or places of work and travel to the place or places of work (e.g. to a holiday home of the employer, or in accompanying the employers family on holiday elsewhere, etc.) shall be included in the written statement of terms and conditions of employment

- The employer shall supply to the employee detailed pay slips which set out; Payment intervals (weekly, fortnightly or monthly); Rate of pay per hour; Details of any overtime payments to be paid; Details of all deductions from pay.
- Employers should recognise that accidental breakages or damage will happen. Any deductions from the employee's wages shall only be made in accordance with the Payment of Wages Act 1991.
- The employer may make deductions from wages where the employee is provided with meals and/or lives in the place of employment to amounts specified in the National Minimum Wage Act 2000.¹³⁵
- The employer shall not withhold any personal documentation belonging to the employee (e.g. passport, visa, identity cards, bank account documentation, etc). For the avoidance of doubt, the employer can retain copies of these documents where such copies are required to ensure compliance with other legislation.
- The employer shall ensure that the employee is promptly reimbursed for all reasonable out-of-pocket expenses incurred during the course of his or her employment (e.g. travel fares, entrance charges, etc.) in connection with his or her employment.
- The employer shall facilitate the employee in the free exercise of personal pursuits outside of the employee's working time as specified in the written statement of terms and conditions of employment.
- The employer shall take all reasonable steps to ensure that the employee is aware of his or her statutory entitlements as an employee.
- In accordance with Irish law, the employer shall not restrict the employee's right to trade union membership consistent with the employee's Constitutional right to join or not to join a trade union.
- Both the employer and the employee will mutually respect each other and the employer will take all reasonable efforts to ensure that the employee's dignity in the workplace is respected and protected.
- Both the employer and the employee should establish, where required by law, that relevant employment permits are held.

According to data from the ILO (2008) only 10,100 persons were officially working in private households (Heimeshoff 2011). Most foreign domestic workers come from the Philippines, Brazil, China; Ukraine and India and the majority of them work without work permit. (ibid)

¹³⁵ Currently: Full board and lodging €54.13 per week or €7.73 per day. ; Full board only €32.14 per week or €4.60 per day; Lodgings only €21.85 per week or €3.14 per day.

Estimates of the number of undocumented migrants vary. One (MRCI 2010) suggests the figure of 30,000 based on data from the Department of Justice and Equality and Law Reform.

3.3.2. Au Pair regulation

The Council of Europe's `European Agreement on 'au pair' Placement'

Ireland has not signed or ratified the 1969 Council of Europe European Agreement on Au Pair Placement of 24. November 1969.

No au pair visa

Ireland does not have any specific immigration rules allowing for the admission of persons wishing to take up jobs as au pairs. Thus Ireland does not issue work or residence permits for the purpose of employment as au pairs. Persons working as au pairs in host families in Ireland are doing so within the general rules and regulations for EU/EEA nationals. EU/EEA nationals are not required to register or to obtain permission to reside in Ireland from the Irish Immigration Authorities, but EU/EEA nationals working in Ireland can apply for a Personal Public Service Number at the Department of Social Protection and must pay tax.

However non-EU nationals may have pre-existing immigration status which allows them to take up casual work as au pairs. This pre-existing immigration status may be as a student or as a person who have admission according to a Working Holiday agreement.

Such employment is secondary to the primary purpose of their presence in the State but would allow for au pair work on a causal basis e.g. a non-EEA national may take up casual employment as part of their permission to be in Ireland as a student. In addition, a person who has permission to holiday in Ireland under a Working Holiday Authorisation may engage in casual employment.

On 17 December 2008, the Government announced its decision that from 1 January 2009, it would continue to restrict access to the Irish labour market for nationals of Bulgaria and Romania. This decision will be kept under on-going review and will be assessed comprehensively before the end of 2011. Bulgarian and Romanian nationals continue to require an employment permit to take up employment in Ireland and the job will continue to be subject to the current requirement for a labour market test. However, these employment permit requirements apply only to the first continuous twelve months of employment in the State. At the end of this twelve month period, a Bulgarian or Romanian national will be free to work in Ireland without any further need for an employment permit.

Working holiday agreements

Ireland has working holiday agreements with Argentina, Australia, Canada, Hong Kong, Japan, New Zealand, the Republic of Korea and the US. `These Working Holiday schemes are intended for use by young adults who wish to stay in Ireland

for an extended holiday and who may work casually in order to fund their stay.’
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The regulations on age and length of stay for working holiday permits are as follows:

- Argentina: Age; 18-30. Stay; max 12 months.
- Australia: Age; 18-30. Stay; max 6 months.
- Canada: Age; 18-35. Stay; max 12 months.
- Hong Kong: Age; 18-30. Stay; max 12 months.
- Japan: Age; 18-25. Stay; max 12 months.
- New Zealand: Age; 18-30. Stay; max 12 months.
- South Korea; Age: 18-30. Stay; max 12 months.
- US (Work and travel programme): persons who are in postgraduate programme or newly graduated Stay; max 12 months.

Typically the ability to pay for return ticket, a medical insurance are required and the possibility to bring family or dependants is excluded.

Student permits

Non-EEA nationals can apply for a student visa which allows for one to take up temporarily casual work next to the studies. For such casual work, the following criteria is outlined:

Only students attending a full time course of education of at least one year duration leading to qualifications recognised by the Minister for Education and Science will be permitted to take up casual employment. Casual employment is defined as up to a maximum of 20 hours part-time work per week, or full time work during normal college vacation periods. The work may not interfere with the course attendance and failure to provide evidence of satisfactory attendance record will result in a refusal of any extension to the permission to remain.

Students who are to be considered for a student visa must be enrolled on a private funded course involving at least 15 hours of organized daytime tuition per week, having paid the requisite fees to the college, having the academic ability to follow the course, having a sufficient level of English to follow the course and having the immediate access to the estimated cost of living in Ireland for a year (EUR 7,000) and having private medical insurance.

Casual employment is for a student defined as secondary to the educational purpose of the stay. A casual employee is not defined in employment law in Ireland. In reality, casual workers are on standby to do work as required without fixed hours or attendance arrangements, but these workers are employees, for employment rights purposes and some legislation will apply for them.

Given that Ireland has not ratified the Au Pair Agreement, or has not established specific immigration regulations on au pairing no particular rules are applied to au pairs or host families.

¹³⁶ <http://www.dfa.ie/home/index.aspx?id=80991>.

In this respect the legal regulation on au pairing is not different from general EU-mobility and general labour market regulations.

3.3.3. Statistics

In this study, the only numbers regarding au pairs available is based on information given by the au pair agencies. Informants in the Department of Justice have confirmed information from other government agencies that statistics on au pairs are not available.

One au pair agency reported that they place around 70 au pairs annually from countries such as Germany, the Netherlands, Spain, France, Italy, Poland, Hungary, Austria, Australia, and that au pairs stay between three and 12 months.

3.3.4. Stakeholders in the au pair field

As shown at the beginning of this chapter there seems to be a strong, unfulfilled need for child care for Irish working families. Furthermore there are indications of an increasing need for the care of elderly people due to demographic changes and compositions in general and at the labour market.

In Ireland, as in many other countries, the tendency towards relegating 'care work to the private sphere or markets, has (...) led to the concentration of migrant women in low-wage, often exploitative jobs in the care industry' (Anthias 2000, Timonena and Doyle 2010).

The access to Ireland by non EU care workers, such as nannies, has been abolished since 2009, and even though the public childcare infra-structure has been improved, it is still assumed that the market for private paid care and domestic work is considerable.

Au pair agencies

During the last decade several au pair agencies have established themselves as visible businesses and not only as more or less anonymous websites.

In 2010 a National Au Pair association under the IAPA (International Au Pair Association) was established. The national au pair associations under IAPA are obliged to follow an ethical code of placement, which is based on the European Agreement on Au pair placement of 1969.

The INAPA includes three agencies:

Cara International: www.carainternational.net.

Au Pair Study; www.auparstudy.com.

SK Dublin au pairs: www.skdublinaupairs.ie.

All agencies are selling / offering assistance to host families and/or au pairs consisting of recruitment, assessment, selection, control (medical and police checks, placement and follow-up / mediation. The reasons for choosing these agencies to find an au pair are presented as: the au pair is 'affordable, flexible,

secured, legal (Cara International) 'flexible form of childcare', 'introduction of children to new culture' (Au Pair Study).

From their web site various types and levels of au pairs are offered and defined by the agency:

- au pairs as full time child minders, demi-au pair, who is a student and work secondary as a part time au pair, and au pairs for elderly people (Care International),
- Au Pair Companion (working in the home together with the *mother*), Au Pair Minder (working in a family with a part time employed *mother*), Au Pair Plus (the *mother* is working full time) (Au Pair Study).¹³⁷

Requirements are specified for the host families according to the Council of Europe Agreement/ECAPS: the au pair must have her own room, work a maximum 30 hours, must have the possibility to attend language courses and social events etc. and must invite the agency for an inspection of the home prior to the placement.

The INAPA is, like the other NAPAs, interested in the regulation of the 'au pair industry' that would eliminate the web-based agencies and private hire of au pairs who according to them do not live up to a proper ethical standards and are preventing the professionalization and transparency of this 'industry'. Furthermore, the chair of INAPA expressed the wish to the Irish government to open up immigration to au pairs from non-EU/EEA countries.

As presented by these agencies, au pairs are inscribed in a context of care work – taking care of the children (and now also elderly people) as the primary argument and the element of cultural exchange as secondary. A website for parents (read mothers) on pregnancy and childcare, advertisements, advice on nutrition, family life etc. published in August 2010 a survey on the experiences of host families of au pairs. The article does not allow for an assessment of the study as such, but however concluded that financial considerations are the main argument for hiring an au pair. Au pairing is seen first and foremost as 'less expensive than other childcare options'¹³⁸ and fits into the pattern created by the agencies. In this view, the au pair stay has to some extent become primarily a commodity, sold by agencies and implemented as a 'less expensive' care and domestic worker in private homes, and only secondary a cultural exchange scheme.

The au pair is becoming an equivalent to a nanny also in official government papers. For example a discussion paper from the Ministry of Education and Science 2009: 'Developing the workforce in the early childhood care and education sector'¹³⁹ where one of the 'Standard Occupational Classification description' is formulated as 'Other childcare and related occupations : perform a variety of domestic activities in the day-to-day care of children, and supervise

¹³⁷ My italics.

¹³⁸

http://rollercoaster.ie/Article/tabid/156/ArticleName/RollerCoaster_ie_Survey_Having_an_Au_Pair/Default.aspx.

¹³⁹ Ministry of Education and Science (2009): "Developing the workforce in the early childhood care and education sector.

and participate in their play, educational and other activities; related job titles: child minder, children's nanny, au pair.'

Thus the au pair activity is here described as a job.

NGOs

There are no NGOs solely concerned with au pairs.

Trade unions and NGOs in general are apparently not so preoccupied with the situation of au pairs but the Irish Trade Union Confederation (ITUC) did in their response to the ILO regarding the Decent Work for Domestic Workers process (chapter 1) emphasize that 'au pairs performing domestic work on an occupational basis' should be included in a future convention on domestic work.

The Migrant's Rights Centre in Ireland (MRCI), has been working for a number of years with the rights and situation of migrant domestic workers, and has been approached by especially third county national troubled women who understand themselves to be au pairs.

3.3.5. Abuse, counselling, shelters, cases

Some media attention has been dedicated to the issues of au pairing, and linked to the general insecure situation of migrant domestic workers.

An article was published in the Evening Herald Newspaper in November 2010¹⁴⁰ under the headline; 'Au pairs 'treated like slaves' as job market dries up'. The article refers to au pairs being locked up in the house, working 15 hours a day and having their mobile phones taken off them. Representatives from the Migrant Rights Centre Ireland and from Cara International are cited to confirm the stories and argue for more regulation and better protection of the au pairs. However there is not a support centre for au pairs only that could give an indication of the number of abuses.

The Migrants Rights Centre in Ireland (MRCI) has become aware of a couple of cases, and states that they will investigate the phenomenon further given that they suspect the phenomenon of au pairs working as domestic workers to be increasing after the closure of legal admission for migrant domestic workers in 2007. The many websites and ads in newspapers offering au pairs full time, part time, from three months to two years and of non-EU nationality could indicate a growing market for au pairing going beyond the concept of cultural exchange transforming it to connote domestic helper / child minder. MRCI reported a case where a South African woman was placed through an internet agency with an Irish host family in what she was told was an au pair placement:

'The South African woman registered with an online Au Pair agency. She was working 70 hours a week for 400 Euro per month. Her passport was taken from her. Her 'host family'/employer did not apply for the necessary immigration papers for her. Therefore she became undocumented after 90 days in Ireland (South African nationals can enter Ireland without a visa and remain for up to 90

¹⁴⁰ McBride (2010).

days). She was told that she would be allowed to study when she came to Ireland but this was not the case. They threatened her with deportation. Immigration picked her up and she told them her story. They referred her to us in the Migrant Rights Centre Ireland. We forwarded her case to the Anti Human Trafficking Unit in the department of Justice. They did not deem her to be a potential victim of trafficking for forced Labour. MRCI are continuing to assist the woman, we believe her case is a forced labour case. We have lodged complaints with the Labour Relations Commission under breaches of employment legislations. This process is in its initial stages.'

As mentioned, travellers from South Africa do not need a visa to enter Ireland for holiday purposes, as well as travellers from Brazil¹⁴¹.

Given that students from non-EU countries have the possibility to work 20 hours besides their studies, a Brazilian or South African au pair does not as such indicate an irregular situation, but the normalisation also in popular media (according to one informant 'Brazilian au pair' did appear in a HOT-list in the Sunday Times) also could mean that non-EU nationals are being employed in what is called au pair placements, but is actually irregular domestic workers employment.

3.4. Au pairs in the Netherlands

Summary

In 2010, 1,377 residence permits were granted to au pairs. One third was granted to Filipinos.

The labour market in the Netherlands is dominated by patterns of high employment rates and a very high percentage of female part time employment. Childcare is not available in the extent that it is needed which seems to sustain the pattern of female part time employment.

The gender division of domestic work such as cooking, cleaning and caring for children in private homes is characterized by a relatively high percentage of men being involved.

A considerable number of the households in the Netherlands hire paid domestic help, many are migrant women with or without legal residence.

The au pair scheme in the Netherlands is organised as an immigration regulation. The Netherlands did not ratify the European Agreement on au pair placement, but followed some of the requirements specified in the Agreement in order to issue au pair visas and residence permits.

A new piece of legislation including changes in au pair regulations, the Modern Migration Act, has been adopted, but not yet implemented. According to the new law au pair agencies are given a prominent role; they will become the sole sponsor of au pairs. This is different from the current situation. With the new law,

¹⁴¹ The list of countries with no visa requirements to enter Ireland can be found at the website of Department of Foreign Affairs: : <http://www.dfa.ie/home/index.aspx?id=8777#non%20visa>.

the agencies will have to be authorized as sponsors and hence, agencies without authorization cannot be sponsors for au pairs who need a residence permit. Agencies will be held responsible for the entry, the care and the return of the au pair. It is not clear whether any code of conduct will be of significance in authorizing/ excluding agencies.

Au pair migration has increased during the last decade, and the au pairs come from a variety of countries, but most (35%) come from the Philippines and South Africa (20%). Au pairs from the Philippines go to the Netherlands despite the Philippine ban on au pair migration to Europe. EU citizens are also placed as au pairs including through agencies.

Control mechanisms: the enforcement of the legal provisions is conducted by the Immigration Authorities who can ask the Labour Inspection and the Police to investigate signals of violation of the rules. Host families can be fined for violation. The coming implementation of the Modern Migration Act will mean that an agency will be held responsible for the fulfilment of the au pairs' legal obligations and those of the host family, and failure to do so can result in sanctions against the au pair agency.

In 2004 by the immigration authorities (IND) established a hotline in order to give au pairs the opportunity to complain about working conditions.

Private initiatives have been established in the shape of agencies and NGOs working in the "au pair field". A number of agencies offer au pair placement and some of them have founded a national au pair association under IAPA, advocating for obligatory agency placement under an ethical code, and the recognition of the association as a self-regulating industry. Some of the agencies offer au pairs and other paid services of domestic and care work.

NGOs working with au pair issues are mostly linked to the Filipino community and migrant domestic workers network. Trade unions have earlier taken up cases of abuse, but seem currently not to be active. Those NGOs having contact with au pairs are very critical of the way the au pair scheme often is used and they reject the idea of agencies and sponsors as a measure to extend the protection of au pairs. In addition, there seems to be a concern about au pairs overstaying their visas and continuing to work as undocumented domestic workers in precarious situations.

3.4.1. Context of welfare, gender and migration

According to Daly and Rake (2003), the Netherlands is characterized by welfare entitlements closely tied to labour market status. This tends to favour male lifetime employment and marginalize care which is often performed by women. The labour market is dominated by patterns of high male full time employment rates and a high percentage of female part time employment. General employment rates for women seem, at first glance, to be high; 71,1% in 2008, which is higher than the EU-27 average of 59,1 %¹⁴².

¹⁴² European Commission (2009): Report on equality between women and men 2010.

An OECD survey of 2008¹⁴³ however states that about two-thirds of Dutch working women opt for part-time jobs, contributing to bringing down the country's general average working time to one of the lowest levels in the OECD (OECD 2008)¹⁴⁴.

The link between lack of affordable child care services and a high percentage of women working part time is also underlined in the OECD analysis despite government initiatives to improve the situation:

'Recent government decisions have stimulated the provision of childcare services and helped reduce their cost, making it easier for parents to work longer hours. But not all obstacles to the supply of childcare services have been removed' (OECD 2008:8).

The government is praised in the OECD report for a new law that requires schools to arrange the provision of care before and after school hours by either supplying care themselves or by acting as a matchmaker between external providers and parents. It is recommended to require that schools take responsibility for the provision of childcare services during agreed opening hours and that school premises should be available to external childcare providers outside normal school hours.

The number of people providing unpaid care for children was, in the Daly and Rake study mentioned above, compared to other EU countries, high (35%) but a significant relatively high percentage of men (31%) involved in providing care as part of their daily activities (Daly and Rake 2003:55). However women spent an average of 13 hours a week more than men on domestic work (childcare excluded) (Voicu 2009) and women still perform three-quarters of domestic work in the household (Knudsen and Wærness (2008).

In the World Economic Gender Gap Index¹⁴⁵, the Netherlands sank from a ranking of 11 in 2009 to a ranking of number 17. At the same time, female labour market participation has increased in the years 2006-2010 from 56% to 74%.

The ILO calculates that there are 6,000 employees in private households in The Netherlands (Heimeshoff 2011), but according to a 2003 governmental report '1,235,000 Dutch households made use of household help, of which 85% was paid' (Marchetti (2005:31, McDonald 2006:18). This indicates a much higher number of domestic workers. Often migrant women are among the domestic and care workers, but it is not possible legally to migrate to the Netherlands to work as domestic or care worker.

It is estimated¹⁴⁶ that 100,000 migrants reside illegally in the Netherlands.

¹⁴³ OECD 2008: OECD ECONOMIC SURVEYS: NETHERLANDS.

¹⁴⁴ In the EU Commission report 2010 on Equality between Men and Women the same tendency is repeated; The Netherlands is still the part time leader in the EU with 75% share of part timers among female workers (p15).

¹⁴⁵ World Economic Gender Gap Report 2010:
http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf

¹⁴⁶ Van der Leun (2008).

During the last decade, legal immigration to the Netherlands has generally been restricted and migration, ethnic and religious differences have often taken up a prominent place in very heated political debates.

3.4.2. Au pair regulations

The Netherlands did not ratify the Council of Europe's 'European Agreement on 'au pair' Placement', 1969

Cultural migration

In the Report 'Tendrapportage Regulier 2010 Reguliere migratie naar Nederland in beeld' published by the Immigration and Naturalisation Service of the Ministry of Interior and Kingdom Relations, the current trends on au pairing in the Netherlands are described under the headline 'Cultural migrants'.

Cultural migration is described as the possibility 'to stay in the Netherlands, for foreign young people, who are given the opportunity to become acquainted with Dutch culture and society. (...) The stay as an au pair is primarily of a cultural character. The stay as an au pair is for a year and cannot be extended.'¹⁴⁷

Au pair regulations have been changed several times during the last decade in the Netherlands. In 2000, it became possible for the au pair to change families and the signing of declaration of awareness on rights and obligations was introduced as mandatory for both the au pair and the host family (Miedema et al 2003).

In 2003, the Ministry of Justice commissioned an evaluation of the au pair regulations (Miedema et al 2003) to 'ascertain whether the au pair regulation is being improperly used, and if so to what extent and in what way' (Miedema et al 2003:2). Although the study could not give a 100% precise answer to that question, it emphasized the difficulty of ensuring the rights of the au pairs, who in this context are defined solely as non-EU citizens:

'A possible bottleneck in the supervision is that improper use is often difficult to establish because the regulation is often vague and not concrete. The line between non-physical and physical household chores, a definition of a cultural exchange and what exactly is meant by the availability of an alternative for the au pair is not specifically defined in the regulation. The aliens registration office admits that improper use is difficult to establish, especially when there is no plaintive.

Au pairs often waive the right to complain, because of the possibility that they are forced to leave the country, for instance if they actually perform labour. If an au pair ends the relation with her host family, she loses the right to stay in the Netherlands, unless she immediately finds a new host family.' (Miedema 2003:15).

Regulations on au pairing were changed in November 2005, where it was made mandatory to provide a signed agreement between the au pair and the host

¹⁴⁷ IND Informatie- en Analyse Centrum (INDIAC) – Tendrapportage Regulier 2010:20.

family together with the application for residence permit. Furthermore the request for an authorized declaration of marital status was replaced by the signing by the au pair of a declaration on marital status declaring her to be single (Trendrapportage 2010:28).

As part of the process of developing a new immigration legislation, the Modern Migration Policy, a pilot project was launched in 2008, conducted by the Immigration authorities, IND, on au pair agencies as sponsors for au pairs and au pair placements (See details below).

The au pair regulations are now formally included in the Modern Migration Policy which has been adopted as legislation but not implemented¹⁴⁸. The date of implementation has not yet (May 2011) been decided upon.

The requirements to be an au pair¹⁴⁹ are the following:

- Be over 18 but no older than 25 years of age. (Change: *Maximum age will in Modern Migration Act be changed to 30 years*)
- Have a valid passport
- Have health insurance with cover in the Netherlands
- Must not be married
- Must not have a duty of care or be responsible for the actual care of own family members (children or parents, for instance) (Change: *An au pair is allowed to be married and to have children, but is not allowed to bring any family members to the Netherlands.*)
- Must not constitute a risk to public order
- Must undergo an examination for tuberculosis in the Netherlands
- Must not have previously stayed in the Netherlands on a residence permit
- Must not have previously worked for the same family abroad
- Will only carry out light domestic work to assist the host family
- Will work a maximum of 8 hours per day and a maximum of 30 hours per week and 2 days off per week
- Must sign a declaration of awareness of rights and duties of the au pair and the host family.

The requirements of the host family¹⁵⁰ are as follows:

- The family must consist of a minimum of 2 persons
- They must support the au pair during the stay in the Netherlands
- The family must meet the 'standard amounts considered adequate financial resources' set by the Minister of Social Affairs and Employment¹⁵¹
- The responsible person in the host family must sign a sponsor declaration
- The responsible person in the host family must sign a declaration of awareness of the rights and duties of the au pair and the host family
- The family must draw up a daily schedule for the au pair.

¹⁴⁸ Ministry of the Interior and Kingdom Relations. Immigration and Naturalisation Service: Modern Migration Policy. <http://english.ind.nl/themas/momi/>.

¹⁴⁹ According to old but valid regulations. Two changes will according to interviews in this study with government officials occur with the Modern Migration Act – see brackets.

¹⁵⁰ Ibid.

¹⁵¹ http://www.ind.nl/en/algemeen/begrippen/voldoende_inkomen.asp.

The official maximum pocket money is EUR 340 but no level of minimum pocket money is imposed.¹⁵² Pocket money is not taxable.

The Modern Migration Act and the role of the agency as sponsor

According to the new law that came into effect from 1 January 2011, but has not yet been implemented, au pair agencies will become the sole sponsor of an au pair. This is different from the current situation of the host family being the sponsor. A 'sponsor' can generally be a company, educational institution, organisation or private person that has an interest in the arrival and residence in the Netherlands of a foreign national. Different types of sponsors are linked to different types of immigrants. In the Modern Migration Policy Act agencies will be the only sponsors of au pairs. Agencies will have to be authorized as sponsors and hence, agencies without authorization cannot be sponsors for au pairs who come to the Netherlands and who need a residence permit. Au pairs and host families are thus not able to apply for au pair residence permits without an authorized au pair agency as an intermediary.

Administrative procedures are partly simplified and partly outsourced to sponsors who in this context will be au pair agencies. A sponsor can start an application for a residence permit on behalf of a foreign national or submit an application for a residence permit while the foreign national is still residing abroad, and the sponsor can submit an objection or appeal against the decision on the application. The sponsor will have an independent position in the Aliens Act and consequently have responsibilities. In the case of au pairs however the sponsors can only be au pair agencies authorized by the Immigration and Naturalisation Service.

Four key obligations are linked to the juridical status as sponsor¹⁵³:

- **The duty to inform.** 'This means, among other things, that the sponsor is obliged to report changes which are relevant to the right of residence of the foreign national to the IND.' An au pair agency will, for example, have to report that the au pair will be residing with a different family than the one originally reported.
- **The duty to administer.** 'This means that the sponsor has to include certain relevant information about the foreign national (for example the contract of employment) in his administrative records. Relevant details and documents must be saved for up to five years after the sponsorship has ended.'
- **The duty to care.** 'For example, sponsors of highly skilled migrants, foreign students and young exchange participants (including au pairs) have the duty to ensure careful recruitment and selection.'
- **The responsibility for the foreign national's repatriation.** 'If a foreign national is found to be staying illegally in the Netherlands within a year after the relationship between the sponsor and the foreign national has ended, the IND is allowed to recover certain repatriation costs from

¹⁵² Interview with au pair responsible official in the IND.

¹⁵³ Ministry of the Interior and Kingdom Relations, Immigration and Naturalisation Service: Modern Migration Policy http://english.ind.nl/themas/momi/Rechten_en_plichten/#paragraph1.

the former sponsor (transport costs in the Netherlands, the costs of travel documents and the airline ticket costs).¹⁵⁴

The recognition of a sponsor can be suspended or withdrawn by the Immigration authorities in case of non-compliance with conditions and obligations. Furthermore administrative fines can be imposed on both sponsors and migrants.

Criteria to qualify as a recognized sponsor are according to the IND:

1. The organisation must be registered at the Chamber of Commerce if this is obligatory based on Chamber of Commerce legislation (Handelsregisterwet 2007);
2. The continuity and solvability of the organisation must be guaranteed;
3. The organisation and the people involved with the organisation must be reliable partners for the INS (no relevant criminal records);
4. Reliability also depends on the history with regard to the payment of taxes and contributions;
5. The extent to which the organisation complies with the Aliens Act, the Aliens Employment Act and the Minimum Wage and Minimum Holiday Allowance Act and the Tax Code (no more than three administrative fines over the previous four years).
6. The recognition status of the sponsor is not revoked in the previous five years;
7. The organisation must meet the criteria regarding the purpose of stay of the aliens, such as compliance to a Code of Conduct when applicable.

On the website of the IND, in a press release of October 2010, a part of the participating au pair agencies are mentioned:

‘In anticipation of the implementation of the new law, the IND wishes to gain experience with aspects of this new working procedure, including the sponsor system, in a pilot (‘trials’) with a number of au pair agencies. At present, 23 agencies are participating in the pilot.’¹⁵⁴

The criteria for being in the pilot are according to the informant at the IND the same as the criteria for being accredited to qualify as a recognised sponsor (see above).

NGOs and some agencies have been very critical towards the implementation of sponsor responsibility of agencies. In the case of NGOs this has been because of a scepticism towards and experience with agencies as protectors of the rights of au pairs parallel to their commercial interests in placing au pairs and an opposition to agencies in the role of substituting state authority especially regarding the return of the au pair.

¹⁵⁴ The participating agencies include the following: Wecare AuPair, established in Hoofddorp, www.wecareaupair.com; Au Pair Exclusive, established in Hoofddorp, www.aupairexclusive.nl; Filippijnse Au Pair, established in Hoogvliet, www.filippijnseaupair.nl; Allstar Au-Pairs, established in Tilburg, www.allstaraupairs.com; AuPair Anywhere, established in Almere, www.aupairanywhere.nl; SuriNed Au Pair Bureau, established in Haarlem, www.surinedaupair.nl; Au Pair Trust, established in Almere, www.aupairtrust.com; Au Pair International, established in Roden, www.aupairinternational.nl; Bianca’s Au Pair, established in Horst, www.biancasaupairs.nl; Au Pair in Holland, established in Amsterdam, www.aupairinholland.nl; Jorel Agency, established in Almere; Robmin Agency, established in Zwijndrecht.¹⁵⁴ However the list is not complete.

Some agencies have been critical towards the pilot process regarding mechanisms of selecting agencies (some of the agencies in the pilot were during interviews accused by several agencies of dubious, unethical activities), the lack of transparency and a clear ethical standard and the priority of administrative skills in favour of ethical au pair placement.

Filipino au pair migration and the Philippine ban on au pair migration (see chapter 2)

The implications for Filipinos who choose to migrate as au pairs to the Netherlands are that they are not covered by the administrative umbrella of the POEA (Philippines Overseas Employment Administration)¹⁵⁵. Such 'illegal emigrants' cannot formally appeal to their embassies abroad in cases of abuse without risking being placed on the list of workers banned from migration via POEA. If they overstay or for other reasons are deported from Europe to the Philippines, they risk facing difficulties in obtaining new travel documents from the Philippine authorities.¹⁵⁶

An au pair will have to pay bribe to exit the Philippines with an au pair visa for the Netherlands¹⁵⁷. Corruption is highly organised and only a few exit without paying this bribe. Often the au pair will have to borrow the money to pay the bribe and she will therefore start her career as an au pair indebted.

3.4.3. Statistics

The number of applications for au pair residence permits increased in the period between 2005 and 2008. Reasons for that are in the 2010 Trend report ¹⁵⁸ suggested to be the introduction in 2005 of a new Act concerning childcare in 2005, which increased the expenses for public childcare/nurseries for high income families, and the simplification of the procedure and the need for documentation in the application process (the annulment of an authorized declaration of non-marriage). In 2009 and 2010 it seems that the increase has stopped which might be linked to the economic crisis. Most au pairs originate from the Philippines followed by South African. Au pairs are on average 22 years and mainly women.

¹⁵⁵ This government agency provides labour directly to foreign employers, agencies and governments. When migrating by official channels, migrants obtain a number of benefits, such as pre-migration training, life insurance and pension plans, medical insurance. The government also tries to manage irregular migration by prohibiting its citizens from overstaying visas and keeping a list of workers banned from future contracts, and that they are migrating illegally.¹⁵⁵ The participating agencies include the following: Wecare AuPair, established in Hoofddorp, www.wecareaupair.com; Au Pair Exclusive, established in Hoofddorp, www.aupairexclusive.nl; Filippijnse Au Pair, established in Hoogvliet, www.filippijnseaupair.nl; Allstar Au-Pairs, established in Tilburg, www.allstaraupairs.com; AuPair Anywhere, established in Almere, www.aupairanywhere.nl; SuriNed Au Pair Bureau, established in Haarlem, www.surinedaupair.nl; Au Pair Trust, established in Almere, www.aupairtrust.com; Au Pair International, established in Roden, www.aupairinternational.nl; Bianca's Au Pair, established in Horst, www.biancasaupairs.nl; Au Pair in Holland, established in Amsterdam, www.aupairinholland.nl; Jorel Agency, established in Almere; Robmin Agency, established in Zwijndrecht¹⁵⁵ However the list is not complete.

¹⁵⁵ This government agency provides labour directly to foreign employers, agencies and governments. When migrating by official channels, migrants obtain a number of benefits, such as pre-migration training, life insurance and pension plans, medical insurance. The government also tries to manage irregular migration by prohibiting its citizens from overstaying visas and keeping a list of workers banned from future contracts, and that they are migrating illegally.

¹⁵⁶ Stenum (2008), (2010a,b).

¹⁵⁷ The Netherlands and Germany are the two countries in this study that allows Filipinas to enter as au pairs in spite of the Philippine ban. In 2010 the ban was lifted for Denmark.

¹⁵⁸ IND Informatie- en Analyse Centrum (INDIAC) – Trendrapportage Regulier 2010:20.

Table 11: The Netherlands: Residence permits to stay as an au pair

Nationality	2005	2006	2007	2008	2009	2010	Total
Philippines	103	154	248	476	442	461	1,884
South Africa	166	150	188	269	258	272	1,303
Peru	52	82	93	119	56	31	433
Brazil	7	28	57	88	66	77	323
Indonesia	30	46	41	60	63	57	297
Ukraine	26	31	41	52	19	28	197
Russian Federation	15	24	35	45	30	30	179
United States of America	5	25	23	40	41	60	194
Colombia	6	9	17	36	45	69	182
Morocco	20	16	24	22	21	36	103
Other nationalities	114	158	198	303	280	256	1,053
Total	544	723	965	1,510	1,321	1,377	6,440

Source: IND 2010, 2011

The immigration and Naturalisation Service does not have any statistical data on the host families.

It has been mentioned by several informants that EU nationals are also working as au pairs, but they are not statistically visible. An EU national has to register at the municipality and at the Immigration Authorities if s/he stays more than three months in the Netherlands, but s/he is not registered as an au pair.

3.4.4. Stakeholders in the au pair field

Agencies

In the Netherlands a large number of au pair placements have for the last 10-15 years been carried out through au pair agencies. In 2004 a group of these agencies founded the NAPO (The Netherlands Au Pair Organisation). NAPO declares that their objective is to 'care for the needs of the au pairs and their host families and to facilitate in the creation of a uniform and standard industry norms.'¹⁵⁹ NAPO is a branch organisation for au pair agencies and among other issues it will provide 'a strong lobby towards government and other political bodies' (ibid).

The membership of the association is conditioned to compliance with a code of conduct that specifies the regulations for au pairs as cultural exchange based on the European Agreement on Au Pair Placement and Dutch immigration regulations on au pairs, supplemented with various provisions such as the possibility to visit the home of the host family prior to placement of an au pair and the obligatory coverage by the host family of health insurance and fees regarding residence permit and visa.¹⁶⁰

¹⁵⁹ <http://www.napoweb.nl/en/index.html>.

¹⁶⁰ http://www.napoweb.nl/en/download/av_napo_2010_en.pdf.

According to information given by NAPO, 35% of the general au pair placements is estimated to concern EU citizens and 65% of the au pair estimated to be non EU citizens.

NAPO¹⁶¹ is as other national au pair associations and the IAPA founded with the aim of transforming au pair placement to a transparent and trustworthy business through the national au pair associations as 'self-regulating' mechanisms, regulating and controlling the agencies operating through including and excluding agencies as members according to the code of conduct.

The interviewees from NAPO emphasised the importance of setting a standard in a market that is both unregulated and often characterised by lack of transparency for example through internet agencies. They also emphasised the advantages of engaging in compliance with the code of conduct and creating a self-regulated industry with credibility in spite of being competitors on a market.

NGOs

There is no organisation especially for au pairs in the Netherlands.

Few NGOs work specifically with au pairs, but trade unions and NGOs working with domestic workers' issues and migrant women's issues have advocated to improve the situation of au pairs and supported them.

A shadow report (de Boer and Wijers (2006) to the UN CEDAW committee from 28 NGOs (trade unions, womens NGOs, migrants NGO etc.) however is very critical about the use of the au pair scheme in the Netherlands and states:

'Despite the growing demand for domestic workers, which is increasingly met by migrant women, they have no access to work permits. Their only option is to acquire a one-year, dependent-resident permit. This 'au pair' status, however, is not considered work but 'cultural exchange', notwithstanding the fact that au pairs are legally allowed to work 30 hours per week. Moreover, research shows that many au pairs work (far) more than 30 hours, have less than 2 days off, and perform work that goes beyond the au pair contract. NGOs are interested to know what measures the government is taking to enforce proper observance of au pair contracts. They also want to know if the government is willing to consider changing the au pair contract into a labour contract. Finally they would like to know what measures the government intends to take to improve the position of migrant domestic workers, including access to legal working permits and regularisation schemes'.

¹⁶¹ The current members of the NAPO are: Au pair Interactive <http://www.aupairinteractive.com/>; Au pairs worldwide <http://www.aupairsworldwide.com/>; Home au pair <http://www.hoom-aupair.nl/>; House o orange <http://www.house-o-orange.nl/>; Mission Hollandaise <http://www.missionhollandaise.eu/>; Neds au pair <http://www.nedsa.nl/>; S-au pair <http://www.saupair.com/>; Smiling faces au paii ; <http://www.smilingfaces.nl/nl/welcome-bij-smiling-faces-933.html>; SNAPS - Super Nanny Au Pair Services <http://www.supernannyaupairservices.nl/>; Travelactive <http://www.travelactive.nl/au-pair-holland/voor-gastgezinnen/een-au-pair-in-huis>; Yes au pair <http://temp.yesaupair.com/>; World wide nanny and au pair <http://www.worldwideaupair-nanny.com/>.

The Bayanihan, Philippine Women's Center in the Netherlands¹⁶² has been working with au pair issues since 1996 and has organised both support, help-line and activities for au pairs, filed lawsuits together with the trade unions (FNV) in the early 2000 on behalf of au pairs who were abused (Oosterbeek-Latoza 2007), and lobbied for improving the situation of au pairs. The Bayanihan foundation is a Filipino based NGO that works with migrant/Filipina migrant women's issue, but the Bayanihan is now reporting that not only Filipino au pairs turn to them, but also au pairs from Latin America come to seek help, but they experience a language barrier, because these au pairs often do not speak English. Therefore the Bayanihan is looking for an NGO with Spanish speaking members who could take over.

Furthermore, according to the coordinator of Bayanihan, the organisation experiences a heavy workload regarding the au pairs, because taking up a case whether it is mediating between the family and the au pair, contacting the agencies to find another family for the au pair, reacting to urgent issues of abuse that for example involves finding a place for the au pair to sleep, taking a case to court, contacting the immigration authorities etc. is a much too heavy task, considering the limited funding they have. But given that au pairs will come to them for help and that they feel that they cannot refer them elsewhere they respond to urgent needs and try to document cases.

In addition, the organisation organises workshops and activities which addresses au pairs. In December 2010 they together with the Philippine Embassy in Den Haag conducted a workshop on 'Empowering Filipino au pairs through Information and Training' in which 17 Filipino au pairs participated. Another workshop was held in March and two more are planned for 2011.

The Commission of Filipino Migrants Workers and the Respect Network, which is an European network of migrant domestic workers' organisation, trade unions, NGOs and supporters, 'that campaigns for the right of all migrant domestic workers in private households, both women and men, regardless of immigration status'¹⁶³ have addressed the issue of au pairing. In a presentation given at a hearing in the European Parliament¹⁶⁴ in December 2010, 'the au pair option' was addressed together with proposals on circular migration, seasonal worker schemes, point systems etc. as 'variations on the theme of temporary migration programmes which tend to keep migrants in a temporary status without the possibility to build up their basic human rights.'

The Respect Network is also working on the situation of undocumented migrant workers of whom a number are former au pairs.

Trade unions

According to Oosterbeek(2007), the Dutch trade union (FNV) together with the Bayanihan brought cases on labour abuse to court in 1999 and 2000, and financial compensation was given to a Filipino au pair by a host family without bringing the case to court, but with the threat by the FNV to file a law suit. In

¹⁶² <http://www.bayanihan.nl>.

¹⁶³ <http://www.respectnetworkeu.org>.

¹⁶⁴ <http://www.respectnetworkeu.org/respect-in-the-european-parliament>
HYPERLINK 'http://www.respectnetworkeu.org'.

2001 and 2002 cases for a Polish and a Bulgarian au pairs were taken to court by the FNV and the au pairs won the cases¹⁶⁵.

According to inquiries in this study both among trade unions (FNV, Abvakabo and Bondgenoten) and NGOs, au pairs are not currently explicitly on the agenda of these trade unions.

3.4.5. Abuse, counselling, shelters, cases

Hotline

In 2004, the Immigration and Naturalisation Service established a hotline, the IND 'Meldpunt' in order to get more information on the violation of the au pair regulations and as a measure to prevent and stop abuse of au pairs by host families.

The following comes from the website of the Immigration and Naturalisation Service on the IND Hotline¹⁶⁶. 'From 1 June 2004: au pairs who have complaints about their stay in the Netherlands as an au pair can report these complaints to the IND hotline. The complaints may relate to the amount of domestic work, the number of hours they are expected to look after the children, or the way in which they are treated'. The telephone is open during office hours.

Asked about more specific information on the hotline the IND answered that 'The complaints may relate to the amount of domestic work, the number of hours they are expected to look after the children, or the way in which they are treated. There is no recent registered statistical or annual information.'

Agencies

The informants from au pair agencies in the NAPO were very critical towards the implementation of the provisions in the Modern Migrant Act, although they participate in the process with the IND and although they wish to have, as an industry subjected to an ethical code of conduct, the monopoly of au pair placements, in that au pair placements according to them should not take place without the intermediary of a 'licensed' agency.

According to them the advantages regarding protection of the au pairs would be the closing down of dubious websites and internet agencies, transparency in the daily work of the agency, a responsibility of the agency to take care of the interests both of the au pair and the host family, ensuring a replacement of the au pair if needed, ensuring that regulations are not violated in the home of the host family, and mediate in case of conflicts and organising social events for au pairs.

¹⁶⁵ In a judgement dated 11 February 2004, the Court of Appeal in Leeuwarden decided in a case brought by the union FNV (the Polish au pair) that the situation of that particular au pair was in fact equivalent to an employment relationship, and that the legal minimum wage should be paid. According to the Court, if an au pair contract meets the requirements of art. 7:610 Civil Code – that is: the performance of labour in a relation of authority against wages during a certain time period – the contract must be qualified as a labour contract (de Boer and Wijes 2006) Shadow report to CEDAW 2006).

¹⁶⁶ It has been very difficult to get information on the activities and experiences related to the hotline.

The criticism of the process conducted by the IND was first and foremost based on a frustration on the apparent lack of ethical criteria for the benefit of administrative criteria and a disappointment on the inclusion of some agencies in the pilot project which were accused of dubious activities disguised as au pair placement.

One of the informants from an agency in the NAPO severely criticised the IND for shifting the administrative responsibilities to the agencies without giving them the opportunity to oppose the lack of an ethical code of conduct because signing the contract with the IND is crucial for the opportunity to stay in the business of au pair placement in the future.

NGOs

NGOs interviewed for this study are most familiar with experiences of Filipino au pairs, although they also are in contact with other nationalities.

The concern for the situation of the Filipino au pairs in particular is on the one hand dominated by the special situation for the Filipinos migrating as 'illegal emigrants' because of the Philippine ban with the consequences mentioned above (paying bribes, not being covered by minimum social right in the Philippines, no structure for getting information before migration etc.) and on the other hand the concrete and general use and abuse of the au pair scheme in the Netherlands.

On the first issue – the ban – they argue that the ban should be lifted.

On the second issue they are very sceptical or concerned about the general situation for au pairs in the Netherlands.

Malu Padilla from the Bayanihan writes in a paper from 2010:

'Au pair schemes in Europe and in The Netherlands are increasingly being used as a way of ensuring that families have access to low cost domestic labour. Constructed as cultural exchange and as family rather than contractual labour this can often leave young women extremely vulnerable to abuse and exploitation. Agencies operating for profit are often unregulated even though au pairs are extremely dependent on them for protection. There is an urgent need for research and evaluation of these schemes in order to decide how best to work with them.'

Both the representative from Commission for Filipino Migrant Workers and Respect, and from the Bayanihan experience how the au pair scheme is often used as a 'cheap labour', 'domestic helper' arrangement and both organisations find that the concept of the cultural exchange should be taken literally. They call for an independent, structural, institutionalized system of protection and help for the au pairs with the involvement of NGOs.

However they also agree that the general situation in many Asian, Latin American and African countries with poverty, unemployment and few possibilities for young people contribute to making the au pair scheme an opportunity for earning money and remitting money to the country of origin. Therefore many of these au

pairs see au pair migration as a possibility to earn money and to support families in the country of origin.

As for the situation now, according to the NGOs some au pairs have part time cleaning jobs to supplement the limited amount of pocket money; it is very difficult for them to do something about abuse other than finding another host family; some au pairs become overstayers, continuing to do domestic work as undocumented workers.

At the same time, the NGOs refer to an increasingly anti-immigration climate in the Netherlands, which affects everyday life for all visible migrants and in that respect also challenges both au pairs and especially undocumented migrant domestic workers.

As for the transfer of the administrative immigration responsibility to the agencies, the NGOs are critical: The Commission for Filipino Migrant Workers does not see agencies as the solution, on the contrary it finds that it will make migrants more vulnerable. And Bayanihan finds and has repeated earlier claims that agencies are not suitable for taking the responsibility for the au pairs because of conflicts of interest, and in their opinion it is very difficult to see how the agencies in a new system will be monitored and controlled. Both organisations refer to experiences from the Philippines on labour recruitment/placements agencies which often work in a non-transparent setting of legal/illegal recruitment and payments 'under the table'. The Bayanihan is currently working on a report to document cases of agencies violating the rules. The report will be presented to Dutch parliamentarians.

The IND hotline is also being criticised for not meeting the need of counselling as it is a part of the immigration authorities which will prevent many au pairs for calling the hot line and for lack of transparency and accessibility (opening hours, getting through on the telephone etc.)

Recommendations from the Bayanihan are very specific:

- The au pair programme as a cultural exchange opportunity should continue, but should be strictly and properly enforced by the authorities.
- An agreement between the Philippine and Dutch government should be established in order to ensure the rights of the au pairs.
- A monitoring supervision system should be established in order to monitor and impose sanction in case of violation of rules.
- An independent national hotline should be established in cooperation with NGOs, 'credible' au pair agencies, trade unions and the police. (Linking the help line for au pairs to the help line on domestic violence should be considered.)
- Support and training in empowerment should be encouraged in organisations and agencies and the cultural aspects should be underlined

- The au pair ban in the Philippines should be lifted, since it proves to be ineffective. Instead more protection and supervision should be imposed such as pre departure orientation and registration at the Philippine embassy upon arrival in Europe.
- More information as measures of prevention of abuse and the emphasis on the responsibility of the au pair as well as the host family.

The Bayanihan finds basically that the au pair programme is a good programme as a cultural exchange programme, but it should not be used as a means to emancipate the Dutch women at the expense of the au pairs being treated as domestic workers.

3.5. Au pairs in Poland

Summary

Au pairs in Poland seems to be a limited phenomenon. No figures are available.

Domestic and care work in Poland is still highly female gendered. The demand for domestic work has increased parallel to an increasing female labour market activity during the last three decades. Public social services are inadequate to cover the increasing demand for care, and lack of trust in institutional care solutions. Informal care arrangements are predominant. Natives constitute the majority of the labour force in the Polish domestic sector, and the share of migrants is smaller, than in many other Western countries. Poland does not have any regulation concerning au pairs and it does not seem that au pairing is a phenomenon in Poland other than some limited placements. Poland is more familiar with sending Poles as au pairs to other countries.

3.5.1. Context of welfare, gender and migration

In Poland there is no au pair scheme as a legal category, and thus the country has no regulations within this area.

This should be understood in the light of the Polish welfare and migration regime, which, in some regards, differs from that of other European countries. Paid domestic work is a rather new phenomenon in Poland and is characterised for being feminized, and informal, but not predominantly performed by foreign workers (Kindler, 2009).

The demand for domestic work in Poland has increased during the last two decades. A high level of informality in the domestic sector leads to great statistical uncertainty. But according to surveys, 7% of Polish households employed domestic workers in 2001¹⁶⁷, while the figure was 15% in 2007¹⁶⁸, including both regular and irregular domestic work (Kindler, 2009).

This contemporary need for domestic help in Poland has several explanations, such as an ageing population in need of care and an intensified influx of women to the labour market due to the introduction of capitalism in 1989. Public social

¹⁶⁷ Morecka and Domaradzka (2004) and Golinowska (2004) in Kindler (2009).

services are inadequate to cover the increasing demand for care, lack of trust in institutional care solutions, and a preference among Polish care service beneficiaries towards informal and privately recommended domestic workers, are other important reasons for a growing domestic sector in Poland (Kindler, 2009).

The sector is characterised by a high level of informality, among local as well as migrant workers. This is due to both cultural acceptance of irregular work in Poland, and a lack of rational legal solutions fitted to the working reality of domestic workers (e.g. a working permit is needed for every employer and the domestic workers tend to have several at a time) (Kindler, 2009).

Natives constitute the majority of the labour force in the Polish domestic sector, and the share of migrants is smaller, than in many western countries. The two above-mentioned surveys from respectively 2001 and 2007 respectively shows that of the 7.1% of Polish *households* employing domestic workers in 2001, and 10%, that is approximately 90,000 Polish households, employed non-natives¹⁶⁹. In 2007 this number had decreased to approximately 80,000¹⁷⁰. With the percentage of Polish households employing domestic workers having increased to 15%, this means that in 2007 only 4% percent of households employing domestic workers employed foreigners.¹⁷¹ It is not uncommon for the migrants to be employed in more than one household at a time. According to Grabowska-Lusińska and Żylicz (2008) there was an estimated group of 40-60,000 migrant domestic workers in Poland in 2007.¹⁷² These are mainly female Ukrainian and to some extent Byelorussian and Russian workers (Kindler, 2009).

This relatively low number of migrant workers in the Polish domestic sector has several explanations. One being that Poland is a rather new destination for immigrants. Other important factors include keeping the demand for foreign labour low, are legal requirements and costs related to employing migrant workers. Because labour is already cheap in Poland, and because of extra costs related to hiring migrant workers (e.g. taxes and working permits), this is often not profitable for the employer or the migrant. The relatively lower cost of labour from Ukraine and Byelorussia explains why these nationalities constitute the bulk of domestic migrant workers in Poland (Kindler, 2009 and Kaczorwska, 2011).

The Council of Europe's 'European Agreement on 'au pair' Placement', 1969 and Poland

The European Agreement on 'au pair' Placement was not ratified by Poland. There are no separate immigration regulations for au pairs and thereby no legal requirements regarding the au pair scheme in the country. This makes it impossible for agencies to legally invite and employ au pairs from countries outside the EU, which therefore does not happen on a regular basis. The legal employment of migrants as domestic care workers can only happen through the 'Act on foreigners of 13 June 2003', implying that employment of migrant domestic workers has to follow the general conditions for immigrant workers

¹⁶⁸ Kordziejewich (2010) (figures from Grabowska-Lusińska & Żylicz (2008)).

¹⁶⁹ Morecka and Domaradzka (2004), Golinowska (2004) in Kindler (2009).

¹⁷⁰ Grabowska-Lusińska & Żylicz (2008) in Kindler (2009).

¹⁷¹ Grabowska-Lusińska & Żylicz (2008) in both Kindler (2009) and Kordziejewich (2010).

¹⁷² Grabowska-Lusińska & Żylicz (2008) in Kindler (2009).

(EMN 2009 and Kaczorwska 2011). For these reasons, no statistics exist on the matter.

3.5.2. Stakeholders in the au pair field

According to the representative from the Polish child care agency, Prowork Child Care Service, handling the au pair scheme in Poland is mainly concerns sending au pairs from Poland to Western European countries. They do not invite au pairs due to the lack of a legal framework. Nevertheless, some advertisements by families in Poland, in search for au pairs, can be found sporadically on the Internet, among others on web-pages of several international au pair agencies. This indicates that the demand is there to some extent. Many of the advertisements are characterized by requiring language skills other than Polish, mainly English but also e.g. French, Russian, and German. Preferences for native English speaking au pairs are not rare. It seems that quite some of the families in search for au pairs are either native Polish families who want an English speaking nanny to help teaching their children English or foreign families living in Poland who want an English speaking nanny or domestic helper or one speaking their mother tongue.

3.6. Au pairs in Spain

Summary

Spain does not allow third country nationals to enter as au pairs. Numbers of EU au pairs are not available.

The share of female employment in Spain is below the EU27 average, but the use of formal childcare arrangements is slightly above the Barcelona target of 90%. In Spain a considerable number of domestic and care workers are migrants and a considerable number of them is undocumented.

Spain has ratified the European Agreement on Au Pair Placement, but does not allow third country nationals to immigrate as au pairs. It is however possible for students to do au pairing while studying in Spain. Au pair agencies in Spain and among them the national association of au pair agencies often seem to link the au pair stay more directly with language training and cultural exchange. Sometimes the au pair will stay in a private home where a maid takes care of domestic work. NGOs in Spain are more preoccupied with the situation of migrant domestic workers as with au pairs.

3.6.1. Context of welfare, gender and migration

The employment rate of women in Spain in 2007 was 54% and in that respect below the level of EU27 average (58%)¹⁷³. The employment rate of women in Spain increased from 46,3% in 2003 to 54,9 in 2008¹⁷⁴.

Research on the division of domestic work in private households shows that women in average on a weekly basis spend 20 hours more on household chores

¹⁷³ European Commission's Expert Group on Gender and Employment Issues (EGGE) 2009.

¹⁷⁴ European Commission (2009): Report on equality between women and men 2010.

than men (Voicu 2009), and that women in average cover 78% of the hours spent on domestic work in the household (Knudsen and Wærness 2008).

Spain ranked 11 on the World Economic Forum's Gender Gap Index in 2010, moving up from 17th in 2009.

In Spain, the proportion of children attending pre-school services has grown during the last 15 years, especially in the case of children aged three years, whose schooling rate has increased from 38 % in 1991 to 96 % in 2005¹⁷⁵.

Childcare is considered to be expensive, but the government has taken various initiatives to increase the availability and affordability of services.¹⁷⁶

During the last two decades Spain has generally developed from a country of emigration to a country of immigration. In 2006, 9.3% of the population were registered as foreigners living in Spain. A large share of these migrants originated from Latin America, and only minor percentages from Africa, Asia, and a large part of the migrants are women, coming to Spain to work. According to statistics 22% of migrant women registered for social security as domestic workers (Garcia et al 2008:136). According to ILO data (Heimeshoff 2011) 752,600 domestic workers were employed by private households in 2008. A minimum of 90% of domestic workers are female¹⁷⁷ and half of women employed officially as domestic workers are immigrants (ibid).

A large number however are working as domestic and care workers without contract and without residence and work permit. The Spanish trade union CCOO estimates that 80,000 female migrants are employed with correct documentation and another 25,000 without correct documentation¹⁷⁸ which by researchers is considered a rather low estimate. According to Mather (2005 in Heimeshoff) 85% of the domestic work is estimated to be informal, which contribute to statistical insecurities.

One study¹⁷⁹ estimates that 354,000 irregular migrants were residing in Spain in early 2008, which is a substantial decrease from the estimates pointing to 1,232,000 irregular migrants at the beginning of 2005 (because of a large regularisation of 570,000 irregular migrants in 2005) and another study estimates that 30 % of irregular women migrants in 2005 were working as domestic workers.¹⁸⁰

The labour market for domestic and care work reflects a situation where native Spanish women increasingly participate on the labour market in other areas than private paid domestic work (and are no longer unpaid domestic and care workers in their own families). Instead they employ migrant domestic workers to do domestic and care work in their family.

¹⁷⁵ European Commission's Expert Group on Gender and Employment Issues (EGGE)(2009:35).

¹⁷⁶ The Ministry of Labour and Social Issues has launched a programme of subsidies to help autonomous communities finance new childcare services. EGGE(2009:58).

¹⁷⁷ Artiles (2006); Galeotti (2009) in Heimeshoff (2011).

¹⁷⁸ ICFTU (2002) in Heimeshoff (2011).

¹⁷⁹ Clandestino(2009): Country report Spain.

¹⁸⁰ The Clandestino study estimate 45% of the irregular migrants to be women, but it must be emphasised that these studies are estimates of the number of the irregular population.

According to data gathered in 2001 (Garcia et al 2008:137) there were between 800,000 and 1,000,000 families employed a domestic worker. The employer families were usually families with a good income and/or involved families who had an urgent need for assistance (single parents, disabled members of the family etc.).

Employment is most often organised through personal networks and contacts and domestic and care workers are employed as both live-in full time workers and part time live-out. Research on registered domestic workers show that 6% was live-in domestic workers, 24% were live-out, but worked only for one employer whereas around 70% worked by the hour for more than one employer¹⁸¹.

In Spain a significant number of irregular migrants have been regularised through extraordinary regularisation processes (2001:157.883, 2005:578.375¹⁸²), and regularisation of irregular residence is possible if certain requirements are met (three years stay, contract of employment, no criminal record, certificate of language training etc.).

A 'special regime' of domestic work¹⁸³ regulates the employment related to contract, minimum salary, timetables, breaks, termination of contract, but a huge part of the women working in the domestic sector, especially migrant women are not covered by these regulations, among others reasons because of an irregular situation of residence.

Thus the domestic sector is characterized by informality and precarious employment.

3.6.2. Au pair regulation

The Council of Europe's "European Agreement on 'au pair' Placement', 1969

Spain ratified the Agreement in 1988.

In the guidelines from the Ministry of Labour and Immigration, the au pair section under the headline; the access of foreigners to employment is more or less a repetition of the European Agreement.

However beneficiaries of these regulations are defined as:

¹⁸¹ Albarraicin (2002) in Heimeshoff (2011).

¹⁸² Clandestino(2009): Country report Spain p 11.

¹⁸³ Ministerio De Trabajo De Espania: Special Regime for Domestic Employees: The workers included in the scope of application of the Special Scheme for Domestic Employees are those who exclusively carry out domestic services for one or more heads of household, provided that these services are rendered at the house where the head of household resides and that they receive a wage or remuneration of any type. It includes childcare, gardening, driving of vehicles, and other analogous work provided that it is performed as part of the set of domestic tasks. Classification within this Special Regime shall depend on the number of hours worked and on whether there is one single employer or several, in accordance with the following: Permanent domestic employees: persons who render services for a single head of household for a time greater than or equal to 80 actual hours worked per month. Intermittent domestic employees: persons who render services for one or more heads of household, partially or intermittently, for a minimum of 72 actual hours worked per month, which must be performed for a minimum of 12 days in said month. http://www.seg-social.es/Internet_6/Trabajadores/Afiliacion/RegimenesQuieneslos10548/RegimenEspecialdeEm32820/index.htm?LANG=en&ssUserText=81780&dDocName=32821_6.

'Persons who are nationals of the Member States of the Council of Europe, which signed this European Agreement and any state that adheres to this Agreement, between the age of 17 and 30 years.'

Given that only six countries have ratified the European Agreement ¹⁸⁴and combined with the existing EU mobility makes au pair settlement irrelevant for immigration legislation and thereby more difficult to trace as a social practice 'in real life'.

However Spain has ratified the Agreement on the following terms:

The requirements of the au pair:

- An au pair can formally be a person who is national of the member states of the Council of Europe, which signed this European Agreement on au pair placement and any state that adheres to this Agreement. These countries include Denmark, France, Italy, Luxembourg and Norway. In practice it seems that au pair countries are to be understood as EU/EEA countries.
- The age limits are between 17 and 30 years.
- The person placed as an 'au pair' is obliged to have a medical certificate issued at a date no later than three months before the placement.

Requirements of the host family:

- A private medical insurance should be issued for the au pair.

The au pair residence with the host family

- A written contract must be signed which includes rights and obligations of each party. This agreement should specify, among other things, the way in which the person placed as an 'au pair' will share life in the receptive family.
- The duration of the stay is one year which can be prolonged to maximum of two years.
- The au pair must be given a fixed monthly pay and have the right to 'Housing with the family'.
- Holidays and days off are one day per week and one per month must be a Sunday.
- Furthermore, the au pair must 'have sufficient time to attend language courses and to improve his/her cultural and professional education'.

¹⁸⁴ Denmark, France, Italy, Luxemburg, Norway and Spain - see Chapter 1 on International regulations for more information).

The au pair relation is defined as a 'temporal reception in a family in exchange for certain services of young foreigners who wish to improve their linguistic, and perhaps professional, knowledge and their general culture, acquiring a better knowledge of the country of reception. This kind of position does not involve a labour relation'.

Other types of au pairing in Spain

Whereas for EU nationals au pair relations can be arranged and negotiated without interference from authorities given the EU-mobility, au pairing is still a label connected to immigration rules and regulations for non-EU citizens, but only when au pairing is related to and on the condition of a study visa.

The Immigration legislation ¹⁸⁵ states that '*working for a family in exchange for stay and being maintained by that family while improving one's professional and linguistic skills shall be regulated in accordance with the provisions set forth in international agreements concerning 'au-pair' placements*'.

The system, specific to students¹⁸⁶, sets forth the conditions and requirements for obtaining the corresponding study visa, related procedures and other obligations for accessing said special system. Third country nationals whose main reason for entry to and stay in Spain is training, and education without dependency on employment for being able to study have the possibility of staying and working in the home of a host family as an au pair. It is underlined that an employment must be compatible with doing the studies and the income thus obtained must not be essential for the foreign student's living expenses. However, the European au pair agreement is still mentioned as a regulating mechanism for 'student-au pairs'.

Internet websites reveal a tendency to advertise for 'au pairs' in terms of a broad concept including nannies and domestic workers among for example Northern European residents who might be used to au pairs having such positions.

The position of the au pair in Spain however seems often to be associated with cultural exchange and language training, at least in some parts of the country and influenced both by the general situation concerning migrant domestic work, which seems highly organised and often based on undocumented labour, and the fact that au pairs officially in Spain are Europeans. An au pair agent stated that the au pairs she was placing had such a good time because the host families most often had a maid.

Former au pairs as domestic workers in Spain

Spain is one of the countries that might be attractive for overstaying third country au pairs from other parts of the EU. Spain grants limited social rights and the right to health care which reduces the level of precariousness when being an undocumented migrant domestic worker.

¹⁸⁵ Article 33 ('Special system specific to Students'), Section 5 of Organic Law 4/2000 (EMN 2009).

¹⁸⁶ Organic Law 4/2000 (Article 33) and developed by its Regulations (Articles 85 to 91 and 106). (ibid).

Filipinos interviewed in this study in Spain, now working as domestic workers and who had earlier been au pairs in Denmark and Norway reflected on the possibility of being an au pair in Spain, but did not count that as a possibility for them. They also emphasized the lower salary as au pair compared with what they could earn in the (rather organised) labour market for undocumented migrant domestic work.

3.6.3. Statistics

It has not been possible to provide data concerning the number of au pairs in Spain, because they are not officially registered.

3.6.4. Stakeholders in the au pair field

Given that au pairing by third country nationals is linked to enrolment in a Spanish University or school, the au pair agencies often function as a type of cultural exchange agency, combining offers of study opportunities with au pair placements in host families.

It has not been possible to identify an organisation especially catering for au pairs.

A number of au pair agencies are members of IAPA and a national association has recently (2011) been established.

The agencies organised in IAPA would like Spain to open up to au pair migration from third countries.

3.6.5. Abuse, counselling, shelters, cases

Some au pair agencies and language schools offer counselling and support.

No institutional structure of complaints or counselling concerning au pairing exist, but one language school reported about their informal cooperation with the local police authority regarding disagreements and problems of all kinds between host families and au pairs who have met through the internet and were not affiliated with an agency.

4. DISCUSSIONS AND RECOMMENDATIONS

The findings in this study show different patterns of au pair migration in the selected EU countries and radically different situations of au pairing. In some Member States, like Poland, the au pair phenomena seems limited, whereas in other EU countries such as Denmark, the Netherlands and Germany au pair migration is a larger phenomenon predominantly characterised by temporary immigration from outside the EU. In between these poles are Ireland and Spain who do not allow immigration from outside the EU, but who have EU citizens placed as au pairs with host families.

4.1. Differences between EU and non-EU au pairs

A dividing line runs between au pairs coming from EU Member States and au pairs coming from non-EU countries, especially from less affluent parts of the world. In this study, three countries do not allow third country nationals to immigrate as au pairs (Ireland, Spain and Poland) and three countries allow third country nationals to enter as au pairs (Denmark, Germany and the Netherlands).

EU au pairs

EU citizens employed as au pairs are according to EU law mobile workers with the protection and entitlements granted to EU citizens working in other EU Member States. This implies that the element of work in the au pair placement is already regulated through EU law.

Some of the EU Member States in this study have been known to include domestic workers in labour law so as to increase the protection of, especially, women and migrants on the labour market. In Spain, live-in domestic work has, since 1985, been covered as a special employment relationship; and in Ireland special initiatives have been taken to make it clear that domestic workers basically are covered by the same employment rights as other workers in Ireland.

However information on these broad EU employment rights does not seem to be common knowledge among au pair agencies and au pairs. It could indicate that au pairs are being placed and are working without basic knowledge of their employment rights. A general concern expressed by some informants is that an unknown number of EU citizens from the less wealthy countries in the EU work as au pairs under poor working conditions and are not being treated as workers with rights.

Furthermore EU au pairs are not statistically visible in the EU. Even if they do register at the authorities of the Member State in which they are staying, it would not be possible to distinguish them from other mobile EU workers. It is thus not possible to assess the size of EU au pair phenomenon because of either lack of registration or inadequate registration for statistical purpose focusing on EU au pairs.

Non-EU au pairs

In Germany, Denmark and the Netherlands, third country nationals are allowed to enter as au pairs. Most of the migrants in Denmark and the Netherlands are from

the Philippines, but subject to different regulation due to the existing ban on au pair migration from the Philippines to Europe and the existence of a bilateral agreement (for Denmark).

Non EU au pairs are in these three countries subjected to immigration rules that imply that

- Their residence permit is tied to a specific host family or agency
- They must stay as live-ins in a private home
- The residence permit is not a work permit.

These three conditions of residence for young third country nationals in the EU lead to the risk of abuse of non-EU au pairs. Coming from outside the EU, the au pair is excluded from protection as an employee, dependant on her residence solely on the host family or an agency, and through the live-in obligation staying in an in-between of a work place and (someone else's) private home. In cases of abuse and exploitation experience shows that it is difficult for the au pair to change and improve her situation because her residence permit is closely tied to the employer and not tied to her as an independent individual.

To increase the protection of the non-EU au pair, granting her an au pair residence permit instead of tying the residence permit to one specific host family or agency would improve her legal position. This would give her the opportunity to find a new host family should problems arise without risking to lose her residence permit. Furthermore it would increase the protection of the au pair if she, in a period of transition from one family to another, could stay in a place of her own choice.

Given that the current au pair schemes are most often both an employment and a cultural exchange arrangement, the conditions of residence should also reflect this, for example by granting au pairs a combined residence/work permit that specifies the working hours, the contract etc. This would acknowledge, on the one hand, the employer-employee relation and, on the other hand, acknowledge the cultural exchange with possibility to specify requirements of language class etc.

Given that migrants from outside the EU seem most exposed to abuse, it is pertinent to ensure their rights. Placing non-EU au pairs on an equal footing with EU au pairs concerning employment is the most obvious way of protecting both the EU and the non-EU au pair, given that abuse and exploitation most often stem from their capacity as labour.

One example hereof could be the possibility for Member States to grant residence permits to third country au pairs who stay solely because of cultural exchange, not working more than the EU limit¹⁸⁷ of eight hours per working week.

Another example could be equal footing in terms of payment related to levels in the labour market rather than determined in immigration regulations. In the

¹⁸⁷ See chapter 1. Council Directive 99/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

Netherlands non-EU au pairs are today covered by a maximum amount of pocket money. Although minimum remuneration is preferable as guaranteed in Denmark and Germany, the general level of 'pocket money' in these countries is still well below average salaries for regular domestic work.

Au pair migration from the Philippines to countries with no bilateral agreement with the Philippines is covered by a Philippine ban, which increases their precariousness in these countries since they enter as illegal emigrants. Furthermore an important number of migrant domestic workers are from Philippines¹⁸⁸ and the Filipino woman is often associated with a domestic worker which raises the possibility of stereotyping and the implicit assumption of au pair being an inexpensive maid.

4.2. Statistics, variation in rules and cultural images of the au-Pair within the EU

Cultural / educational exchange, youth mobility and/or work

Au pair activities are continuously debated and socially constructed as either a cultural exchange for a student and/or a domestic work. The legal construct of the au pair in this study does also reflect this ambiguity. In Denmark, Netherlands and Germany au pairs are granted a residence permit which is not a work permit. But in Denmark some parts of the labour laws apply to au pairs and the pocket money is also taxable.

The bilateral au pair agreement with the Philippines seems similar to other domestic labour programmes granting the au pair rights and position as an Overseas Foreign Worker. In other EU countries such as Sweden, the au pair is granted a work permit and is covered by all labour market regulations.

Elements of cultural exchange in Ireland and Spain seem more often to be more closely connected to the 'classic' understanding of au pairing as cultural exchange and language training for young people concurrent with au pairs being offered by agencies as domestic help and in Germany the language requirement is supposed to strengthen the element of cultural exchange.

Variation in rules

Only two of the countries in this study ratified the Council of Europe Agreement of 1969 on au pair placement, namely Spain and Denmark.

As mentioned earlier three countries in this study do not allow third country nationals to immigrate as au pairs (Ireland, Spain and Poland) and three countries allow third country nationals to enter as au pairs (Denmark, Germany and the Netherlands).

The nature of the specific immigration regulation varies between the three countries that allow third country nationals as au pairs : Denmark regulates closely the status of the au pair (age, civil status, children, pre-migration history,

family related to the host family, educational level or labour market experience, number of prior placements) adding still more mechanisms of selection; Germany focuses on language skills as a primary mechanism of selection and the Netherlands transfer responsibility and control of the au pair and the host family to private au pair agencies.

Ireland and Spain define a kind of au pairing, as secondary employment for students and casual work for working holiday youth, but do not together with Poland administer specific rules for EU au pairs.

Numbers and figures

Compared to the overall numbers of domestic workers in the EU, the number of au pairs is still small, but the actual total number of persons employed as au pairs is not clear because the number of EU au pairs is not registered and because the concept of au pair is also used in various irregular forms of employment. However the number of registered non-EU au pairs has increased in Denmark and the Netherlands, whereas it has decreased in Germany after the introduction of the requirement of German language skills.

4.3. Different strategies to protect the au pair

Basically as shown repeatedly in research and other forms of documentation, working alone in a private home is a situation of potential vulnerability and dependency and this goes for the au pair as well.

Different strategies to protect the au pairs have been seen in this study. The European Agreement on Au Pair Placement is one. Other strategies are ethical codes of conduct for the intermediaries and the families as well as the establishment of hotlines and shelters for the au-pairs. In Germany, an ethical code of conduct has been established to regulate and control the intermediaries of au pair placement. In Denmark grants have been given to NGOs working with counselling, sheltering and supporting the au pairs, and in Ireland a Code of Practice for protecting persons employed in other people homes establish certain criteria of protection.

Hotline, shelters, NGO support

In the Netherlands, the immigration authorities have run a hotline for au pairs since 2004, in Germany and Denmark NGOs are responsible for hot line services. It is however difficult to evaluate the effect and the character and amount of calls to the hotlines. In Spain and Ireland agencies offer hot line support and in all countries with au pairs voluntary networks and individuals offer assistance to au pairs in problematic situations. None of the countries covered in this study offers shelters for run away or terminated au pairs, but sheltering is sometimes organised through personal networks or through the replacement by an agency.

Economic grants for civil society activities in support of the au pairs seem to be limited with the exception of Denmark. But NGOs in Denmark, the Netherlands,

¹⁸⁸ Go (2009) Parrenas (2001) The Philippine population in Europe is estimated by the Philippine government to be 700,000. 300,000 are estimated to be temporary migrants and 100,000 irregular migrants (POEA 2008).

Germany and Ireland have expressed concern for the situation of especially the non EU au pairs.

Civil society activities, counselling and support could both improve the situation of the au pairs regarding information, social events and support in cases of abuse and could be a source of information for authorities about the general and specific situation on au pair migration

Intermediaries

The use of agencies varies in the countries of this study as well as numbers and divisions between commercial and non-commercial agencies.

In Denmark, agencies are most often a one person intermediary operating as a more or less informal placement agent, whereas most placements seem to take place through personal networks among both au pairs and host families and through the internet.

In Germany, many agencies have emerged including both small agents and large companies which offer both au pairs and other domestic and care services. It has been valuable to establish independent and reliable mechanisms of accreditation according to ethical standards specifying the relationship between the au pair and the agency, and between the agency and the host family.

In the Netherlands, the significance of the agencies will be strengthened through the new obligation to use an agency.

In Ireland au pair placement agencies seem to be emerging, but on a relatively small scale.

In Spain au pair placement through agencies is often linked to language and cultural studies, and in Poland au pair agencies are primarily preoccupied with the outbound placement of Poles as au pairs.

Control with the agencies based on transparent and ethical codes of conduct and effective mechanisms of control can improve the credibility of the accreditation system and increase the chance of detecting and excluding abusive agencies.

Agencies in themselves do not seem to increase the protection of the au pair as such, given that the dependency will shift from the host family to the agency and shift the risk of getting in touch with abusive, dubious host families to dubious agencies. The model of outsourcing authorization as immigration service or employer substitute to agencies, or to make residence permits dependant on the use of an intermediary such as in the Netherlands, does not automatically lead to a better protection of the au pair.

4.4. International regulation and the European Agreement on au pair placement

Only a few countries have ratified the Council of Europe's Agreement on Au Pair Placement (Denmark, France, Italy, Norway and Spain). The Agreement was established in another societal context, and does not necessarily meet the need for regulation of au pair migration of today.

A greater number of women in Europe are taking part in paid labour part- or full-time on the labour market, an increased feminized migration from the global South to the global North has occurred and many of these women occupy positions as migrant domestic workers in the EU; mobility in general has increased, especially within the EU; immigration regulations and restrictions to Europe have been established as a whole system of managed migration, which did not exist in late 1960's, gender equality has become a key value within the EU; paid domestic and care work have in many parts of Europe been recognized as 'real work'.

The discussion in international regulation of au pair migration is centred round whether au pairing is employment or cultural exchange and the responses to the dilemma have internationally been different. Canada for example has prohibited au pair schemes because of the risk of using the au pair as a domestic worker.

The Philippines has, as mentioned earlier, issued a ban on au pair emigration to Europe, and the most recent international regulation of au pair migration to the EU is observed in the bilateral agreements between some European countries and the Philippines on au pair migration.

The EU does not have specific au pair regulation and the current negotiations on an ILO convention on domestic work do not at this point of time include au pairs. Au pairs from outside the EU therefore seem to fall within a legislative vacuum.

4.5. Extending au pair schemes?

Many socio economic factors affect the domestic labour demand (Galotti 2009); an ageing population, changes in household structures towards an increase of single headed household and weakening of family and networks care capacity; an increasing female participation in the labour market; reconciliation of family-work responsibilities which can be realized through providing affordable public childcare, family friendly policies and/or outsourcing the gendered domestic and care work to another, often migrant woman. As Galeotti states 'migrant women often de facto replace national women in their traditional care and domestic roles (substituting the decreasing institutional and family support)'.

Au pair migration can in some cases be seen as a solution to the lack of childcare places, general work-life imbalances and gender inequality in families.

Tendency to normalize au pairs as private paid welfare service

The tendency of extending au pair schemes to cover domestic and care work (formulated as cultural exchange activities) in the homes of elderly and retired people is an indication of au pairing developing in some countries into an

increasingly normalized private paid welfare service.

The increasing professionalization of au pair placement in agencies and outsourcing immigration management to agencies in some Member States can furthermore indicate a more regulated market for au pairs as domestic workers. The introduction of au pair remuneration being covered by public subsidy of home based childcare in some EU Member States, for example Austria,¹⁸⁹ emphasizes also the process of normalization of the au pair schemes as legitimate solutions to lack of public and affordable child care and work-life imbalances in the EU.

There is a risk of creating a dependency on this kind of often relatively cheap solution to lack of childcare and work-life imbalances for families in the EU.

The perception of the au pair in political and popular discourse points also to this kind of normalization in some countries as if the broader understanding of au pair' includes different versions of documented and undocumented migrant domestic workers. This may facilitate an extension of the au pair schemes to new areas of domestic and care work.

In order not to undermine other initiatives on child care (Barcelona goals and follow up initiatives on Barcelona goals on public childcare, educated staff, coverage rates etc. ¹⁹⁰) and decent conditions for domestic workers (labour rights, recognition of domestic work as real work, prevent de-skilling etc.), it seems important to ensure that au pair migration is regulated properly.

A clear-cut model could be a solely cultural exchange au pair scheme, abolishing expectations of work or linking it to educational residence, making au pairing secondary and supplementing the au pair scheme with legal immigration opportunities of decent migrant domestic and care work programmes.

However if this is not possible immediately, and if the au pair schemes will continue to operate as both cultural exchange and work, there is a need to at least regulate the work part of the au pair stay according to more general labour market standards and rights.

Granting the au pair a work permit would be a first step to recognize the work elements. Making living-in with the host family voluntary and granting the residence and work permit to the au pair independent of host family or agency would be other important steps in reducing the dependency between the au pair and the host family, and, thereby, reducing the risk of abuse and exploitation.

Working holiday schemes could be an immigration model that could open up the possibility for a young person to choose to work as au pair in a private family. This could be done in a way which does not limit the au pair to this kind of work

¹⁸⁹ Österle, August; Bauer Gudrun; Haidinger, Bettina (2011): Migrant Care Work and Care Regimes in the European Union, Conference paper at the conference Making Connections: Migration, Gender and Care Labour in Transnational Context 14-15 April 2011, University of Oxford.

¹⁹⁰ At the 2002 Barcelona European Council Member States agreed by 2010 to provide full-day places in forma daycare arrangements to at least 90% of children aged between three and school age and at least 33% of children under three. COM(2008) 638; Implementation of the Barcelona objectives concerning childcare facilities for pre-school-age children; COM(2011) 66: Early Childhood Education and Care: Providing all our children with the best start for the world of tomorrow

or oblige her to live-in with the family. A young person could have a residence permit of her/his own, granting the young person the right to reside for a specific period of time, whilst not being dependent on one employer or agent.

The insufficient regulation of au pair migration in the EU has resulted in fundamentally different conditions for au pairing in EU Member States. Placing the non-EU au pair on an equal footing with the EU au pair could strengthen the level of equal rights in the labour market not only between EU au pairs and non-EU au pairs but also between au pairs in different EU Member States.

5. RECOMMENDATIONS

Separate Au pair schemes and domestic workers programmes

This study has shown that the perception, the practice of placement, the legal position and the social construction of the au pair imply the possibility of using the au pair scheme as a domestic worker arrangement excluded from labour protection and regulated through immigration regulations.

At the same time, the increasing use of the au pair schemes must be understood in the context of the current care squeeze¹⁹¹ with insufficient supply of affordable child- and elderly care, increased pressure on the work-life balance and an unequal division of care and domestic work in private homes between women and men. The au pair has, in most EU countries, become a private solution to these problems. However, even in welfare states with extensive coverage of pre-school and after school care e.g. Denmark, au pairs are increasingly being employed.

Immigration restrictions in many EU Member States exclude the possibility of legal labour immigration for domestic and care workers, which makes the au pair schemes one of very few options of legal immigration – and a precarious one too. Their immigration status linked to their host family, working conditions and their vulnerable situation as a domestic worker are open to abuse without sufficient protection of the au pair. The schemes are often characterised by low remuneration, exclusion from labour protection, an obligation to live-in and a structural dependency of the employer/host family.

The overall recommendation is therefore to separate current au pair immigration programmes into two programmes: one of cultural and educational exchange with less than eight hours domestic help per week in exchange for food and lodging; and one of domestic and care work on conditions meeting decent working conditions.

To avoid the au pair scheme being abused as a migrant domestic workers programmes and to ensure decent conditions for all – permanent and temporary – domestic workers, it is necessary to establish legal migrant domestic and care programmes that can meet potential demands.

The demands however will also depend upon the coverage and quality of state based social care policies. The growth in care and domestic work in the home can be seen as a state failure to ensure sufficient time for care and domestic work for

¹⁹¹ (Boje and Leira, 2000; Hochschild, 1995; Knijn and Kremer, 1997, Saraceno, 1997).

parents in their families, by providing adequate public childcare, flexible working time arrangements, financial support etc. Therefore domestic and care work should in general be related to the specific welfare regime in question. However, even in the Nordic welfare regimes demands are growing, often amongst well-educated, two career families.

Establish an EU observatory on migrant domestic and care work

Acknowledging the complexities in migrant domestic and care work and the inclusion of au pairs in this complex field, it is recommended to establish an observatory on migrant domestic and care work in the EU. The observatory should research and monitor developments on all kinds of migrant domestic work and migrant domestic workers (undocumented, documented and au pairs) including numbers and status of both employee and employers, live-in and live-out, salaries, working conditions, agencies offering employment assistance on domestic and care work etc. The Member States would have to report data to the observatory according to a standard and the observatory should have the capacity to conduct research and surveys on migrant domestic work in the EU.

Establish common standards and guidelines

The concept of 'au pair' seems to have different meanings and not seldom used synonymously with domestic helper or nanny.

It is therefore recommended to establish a common understanding of the concept au pair which it would be desirable to suggest an EU wide normative concept.

It does not seem to be realistic to draft and negotiate a new European agreement on au pair placement – either in the EU or the Council of Europe. However *it is recommended to establish a recommendation or charter on au pairing by the relevant authority in the EU that includes recommendations on immigration status.*

Strengthen the protection of the EU au pair.

There seems to be a lack of knowledge and a need for clarification on the position of a EU au pair. The EU au pair is invisible in national statistics concerning labour mobility.

It is therefore recommended to disseminate the information of the EU au pair's rights and entitlements to the relevant authorities, agencies and organisations.

The following possibilities can also be considered:

- Establish an information document specifying, on the basis of existing EU law, the rights and entitlement of an EU au pair working more than one month and/or more than eight hours a week in a private homes
- Encourage Member States to inform EU au pairs about their employment and social rights and likewise use the European Youth Portal and other web-site to disseminate the information on rights.

- Give attention in the EU and in Member States to include EU au pairs in existing initiatives concerning people working in the homes of other people. Furthermore national initiatives to protect the au pair or others in a similar situation can be of inspiration for new EU initiatives. The Irish Code of Practice for Protecting Persons Employed in Other People's Homes could be such an inspiration together with the possibility of an institutionalised labour inspection in private homes.

In order to monitor the situation of au pairs and domestic workers, better data on them is needed. It is therefore recommended to establish a procedure of registration of both host family and au pairs at the national level to ensure the statistical monitoring of this specific kind of EU mobility.

Strengthen the protection of the non-EU au pair.

The potentially precarious situation of the non-EU au pair is most often based on the character of the residence permit as tied to a host family or an agency. Most often such permits are not work permits, and do carry an obligation to live-in.

It is therefore recommended that the EU establish a recommendation to Member States or a standard on au pair permits, where the permit is tied to the person being permitted to stay in the country for a specified time as an au pair during the period of time for which the permit is granted. The permit should be a work permit if more than eight hours work weekly is expected. Living-in should be made voluntary for the au pair.

In the specific case of au pairs migrating from the Philippines, it is clear that migrating as au pair despite the Philippine ban increases the situation of precariousness of the au pairs.

It is therefore recommended that EU Member States do not encourage illegal emigration from the Philippines, but either negotiate bilateral agreements with the Philippines or stop issuing au pair visa, in order to contribute to transparency and good governance.

As this study shows, especially in countries with au pairs from outside the EU, the discussion on whether au pairing is work or cultural exchange and whether the au pair is worker or student has been continuing for some years. It was also present in the 1960s in the negotiations in the Council of Europe on the European Agreement on Au Pair Placement. This ambiguity is the source of the special situation of the au pair and is linked to a century long debate on gendered domestic and care work. Given that rules and regulations – though not yet fully grasped – define the EU au pair as a mobile worker and covered by labour market regulations it would be appropriate to also recognise elements of work in the non-EU au pair placement.

If the au pair is expected to work more than eight hours per week, it is recommended to define the au pair stay as BOTH work and cultural exchange, instead of either or and let it be reflected in the residence/work permit.

The elements of work could be regulated according to common EU standard and regulations for third country nationals residing as temporary migrants and other

rules can eventually be established on the cultural exchange part. This would ensure common regulation of au pair stays and create a better protection of the au pair as worker.

Establish an independent public authority for labour inspections, control of agencies, complaints, monitoring the activities

Placing non EU au pairs on an equal footing with EU au pairs concerning labour market rights would increase the protection of au pairs against abuse and prevent that immigration regulation are used to dump general mechanisms of worker protection in the EU labour market.

Several conditions point to the need of a special institution for monitoring and protecting the au pair: Employment in private homes constitutes an isolated position for the employee the character of domestic work performed in private homes tends to be perceived as excluded from regulation and employment rights. This situation is linked to the gendered nature of domestic and care work, that the general gender division of reproductive work seems to continue to weigh the heaviest burden on women; an increasing female participation on the labour market in combination with lack of childcare places, and affordable elderly care could indicate an extended future use of au pairs in private homes.

Given that the basic situation for a young person living with a host family far from home can be difficult, it is recommended that EU Member States with EU au pairs and/or non EU au pair mobility establish and fund a national, independent control, counselling and complaint service that can assist in case of problems.

The institution should have the possibility to visit the homes of host families prior to placement of the au pair, undertake a follow-up visit and react in case of problems brought forward by the au pair. The permission to visit the homes is suggested to be part of the procedure of registering with the authorities. This authority should also have the authority to exclude host families that abuse au pairs from the schemes.

- **Registering of all au pairs and host families.**

It is recommended to establish an EU data standard for au pair and host family and register both the au pair and the host family for regulation and statistical purposes. It should be possible to register and monitor both the EU au pairs and the non EU au pairs and to make statistics on the development concerning age, gender, education, geography (country of origin and country of residence), length of stay, change of host families / replacement of au pairs.

- **Accreditation and control of agencies**

It is recommended to establish independent and reliable mechanisms of accreditation according to ethical standards specifying the relationship between the au pair and the agency, considering the existing experiences of Germany and IAPA.

The control and monitoring of agencies is recommended to be conducted by an independent governmental institution, based on effective mechanisms of control, a transparent and ethical code of conduct and the specific objective of protecting the au pair.

It is not recommended to outsource authorization as immigration service or employer substitute to agencies, or to make residence permit dependant on the use of an intermediary.

Support NGOs

Experiences from Denmark, Germany, Ireland and the Netherlands have shown the value and commitment among NGOs to support au pairs.

Civil society activities, counselling and support can improve the situation of the au pairs regarding information, social events and support in case of abuse and can be a source of information for authorities about the general and specific situation on au pair migration

It is recommended to support NGO activities with the aim of improving the situation of the au pairs and contribute to respond to abuse.

Furthermore shelter facilities should be provided, eventually linked to existing shelter facilities, these could include for example shelters to protect women in situations of domestic violence.

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