



International  
Labour  
Office

**PROMOTING THE  
INTEGRATION OF**

**MIGRANT  
DOMESTIC**

**WORKERS**

**IN EUROPE**



**MODULE VII**  
**Access to Social  
Security for Migrant  
Domestic Workers**

**ITC**   
International Training Centre

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## Module VII – Access to Social Security for Migrant Domestic Workers – OBJECTIVES



To get acquainted with the EU approach and framework for integration regarding third country nationals and its impact on migrant domestic workers

To be introduced, at national and European levels, to the barriers undermining and the opportunities enhancing integration of migrant domestic workers into the EU labour markets

To evaluate the possible implications of national policies in terms of integration of migrant domestic workers, based on the information provided by the four country reports on the subject (Belgium, France, Italy and Spain)

To understand how migration trajectories, modalities of entry, mobility patterns within domestic work, personal characteristics and level of access to inclusion tools (knowledge of local language and/or access to language training, regularity of migration status, access to networks and services) shape the integration paths of migrant domestic workers in Europe



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## Module VII – Access to Social Security for Migrant Domestic Workers – KEY MESSAGES



Labour, migration and social welfare legislation and policies at the European and national levels significantly affect the opportunities and modalities of integration of migrant domestic workers in European countries.

Despite the European Union's steps to promote the integration of third country nationals, existing national legal and policy framework often inadequately respond to the needs of migrant workers. Migrant domestic workers tend to often be subjected to unequal treatment vis-à-vis their national counterparts and often face poor working conditions and low remuneration. Research shows they often have difficulties to find their place in their communities of destination and to meet the expectations they had at the start of their migration experience.

Many different elements considerably affect individual trajectories of migrant domestic workers in Europe and many individual characteristics emphasize opportunities for and obstacles to integration. Among them are: their country of origin, their original economic migration project, historic linkages between the host country and the country of origin, the qualification of the migrant workers, their sex, etc.

Understanding how these factors interact (policies, legislation, individual profiles, etc.) helps to consider means for a more effective integration of migrant domestic workers in Europe.



## Module VII – Access to Social Security for Migrant Domestic Workers – OVERVIEW OF THE ISSUE

The prevalence of domestic workers and migrant domestic workers in Europe has been often associated with the shortcomings of the welfare state<sup>1</sup>. While the labour market continues to integrate women, the need to outsource child-rearing and household responsibilities through private solutions increases especially where such policies do not exist in the public sphere<sup>2</sup>. The vulnerability of Migrant Domestic Workers is reflected in the particular difficulties they encounter in the field of social security. Because of the nature and characteristics of their work, domestic workers often fall between the gaps of social security legislation. The difficulties experienced by domestic workers are exacerbated in the case of migrant domestic workers as the later are often excluded from social security legislation on the basis of their immigration status.

In accessing social security rights, migrant workers face systematically three main restrictions. First, the problem of territoriality, a corollary of national sovereignty and state responsibility for people living inside its borders, limits the scope of application of social security legislation to the state where it is enacted. This makes it legally and technically difficult to enforce national legislation outside of the nation-state where it was enacted. Second, the principle of nationality sets that coverage and entitlement to benefits is limited to nationals of a nation-state. Foreign workers can be excluded from national schemes and the export of benefits abroad can be restricted. Third, where there is a lack of social security coordination by way of bilateral and multilateral agreements there is no guarantee for the maintenance of migrant workers' social security rights or their rights which are in course of acquisition. This makes it difficult for migrant workers to qualify for benefits in other countries or it could have the effect of restricting the export of benefits gained abroad.

### Challenges and obstacles for extending social security to Migrant Domestic Workers

#### No clear status under modern legislation

A major barrier to extending social protection to migrant domestic workers lies in the fact that **domestic workers are often excluded from legislation** including labour and social security laws thus preventing domestic workers and migrant domestic workers from claiming their rights. Reasons for such exclusion<sup>3</sup> include the following:

- domestic work is not considered as a “productive” labour market activity, as it was traditionally done by women as part of normal unremunerated chores;
- it is principally done in households rather than in more traditional workplaces, rendering this category of work difficult to regulate;
- domestic work often falls under atypical forms of employment – whether the person works occasionally or part-time, for several employers, or for a limited number of hours for one employer.<sup>4</sup>

1. It is interesting to observe that the number of domestic workers in the Nordic countries is very low in comparison to other EU Member States. It is suggested that this is in part because of existing public services for childcare and elderly care. ILO, *Domestic Workers Across the World*, 2013 (ILO:Geneva) p.35; see also Helma Lutz, *Migration and Domestic Work: A European Perspective on a Global Theme* (Aldershot, Ashgate, 2008)

2. Helma Lutz, *The New Maids: Transnational and Care Economy* (Zed Books, 2011).

3. It has been referred to as the “invisibility of domestic work” ILO Decent Work for Domestic Workers, 2010 (ILO: Geneva), p.87

4. *Decent Work for Domestic Workers*, 2010 (ILO: Geneva), p.33 For example, Portugal legislation requires that work be continuous and Finland excludes domestic workers whose contracts are of a duration under one month, who work only one day per week for the same employer, or whose hours worked for one same employer fall below three hours per day ILO.

This situation has led to an ambiguity in the legal status of domestic workers – both under international and regional standards and national laws – which gives way to exemptions or complete exclusion of domestic workers. It should be noted in this respect that the Committee of Experts on the Application of Convention and Recommendation has determined that such exemptions or exclusion are not in conformity with the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111).<sup>5</sup> Exclusion of irregular migrant domestic workers is greater since they are often excluded from labour and social security laws.

### **Informality**

**Domestic work may often fall within the informal sector.** Informality often translates into ambiguous working relationships characterised by a lack of a written contract which would otherwise formalize employment. Remaining in the informal sector may be perpetuated by employers because of the administrative burden involved in regularizing domestic workers, a preference for low-cost services and to evade social security contributions which may be onerous for private households<sup>6</sup>. Domestic workers may themselves seek informality where taxes and social security contributions would normally be deducted from their earnings so as to save as much money as possible<sup>7</sup>.

Given the characteristics of domestic work, and in particular the unreliable source of income, social security contributions may be made difficult<sup>8</sup>. Inconsistent social security contributions can easily translate in ineligibility for benefits which are subject to contributory qualifying periods<sup>9</sup>.

In countries where domestic work is not considered employment, it may have the effect of limiting access to working visas. This in turns forces Migrants Domestic Workers to work informally<sup>10</sup>. Therefore, **encouraging the formalization of domestic work and including domestic work into the realm of labour and social security laws is an essential element for extending social security to domestic workers and in particular migrant domestic workers.**

### **Discrimination and lack of equality of treatment**

Since domestic work is sometimes not considered proper employment, Domestic Workers are not treated like other workers. Discrimination may also relate directly to social security benefits, where workers may be obliged to contribute to social insurance but are not able to benefit from it<sup>11</sup>. The imposition of additional eligibility criteria such as continued employment, minimum working hours or citizenship requirements can place domestic workers at a serious disadvantage.

Given the important gender dimension of domestic workers, appropriate maternity protection is of particular importance. Without maternity cash benefits, taking maternity leave is practically unfeasible. Yet there continues to be a lack of entitlement to maternity cash benefits for domestic workers in Europe, and in particular in Eastern Europe.<sup>12</sup>

### **Lack of representation**

Already vulnerable for the reasons described above, domestic workers' interests are rarely represented. Domestic workers encounter difficulties in organizing themselves to improve their working conditions. This can be caused by their isolation in private homes, language barriers and culture shock. **In this regard, trade unions can play an important role in extending the social security rights of migrant domestic workers.** Traditionally, domestic workers, migrant workers and informal workers have been on the side-lines of trade union activity.<sup>13</sup> However, there is evidence that unions are increasingly lending a voice to both domestic non-migrant and migrant domestic workers. Nevertheless, even where unions are involved and their involvement results in collective agreements, such agreements appear to offer less protections in comparison to other sectors<sup>14</sup>.

5. ILO, *Domestic Workers Across the World*, 2013 (ILO:Geneva) p.51

6. M. Galotti: The gender dimension of domestic work in Western Europe (ILO, 2009), p. 39.

7. Helma Lutz, *The New Maids: Transnational Women and the Care Economy* (Zed Books,2011), p.161

8. ILO, *Domestic Workers Across the World*, 2013 (ILO:Geneva) p.90

9. ILO, *Domestic Workers Across the World*, 2013 (ILO:Geneva) p.90

10. IRENE & IUF, *Respect and Rights: Protection for domestic/household workers*, 2008 (IRENE : Tilburg & IUF: Geneva), p.19 & 74

11. M. Galotti: The gender dimension of domestic work in Western Europe (ILO, 2009), p. 29

12. ILO, *Domestic Workers Across the World*, 2013 (ILO:Geneva) p.89

13. M. Galotti: The gender dimension of domestic work in Western Europe (ILO, 2009), p. 17,22,43.

14. M. Galotti: The gender dimension of domestic work in Western Europe (ILO, 2009), p. 17



### Lack of enforcement of labour laws and access to justice

In order to enforce their rights, including their social security rights, and especially given the invisibility and informality that characterises their work, particular attention is needed in ensuring that domestic workers benefit from enforcement of laws and access to justice. Practical barriers to accessing judicial remedies include lack of knowledge about their rights, costs, language barriers, fear of jeopardizing their jobs and fear of deportation in the particular case of irregular migrant domestic workers. Where Migrant Domestic Workers are explicitly or implicitly covered under labour or social security legislation, enforcement of existing provisions can ensure their entitlement to social protection.

## Understanding International Social Security Concepts

- **Social Security** can be defined as the adoption of public measures to ensure basic income security and medical care to all in need, inter alia, from: (1) lack of work-related income (or insufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old-age, or death of a family member, (2) lack of access or unaffordable access to health care, (3) insufficient family support, particularly for children and adults dependants and (4) general poverty and social exclusion.
- **Social assistance** represents benefits, delivered either in cash or in kind, that are conditional on the level of income of recipients. Social assistance schemes are usually of a non-contributory nature.
- **Social insurance** is employment-related schemes that are publicly administered and financed primarily from workers' and employers' contributions. Cash benefits tend to be determined on the basis of a worker's previous earnings and in the case of long-term benefits, on the length of time the worker has been covered.
- **Universal coverage** schemes are financed from general government revenues and apply to the entire resident population, subject to whatever eligibility requirements may be prescribed in the scheme's legislation (age, minimum period of residence, etc.).
- **Social protection floors (SPF)** constitute the core obligations in order to ensure the realization of minimum essential levels of social security and human rights. According to the United Nations, social protection floors should comprise two main elements: services and essential social transfers. SPF have been further developed following the adoption of the ILO Social Protection Floors Recommendation, 2012 (No. 202), which has defined SPF as "nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion".

## International, Regional and National Legal Instruments applicable to Migrant Domestic Workers in Europe

Parallel to ILO's international legal standards, the social security legal framework in the context of migrant domestic workers in Europe is completed by international human rights instruments, legislation stemming from the European Union and national measures at the EU level. These instruments cover four key principles:

Equality of treatment and Non-Discrimination including in the Field of Social Security between Nationals and Non-Nationals

Maintenance of Acquired Rights

Maintenance of Rights in the Course of Acquisition

Transportability of Benefits

**Equality of treatment between nationals and non-nationals:** The principle of equality of treatment means that a migrant domestic worker should have the same rights and obligations as regards social security as nationals of the destination country.

**Maintenance of Acquired Rights:** Entitlement to certain social security benefits is sometimes subject to qualifying conditions such as, for example, a qualifying contributory period or the fulfilment of a certain period of residence. The principle of the maintenance of acquired rights requires States to guarantee that migrant domestic workers who have acquired entitlement rights in one territory, be entitled to maintain such rights in any other territory concerned. This principle is particularly important in the case of pensions where qualifying periods may be considerable. Without this principle, someone who has met qualifying conditions in one State would not be entitled to receive the corresponding benefit in another State.

**Maintenance of Rights in the Course of Acquisition:** This principle is sometimes also referred to as the totalising period. It guarantees that, where a right is conditional upon the completion of a qualifying period, account should be taken of periods completed by the migrant worker in each country. This is particularly relevant to pensions where often entitlement is subject to lengthy qualifying periods. A migrant worker who has worked in various States could accumulate each qualifying period and be eligible for a benefit on the basis of the totalisation of all qualifying periods.

**Transportability of Benefits:** Also referred to as the export of benefits, this principle allows a person to preserve her/his social security rights regardless of where they were acquired. This is in opposition to the practice which ties payment of benefits to certain minimum residency requirements.

**Social Security as an International Human Right:** The right to social security has been recognized as a human right in fundamental human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>15</sup>, 1966, and other international and regional legal instruments, in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Their Families and the European Social Charter. The realization of this right has also been an integral part of the ILO's mandate.

### **ILO's Mandate in Social Security**

The concept of social security by in large emerged in the mid twentieth century, however it was already an integral part of the ILO's original mandate in 1919. In fact, the Preamble of the *ILO Constitution (1919)* states that: “An improvement [...] is urgently required; as, [...], by [...] the «prevention of unemployment, [...] the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own”. Furthermore, The Declaration of Philadelphia of 1944 extended ILO's mandate to cover economic and financial policies and called “to extend social security measures to provide a basic income to all in need of such protection and comprehensive medical care” (Part III (f)).

There are eight relevant up-to-date social security Conventions and seven Recommendations: Social Security (Minimum Standards) Convention, 1952 (No. 102) and Recommendation No. 202; Equality of Treatment (Social Security) Convention, 1962 (No. 118); Employment Injury Benefits Convention, 1964 (No. 121) and Recommendation (No. 121); Old-Age, Invalidity and Survivors' Benefits Convention, 1967 (No. 128) and Recommendation (No. 131); Medical Care Benefits Convention, 1969 (No. 130) and Recommendation (No. 134); Maintenance of Social Security Rights Convention, 1982 (No. 157) and Recommendation (No. 167); Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) and Recommendation (No. 176); Maternity Protection Convention, 2000 (No. 183) and Recommendation (No. 191).

These international standards guide the ILO in the realization of its mandate in extending social security to all. Unlike Recommendations which provide general or technical guidelines, Conventions create legally binding obligations for ratifying States.

15. Article 9.

## ILO international standards protecting the social security rights of Migrant Domestic Workers

There is no specific instrument setting international standards on migrant domestic workers. However, the social security rights of these workers are extended from the interaction between social security Conventions and Recommendations, migrant workers Conventions and Recommendations together with the domestic workers Conventions and Recommendations. Furthermore, it is essential to note that it is the position of the ILO that unless a Convention or Recommendation explicitly excludes domestic workers from its scope, such workers are implicitly included<sup>16</sup>.

### ILO Social Security Instruments

- **Social Security (Minimum Standards) Convention, 1952 (No. 102)** is the flagship convention as it defines the nine classical social security contingencies (medical care, sickness, old age, unemployment, employment injury, maternity, family, invalidity and survivors) and sets the minimum standards with respect to percentage of personal coverage, level of benefits, qualifying period for entitlement to benefits and duration of benefits. This Convention provides a benchmark for the progressive extension of comprehensive social security systems.
- **Recommendation No. 202** provides guidance to ILO Member States in building comprehensive social security systems and extending social security coverage by prioritizing the establishment of national floors of protection accessible to all in need. In particular it calls for, at a minimum, access to essential health care and basic income security throughout the life cycle. As such, migrants and their families should have access to these basic social security guarantees in the State where they reside, as well as in their home country. It seeks the social protection for the unprotected, the poor and the most vulnerable, such as women, migrants, domestic workers and their families. The Recommendation also recognizes the importance of social security as a tool to prevent and reduce poverty, inequality, social exclusion and social insecurity, and promote equal opportunity and gender equality. Furthermore, Recommendation No. 202 recognizes the need to support the transition from informal to formal employment. Within the context of EU social security coordination, national protection floors can be used as a means to palliate the lack of coordination arrangements between countries in respect of any branch of social security. This is often the case where short-term benefits are concerned, as well as for health care and non-contributory benefits. National social protection floors are thus a very useful tool to address gaps in the social security coverage of migrant workers and their families.
- **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** features the equality of treatment for industrial accident compensation, without any condition of residence. Ratifying States have to grant same treatment to nationals of any other ratifying State and their dependants as to their nationals even without a conclusion of bilateral agreements.
- **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** covers nine branches of security; for each branch accepted under the Convention, a ratifying State undertakes to grant equality of treatment to nationals of other ratifying States (and dependents) on its territory with its own nationals (including refugees and stateless persons, if specifically accepted). It applies to the provision of benefits during periods of work abroad if such dispositions exist for nationals.
- **Maintenance of Social Security Rights Convention, 1982, (No. 157)** covers all nine contingencies: direct obligation to maintain long-term benefits and employment injury benefits to nationals of all other ratifying States and to its own nationals, refugees and stateless persons, irrespective of their place of residence.
- **The Maintenance of Social Security Rights Recommendation, 1983 (No. 167)** proposes model provisions for the conclusion of bilateral or multilateral social security agreements regarding, all

16. Office of the Legal Adviser, Legal Opinion of 29 July 2002

9 contingencies, common definitions, rules on applicable legislation, rules on maintaining social security rights and exporting benefits, rules on mutual assistance between national institutions. It also proposes a model agreement for the coordination of bilateral or multilateral social security instruments

### **ILO Migrant Workers Instruments**

- **Migration for Employment Convention (Revised), 1949 (No.97)** limits the personal scope to regular (permanent or temporary residence) migrants. It calls for the equality of treatment in terms of social security in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities between nationals and migrant workers. However, there are two exceptions to this principle: (1) benefits payable solely from public funds, (2) benefits paid to persons who do not satisfy the requirements for a normal pension. The Convention also provides for provisions of the maintenance of acquired and rights in the course of acquisition.
- **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** protects both regular and irregular migrant workers. It calls for equality of treatment for all migrant (regular and irregular) workers in respect of rights arising out of past employment as regards social security and other benefits.
- **Migrant Workers Recommendation, 1975 (No. 151)** promotes the equality of treatment for documented migrant workers as regards social security measures and welfare facilities and benefits provided in connection with employment. Also, irrespective of legality of their stay, migrants should be entitled to benefits which may be due in respect of any employment injury suffered and reimbursement of social security contributions which do not give rise to benefits.

### **ILO Domestic Workers Instruments**

- **Domestic Workers Convention, 2011 (No.189)** recognizes the need to take into account the specific context and features of domestic work. The Convention calls for the equality of treatment as regards to social security protection as well as the participation of the relevant parties in the formulation of social security measures. Given the over-representation of women domestic workers, the Convention No. 189 also specifically refers to maternity protection.
- **Domestic Workers Recommendation, 2011 (No. 201)** requests that Members consider ways to facilitate the payment of social security contributions given the uniqueness of such employment relations. This Recommendation also calls on Members to ensure that such migrant domestic workers are entitled equal treatment in respect of social security, the maintenance of acquired rights and the right to export benefits.

The right to social security within the EU is contained in the Charter of Fundamental Rights of the European Union. In particular Article 34 places social security and social assistance as fundamental rights and Article 35 provides for the right to health care<sup>17</sup>. The right to Social Security is also contained the 1989 Community Charter on the Fundamental Rights of Workers and the 1989 European Parliament Declaration of Fundamental Rights and Freedoms.

In addition, the Council of Europe (CoE) also provides a comprehensive framework in the field of human rights that apply to contracting EU Member States: the European Convention on Human Rights, to which all EU Member States are signatories, provides for the protection of social security; the European Social Charter (ESC) and the Revised ESC<sup>18</sup> protect the right to social security and medical assistances, the European Code of Social Security (modelled after ILO Convention No. 102) aims at encouraging the development of social security in all member States of the CoE.

17. Charter of Fundamental Rights of the European Union, OJ C 364, 18 December 2000. Article 34 on *Social security and social assistance*, Article 35 on *Health care*

18. All EU Member States are party to the ESC except Bulgaria, Estonia, Lithuania, Romania and Slovenia. As regards the Revised ESC, Czech Republic, Denmark, Germany, Greece, Latvia, Luxembourg, Poland, Spain and the United Kingdom are not party.

## European Social Security Coordination Rules

**Social security systems remain largely under the jurisdiction of the individual Member States.** Member States are free to regulate the personal coverage, the benefits granted, the qualifying conditions and the formulas and rules for the payment of contributions under their legislation. Harmonization and coordination are two key concepts that help in understanding the interactions between nationally established systems. **Harmonization** is when national social security legislations are replaced and harmonised with one European Social Security system with common rules and definitions while **Coordination** requires establishing mechanisms through which social security systems can work together since social security regulation remains the jurisdiction of every State. The EU has opted for a coordination framework of social security that aims to facilitate the movement within the EU thus protecting social security rights of EU nationals and non-EU nationals moving between Member States. The EU regulations on the coordination of social security cover the four key principles described above.

- **Regulation (EEC) No. 1408/71 and its implementing Regulation (EEC) No. 574/72:** With respect to modernised coordination rules, these regulations Set the basic principles regarding the application of social security schemes to employed persons, self-employed and members of their families moving with the community.
- **Regulation (EC) 883/2004 on the Coordination of Social Security Systems and its implementing Regulation (EC) 987/2009:** It has enlarged and completed the previous regulations. It covers the four key principles discussed above as regards the application of social security schemes to employed and self-employed persons and the members of their families moving within the Community. Namely, (1) the **principle of only one legislation applicable** (provides that the insured person is subject to the legislation of a single Member State, usually where he/she pursues a gainful activity); (2) the **principle of equality of treatment** (that ensures that EU nationals and non EU nationals residing in that country are equal in terms of the rights and obligations under national legislation); (3) the **principle of aggregation** of insurance, residence or work periods (enables that such periods acquired in one Member State are taken into account in any other EU Member State for entitlement of benefits); and finally (4) the **principle of export of benefits** within the EU (allows for workers to preserve, maintain and transfer acquired benefits rights from one Member State to another).
- **Regulation 1213/2010** extends the personal scope of **Regulation (EC) 883/2004** to legally residing non-EU nationals moving within EU Member States. Furthermore, with regard to the European Economic Area (EEA) and Switzerland, following the **EEA Joint Committee Decision No 76/2011** and the **EC-CH Joint Committee Decision No 1/2012**, Regulation (EC) 883/2004 and its implementing Regulation (EC) 987/2009 now apply in relation to these countries.

However, legal vacuums still exist in the EU social security legal framework. Most notably: (1) Equality of treatment of third country workers who have worked in one EU State as this depends on national provisions, (2) Aggregation of insurance periods in a worker's State of origin and (3) Export of benefits to third countries (outside the EU and EEA).

Some of these concerns are addressed in **Association Agreements** between the EU and non EU countries that govern the coordination of social security for workers and their families of the relevant parties. It is also worth noting that the European Council agreed on a common EU position for the implementation of the social security coordination in relation to the Association Agreements made with Algeria, Morocco, Tunisia, Croatia, the Former Yugoslav Republic of Macedonia and Israel. The EU continues to look at ways to develop the external dimension of social security as well (i.e. notably the recent European Commission's communication on the External Dimension of EU Social Security Coordination).

Coordination in the field of social security with third countries is otherwise dealt through **bilateral and multilateral agreements** between Member States and third countries. These agreements provide a

system of coordination for social security rules, mainly on the principles of equality of treatment and the export of pensions, for persons moving between those countries. The **Gottardo Judgement** of the Court of Justice of the European Union, extended the applicability of such agreements in deciding that all social security agreements made by an EU Member States with Third Countries cannot be limited to their own nationals. As such the principle of Equality of treatment must be provided to all EU Nationals whether or not they belong to a state who is a party to a bilateral/multilateral agreement. However, Equality of treatment does not apply to Non-EU Nationals living in other EU States not party to the agreement. Yet, bilateral and multilateral agreements also have shortcomings: in particular, (1) certain Social security systems of migrant sending countries are insufficiently developed which can impede the conclusion of reciprocal agreements, (2) social security systems of migrant sending countries are also different to those of migrant receiving countries, (3) at times, administrative capacity is insufficient to ensure that contributions are paid, that contributions are remitted in a cost efficient way, to ascertain whether all require conditions are satisfied and to periodically distribute social security benefits over several years.

## The case of irregular Migrant Domestic Workers

It is worth making a distinction between informal/undeclared employment and irregular migration. Irregular migration generally pertains to persons who are fully undocumented although it can also pertain to persons who are legal residents but have permits that exclude paid employment (tourist or study visas for example). The vulnerability of migrant domestic workers is exacerbated when their immigration status is not legal. Irregularity in the domestic work sector is widespread and irregular migrant domestic workers are particularly vulnerable as international legal instruments<sup>19</sup> and national legislation generally only cover legally residing migrants. Lawful residence is also often a criterion underscoring the principle of equality of treatment<sup>20</sup>.

Irregular migrant domestic workers are not completely devoid of social security rights according to the European Code of Human Rights. The European Court of Human Rights has also held that certain aspects of social security are protected, in particular the right to receive benefits which are considered a property and therefore should be guaranteed regardless of a beneficiary's country of residence<sup>21</sup>. Irregular migrant domestic workers also have an international right to medical care. This right is guaranteed in the Charter of Fundamental Rights of the European Union<sup>22</sup>, which protects the right to access preventative care. It is also protected under the ICESCR<sup>23</sup> which ensures essential primary and emergency care, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>24</sup>. The European Social Charter, which applies to many EU States, protects the right to healthcare (Article 13) for irregular migrants<sup>25</sup>. Furthermore the Universal Declaration of Human Rights also states that everyone should have the right to security in the event of sickness<sup>26</sup>.

19. For example, many ILO instruments cover "residents" which are considered to be legally residing residence; this is the case of Convention No. 102. See International Labour Conference, 76th session, 1989, Social security protection in old-age, general survey of the Committee of Experts on the application of conventions and recommendations, para. 53. As regards ILO Migrant instruments, Convention concerning Migration for Employment (No. 97) is explicitly limited to "immigrants lawfully within its territory" (Art 6(1)(b)), and Part II Convention No. 143 concerning Migrations in Abusive Conditions deals exclusively with the protection of migrant workers who have been regularly admitted for the purposes of employment (General Survey on Convention Nos 97 and 143, Migrant Workers, ILO, 87th Session, 1999, para. 105).

20. This is the case with ILO Convention No. 118, see Equality of Treatment (Social Security), General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 63rd Session, 1977, para. 57.

21. Klein v. Austria, Application No. 57028/00, Eur. Ct H.R., judgment of 3 March 2011.

22. Article 35, "right to access to preventative health care and right to benefit from medical treatment".

23. Article 12 states that all persons have the right to the highest attainable standard of physical and mental health; the Committee on Economic, Social and Cultural Rights clarified this to mean: "essential primary health care and primary" (General Comment No. 3, paragraph 10 and General Comment No. 14, paragraph 43) and "emergency medical care" (General Comment No. 19, paragraph 37).

24. Article 28 establishes the right to emergency medical care.

25. European Committee of Social Rights, FIDH v. France, complaint No. 14/2003, decision 8 September 2004.

26. Article 25.

## Module VII – Access to Social Security for Migrant Domestic Workers – LEARNING BY DOING



### Understanding the different levels of social security protection of domestic workers in the European Union

**Measure how migration status, employment, gender, formality, national laws and policies and social security coordination affect access to social protection.**

Read the worker's profile selected for your group and chose one person from your group to take a step forward or backward according to the following instructions. This exercise will illustrate (physically) the differences between persons with more social security coverage and those with little or no social security coverage.



**For this exercise, you have 30mn dedicated to the group work and 20mn to the reporting/discussion**

The year is 2040, the European Union is still a regional entity but all the Member States have new social security legislation and new bilateral and multilateral agreements. Social Security Coordination measures remain the same.

1. If you are an EU citizen take two steps forward
2. If you are a regular non EU citizen take one step forward
3. If you are an irregular non EU citizen take two step backwards
4. If you are a woman take one step back
5. If you are over 60 years old take one step backwards
6. If your receiving country has recognized domestic work as employment and addressed the shortage of domestic workers through immigration policies take one step forward
7. If you work in the formal economy take one step forward
8. If you work in the informal economy take one step backwards
9. If your receiving country has a procedure which facilitates the formalization of domestic workers (inspectors, services employment cheques), take one step forwards
10. If your receiving country extends its Social Security legislation to Migrant Domestic Workers on the same footing as all other workers take two steps forward
11. If your receiving country extends its Social Security legislation to Migrant Domestic Workers through specific mechanisms limited to Domestic Workers take one step forward

12. If your receiving country explicitly excludes Migrant Domestic Workers from Social Security legislation take one step back
13. If your receiving country provides medical care and social assistance based on residence take one step forward
14. If your receiving country has trade unions, NGOs or other organizations/associations which represent the interests of Migrant Domestic Workers take one step forward
15. If you are a non-EU national and your sending country and your receiving EU country have a bilateral agreement take one step forward
16. If your sending country extends social protection for your family members left behind take one step forward

Peter				
Personal Information				Occupational Information
Name	Nationality	Age	Family	Occupation
Peter	Urania (non-EU State)	65	separated with two children, both in their 30s	gardener
Additional information				
<ul style="list-style-type: none"> <li>• Peter arrived in Italica (EU Member State) 40 years ago on a tourist visa</li> <li>• Europe provides tourist visas to Uranians for 3 months. After 3 months Uranians must leave the EU territory</li> <li>• While still on his tourist visa, Peter found work as a gardener in a private household which had 3 acres of land</li> <li>• Peter is now considered an irregular migrant</li> <li>• Peter has been working as a gardener for this private household ever since</li> <li>• The owners of the private household told Peter that it was very complicated to give him a contract since he didn't have a working permit</li> <li>• Migrant Domestic Workers are explicitly excluded from social security legislation in Italica</li> <li>• There is no bilateral agreement between Urania and Italica</li> <li>• There are no Trade Unions representing Domestic Workers rights in Italica</li> </ul>				

Marisa				
Personal Information				Occupational Information
Name	Nationality	Age	Family	Occupation
Marisa	Carpania (non EU State)	40	married with two children both under 18 still living in Carpania	house cleaner
Additional information				
<ul style="list-style-type: none"> <li>• Marisa won a lottery for a European working permit and decided to go to Germania</li> <li>• Since Marisa spoke little germanian she had a hard time finding work and was slowly spending all her savings</li> <li>• Finally, Marisa found work as a housekeeper in a private household</li> <li>• Since Marisa wanted to send her children to good universities she thought she would save as much money as possible and stay in the informal sector</li> <li>• Carpania has recently extended the scope of its social security legislation to all domestic workers and migrants by way of a Collective Agreement. The Collective Agreement was loudly applauded by trade unions representing the interests of Domestic Workers</li> <li>• The Collective Agreement contains in particular that such workers who meet the means test are entitled to social assistance benefits, including sickness benefits</li> <li>• Marisa is an active member of a migrant women association</li> <li>• There is unfortunately no bilateral agreement between Carpania and Germania yet</li> </ul>				



Paula				
Personal Information				Occupational Information
Name	Nationality	Age	Family	Occupation
Paula	Gondor (non-EU State)	60	widowed	caretaker for the elderly
Additional information				
<ul style="list-style-type: none"> <li>• Paula was a trained nurse in Gondor however there was very little work available</li> <li>• At the time, Iberia was desperately looking for nurses so Paula was able to receive a working visa to work as a nurse</li> <li>• When she arrived in Iberia she found work as a caretaker for the elderly in a private household</li> <li>• The children of the elderly wrote up a contract for Paula and paid her social security contributions</li> <li>• In fact Iberia has a system of services employment cheques which facilitates the procedures for employing domestic workers on a legal basis so Paula's employer was happy to make the employment agreement official</li> <li>• It is true that in Iberia Migrant Domestic Workers have always been included under Social Security legislation</li> <li>• After working for 35 years, Paula is now thinking of retiring, since she lost her husband a few years ago and has no other family in Iberia she is thinking of returning back to Gondor</li> <li>• Gondor and Iberia signed a bilateral agreement last year which includes, among others, the principle of the maintenance of rights in the course of acquisition and the principle of exportability of benefits</li> <li>• In Iberia trade unions actively represent domestic workers rights</li> </ul>				

Andre				
Personal Information				Occupational Information
Name	Nationality	Age	Family	Occupation
Andre	Lusitania (EU Member State)	25	single	cook
Additional information				
<ul style="list-style-type: none"> <li>• Andre studied to be a cook in Lusitania</li> <li>• Unfortunately when he finished his studies Lusitania was experiencing a very bad crisis and there was no work for cooks anywhere</li> <li>• After looking for a few months, but finding nothing, Andre decided to try his luck in Polonia</li> <li>• One day while he was having a coffee at a bar, he started talking to the woman next to him. The woman told him that because of her job she had to organize many dinner parties and she was looking for a cook</li> <li>• The woman told Andre that she could not make the contract official since she would need to have an inspector come and verify that occupational safety requirements were met and that this would take months</li> <li>• Andre agreed to have an oral contract between the both of them</li> <li>• Domestic workers, such as cooks are not covered under Polonia's social security legislation</li> <li>• Social security benefits in Polonia are receivable through the social insurance scheme which is financed by employers and employee contributions</li> <li>• Andre is not a member of any trade union or NGO, he is not even sure that these exist</li> <li>• However, Andre is aware that Polonia has very organized labour inspections and his employer is very worried they are going to knock on her door one day</li> </ul>				

Aniko				
Personal Information				Occupational Information
Name	Nationality	Age	Family	Occupation
Aniko	Belgae (EU Member State)	18	divorced	child caretaker
Additional information				
<ul style="list-style-type: none"> <li>Aniko finished high school studies but still is not sure what she wants to study at University</li> <li>Her parents suggested she earn a bit of money while she is making up her decision</li> <li>Aniko has always wanted to learn Danian so she decided to buy a one way air plane ticket to Dania and look for work there</li> <li>When Aniko arrived in Dania (EU Member State) she had a hard time finding work since she barely spoke Danian</li> <li>Soon enough, she started working in a private household taking care of 2 small children</li> <li>In Dania, child takecarers are not considered employees. Only employees have a clear status under social security legislation</li> <li>Medical Care in Dania is provided under a universal system to all EU nationals and legally residing residents</li> <li>Dania has a number of trade unions that represent domestic workers</li> </ul>				

Yvan				
Personal Information				Occupational Information
Name	Nationality	Age	Family	Occupation
Yvan	Gallia (EU Member State)	50	married	household employee
Additional information				
<ul style="list-style-type: none"> <li>On a summer trip Yvan met a girl from Graecia (EU Member State) and fell in love</li> <li>That same summer Yvan decided to move to Graecia</li> <li>He quickly found work as an employee in a private household which included taking care of small children and cooking</li> <li>His employer wrote up a contract and both Yvan and him signed</li> <li>In the contract, Yvan and the employer would pay social insurance contributions, 13% and 10% respectively</li> <li>In Graecia, Domestic workers are covered under a Collective agreement that was negotiated between trade unions representing domestic workers and employers</li> <li>This Collective agreement sets out what must be included in the agreement including the payment of social security contributions which provides entitlement for all social security contingencies</li> <li>Graecia also has a social assistance scheme which includes domestic workers who are legally residing in Graecia</li> </ul>				

## Module VII – Access to Social Security for Migrant Domestic Workers – FACT SHEET



### Social protection of migrant domestic workers

In 2011, ILO estimated that 75 to 80 percent of the world's population had no access to social protection and lived in a state of social insecurity.

Domestic workers remain one of the least protected groups of workers under national social security labour legislation yet specific data on social protection of migrant domestic workers is unfortunately difficult to find. This is partly due to the fact that migrant domestic workers work largely in the informal sector constituting a particularly vulnerable group.

In Eastern Europe and CIS countries it is estimated that 45% of domestic workers are excluded from the scope of the country's labour laws although some exceptions exist:

- Austria, Belgium, Denmark, France, Germany, Italy, Portugal, Spain and Switzerland (Canton of Geneva) have included domestic workers in workers' compensation schemes;
- Belgium, France, Germany, Greece, Italy, Netherlands, Portugal, Spain and Switzerland (Canton of Geneva) have included domestic workers in general health care schemes;
- Belgium, France, Germany, Greece, Italy, Portugal, Spain and Switzerland (Canton of Geneva) have included domestic workers in retirement schemes;
- Belgium, France, Germany, Italy, Portugal and Switzerland (Canton of Geneva) have included domestic workers in unemployment insurance schemes;
- Austria, Belgium, Spain, Denmark, Finland, France, Germany, Italy, Switzerland and United Kingdom have included domestic workers in maternity schemes (constituting a protection against their dismissal or repatriation when found pregnant).

## EU Association Agreements

The following association agreements concluded between the EU and third countries provide a legal basis for coordination of social security and thus an extension of social protection to Migrant Workers:

- Association Agreement with Turkey;
- Cooperation Agreement with San Marino;
- Stabilisation and Association Agreements (Croatia, Former Yugoslav Republic of Macedonia, Serbia, Albania, Montenegro, Bosnia and Herzegovina);
- Euro-Mediterranean Agreements (Morocco, Tunisia, Algeria, Israel);
- Ibero-American Multilateral Convention on Social Security (Portugal, Spain and 12 Latin American countries). This agreement covers “all persons who are or who have been subject to the social security legislation of any of the signatory states as well as to their family members deriving rights from them”. Under this agreement, migrant domestic workers covered are ensured equality of treatment with the nationals of receiving country as well as the right to export benefits.

## EU multilateral and bilateral agreements (examples)

Since social security remains under national jurisdiction, in the absence of EU Harmonization of Social Security such agreements provide guidelines for social security coordination between one or more EU Member States and selected Third Countries. Some examples include:

- Ibero-American Agreement (Between Andorra, Spain and Portugal and 19 Latin-American Countries)
- France-Uruguay Agreement
- Portugal-Australia Agreement
- Italy-Venezuela Agreement
- Austria-Korea Agreement
- Hungary-Canada Agreement

### Recommended readings

- Domestic work for domestic workers, report IV(1), International Labour Conference, 99th Session, 2010
- Domestic Workers across the world: Global and Regional Statistics and the extend of legal protection
- ILO Migrant Workers, Report III (Part IB) (General Survey) 1999
- Migration and Domestic Work: A European Perspective on a Global Theme
- Social Security for Migrant Workers: A rights based approach, Kenichi Hirose & co
- The Gender Dimension of Domestic Work in Western Europe, Maria Gallotti, International Migration Papers No. 96
- FRA Migrant in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States
- United Nations Human Rights: Office of the High Commissioner, Rights of Migrant Domestic Workers in Europe

## Module VII – Access to Social Security for Migrant Domestic Workers – GOOD PRACTICES



The following good practices address some of the obstacles preventing migrant domestic workers from accessing social protection, namely a lack of legal coverage, informality, irregularity, language barriers, lack of representation, lack of acknowledgement of the uniqueness of this type of employment, etc.

### General social security legislation applicable to domestic workers

While one of the main challenges to extending social security to migrant domestic workers is their lack of coverage under labour and social security laws, some EU Member States have explicitly included domestic workers in general social security legislation.

#### Spain

In November 2011, Spain adopted a Royal Decree<sup>27</sup> regarding domestic employees in order to update the standards applicable to domestic workers and improve working conditions in the sector. With respect to social security, Spanish Act No. 27/2011 on the updating, adaptation and modernization of the Social Security Scheme<sup>28</sup> integrates the specific social security scheme for domestic workers into the general social security scheme.<sup>29</sup> Thus, domestic workers can benefit from the conditions laid down in the general social security system regarding health care, occupational rehabilitation, invalidity and retirement, family allowances, social services and social welfare benefits.<sup>30</sup> Domestic workers are however excluded from unemployment benefits.<sup>31</sup> Up until recently, migrant workers were entitled to medical care. However, since September 1, 2012, migrant workers in an irregular situation are excluded from medical care above emergency or pregnancy care<sup>32</sup>.

27. *Real Decreto 1620/2011, de 14 de noviembre, por el que se regula la relación laboral de carácter especial del servicio del hogar familiar.* Full

28. Ley 27/2011, de 1 de agosto, sobre actualización, adecuación y modernización del sistema de Seguridad Social. Full text available from the ILO's NATLEX database at <<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88597/101367/F764532863/ESP88597.pdf>>.

29. International Labour Organization, *Spain Approves New Regulations for Domestic Employees*, Developments in Law and Practice 2012, online: <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_173686.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_173686.pdf)> at p. 1.

30. *Ibid* at p. 4.

31. *Ibid*.

32. Robert Semones, *Prime Minister Rajoy's "Recortes Sanitarios" for Undocumented Immigrants in Spain May Face Constitutional Challenges*, 25/09/12, Available at: <http://jilp.law.ucdavis.edu/blog/posts/-prime-minister-rajoys-recortes-sanitarios-for-undocumented-immigrants-in-spain-may-face-constitutional-challenges.html>

## Germany

In Germany, domestic workers are also explicitly covered by the general social security regime regarding employment injuries, general health care, retirement pension and unemployment insurance<sup>33</sup>.

## Canton of Geneva

In Switzerland, section 20 of the *Contrat-type de travail de l'économie domestique* for the Canton of Geneva provides that employers should comply with legal provisions on specific aspects of social security<sup>34</sup>.

## Recognition of domestic work: by way of labour migration policies or collective agreements

Member States should address the need for domestic workers and recognize domestic work as employment. There should be acknowledgement of the pervasiveness of domestic workers in Europe, and in particular Migrant Domestic Workers.<sup>35</sup> Targeted legal migration programmes aimed specifically at domestic workers can redress some of the irregularity found in this sector.

## Italy

An example of this is the migration quotas system introduced in Italy. Since 2005, the Italian Government reserves a proportion of migration quotas for domestic workers.<sup>36</sup> This measure illustrates the explicit recognition of the need for migrants to carry out domestic work.

## Collective agreements

As underlined by the ILO, collective agreements generally “combine elements of contract law generating obligations between the signatories with regulatory mechanisms [...] and thereby extend the standards provided to domestic workers and employers”.<sup>37</sup> The conclusion of these agreements, whether national or regional, also involves several actors as they are usually negotiated by tripartite commissions.<sup>38</sup> In Italy and France, such instruments exist and cover an extensive array of conditions of work and social protection.<sup>39</sup>

## Italy

Indeed, the Italian *National Collective Bargaining Agreement* covers privately employed domestic workers and constitutes the main instrument protecting domestic workers.<sup>40</sup> First negotiated in 1974, the agreement applies to all workers and has become part of Italian collective labour law.<sup>41</sup> Given the fact that migrant workers have special needs, the agreement provides for special provisions such as the right to accumulate holidays over a two-year period in order to facilitate visits to their families abroad.<sup>42</sup> The agreement also creates a supplementary pension fund and provides for safeguards in the event of illness.<sup>43</sup>

33. International Labour Organization, *Decent Work for Domestic Workers*, 99th Session, 2010, Report IV (1) at 59, Table V.2.

34. *Ibid.*

35. European Union Agency for Fundamental Rights, *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States*, online: <[http://fra.europa.eu/sites/default/files/migrants\\_in\\_an\\_irregular\\_situation\\_employed\\_in\\_domestic\\_work\\_en.pdf](http://fra.europa.eu/sites/default/files/migrants_in_an_irregular_situation_employed_in_domestic_work_en.pdf)> at 19.

36. *Ibid.* at 17.

37. International Labour Organization, *Decent Work for Domestic Workers*, 99th Session, 2010, Report IV (1) at para. 95.

38. *Ibid.*

39. *Ibid.*

40. *Out of the Shadows: Organising and Protecting Domestic Workers in Europe: the Role of Trade Unions*, Brussels, 14-15 April 2005 at 28.

41. *Ibid.*

42. *Ibid.*

43. *European Industrial Relations Observatory On-Line, New National Collective Agreement For Domestic Workers*, online: <<http://www.eurofound.europa.eu/eiro/2007/02/articles/it0702079i.htm>>.

## France

In the same way, France has a national collective agreement specifically regulating domestic work.<sup>44</sup> Regarding social security protection, the agreement provides for sickness and injury benefits for domestic workers with more than six months' seniority.<sup>45</sup> These safeguards are financed through a foresight fund to which employers and domestic workers contribute. With respect to maternity, adoption and parental leave, domestic workers can benefit from the specific provisions of the French labour code.<sup>46</sup> The agreement also creates a social fund that aims at providing individual or collective assistance in favour of employees who are in a difficult financial situation.<sup>47</sup>

## Belgium

In Belgium, a similar collective agreement exists and applies to employers and workers within the jurisdiction of the Belgian *Commission paritaire pour la gestion d'immeubles et les travailleurs domestiques*.<sup>48</sup>

## Domestic work an atypical employment: looking at the terminology

### Canton of Geneva

In Switzerland, the standard contract for domestic workers for the Canton of Geneva defines “workers in the domestic economy” as both full-time and part-time workers employed regularly or occasionally according to an agreed schedule and hence, irrespective of the manner and frequency of their remuneration.<sup>49</sup> As pointed out by the ILO, “the use of this language illustrates both that domestic work requires a broad range of skills and training and that it can provide material benefits to families and to the broader economy”.<sup>50</sup>

### France

France has opted for an approach similar to that of Geneva. Here any person who undertakes household tasks of a familial housekeeping nature, whether on a full-time or part-time basis, qualifies as an employee under article 1(a) of the *National Collective Agreement of Employees of Individual Employers*.<sup>51</sup>

## Addressing informality

The absence of written contract to formalize contractual employment relationship contributes to the informality of domestic workers. To address this issue, the ILO *Migration for Employment Convention (Revised), 1949 (No. 97)*, provides that an employment contract is one of the documents that should be given to migrant workers prior to their departure from their sending country.<sup>52</sup> Following this principle, some EU countries provide a modal contract in order to offer guidance in terms of employment.<sup>53</sup> This is the case of **France** where the modal contract is annexed to the national collective agreement.<sup>54</sup>

44. Convention collective nationale des salariés du particulier employeur du 24 novembre 1999. Etendue par arrêté du 2 mars 2000 (JO du 11 mars 2000), online: <<http://legifrance.gouv.fr/affichIDCC.do?idArticle=KALIARTI000005834047&idSectionTA=KALISCTA000005716818&cidTexte=KALITEXT000005672603&idConvention=KALICONT000005635792&dateTexte=29990101>>.

45. See more specifically *ibid* at article 19.

46. *Ibid*, article 23.

47. *Avenant n°1 du 18 mai 2000 relatif à la prévoyance (annexe VI) et au fonds social, article 2 “Fonds social des salariés du particulier employeur”*.

48. See *Arrêté royal rendant obligatoire la convention collective de travail du 1er décembre 2005, conclue au sein de la Commission paritaire pour la gestion d'immeubles et les travailleurs domestiques, relative à la classification professionnelle et aux salaires*, 1st September 2006, online: <<http://staatsbladclip.zita.be/moniteur/lois/2006/11/22/loi-2006202726.html>>.

49. *Ibid* at para.110.

50. International Labour Organization, *Decent Work for Domestic Workers*, 99th Session, 2010, Report IV (1) at para.102.

51. *Ibid* at para.114.

52. *Ibid* at para 129. Article 5 of Annex I and Article 6 of Annex II of the *Migration for Employment Convention (Revised), 1949 (No. 97)*.

53. *Ibid* at para 132.

54. *Ibid*.

## Service Employment Cheque: France, Austria and Canton of Geneva

In recent years, several countries have established a ‘service voucher’ system for household services in order to facilitate the procedures for employing a domestic worker on a legal basis and to combat undeclared work in domestic services.

### France

For instance, France introduced the *Universal Service Employment Cheque* (CESU) in 2006 which is replacing the former schemes.<sup>55</sup> Following the registration of the employer, individuals can purchase cheques and use them to pay for domestic service work in the home and childcare outside the home. Under this scheme, domestic workers are officially employed and can benefit from social security coverage (e.g. sickness, employment injury, unemployment, retirement). Individuals employing domestic workers have to fill out a declaration form which is then registered by the *Centre national CESU* that will calculate contributions (both employers’ and workers’ contributions). These contributions are then automatically withdrawn from the individual’s bank account.<sup>56</sup> Moreover, both companies and individual employers can claim an income tax reduction for the use of these cheques.<sup>57</sup>

### Austria

Established a similar scheme<sup>58</sup> in 2006 that aims to reduce undeclared work and to simplify procedures for legally recruiting domestic workers. The voucher system includes employment injury insurance for workers. Furthermore, the worker has the option to purchase, on a voluntary basis, a sickness insurance and pension.<sup>59</sup> Minimum wage regulations apply to the employment relationship regulated by this scheme.<sup>60</sup>

### Canton of Geneva

Finally, another illustration of the service cheque system is one introduced in the Canton of Geneva. Under this scheme, “a social enterprise calculates the social charges on the salary paid to the domestic worker and declares the salary by means of service cheques”.<sup>61</sup>

## Raising public awareness

### Canton of Geneva

In order to address the invisibility of domestic work, the Canton of Geneva has conducted public awareness-raising campaign which contributed to regularization of domestic workers.<sup>62</sup>

## Addressing language barriers

### Italy

In order to address the language barriers and to facilitate access to justice, some countries provide documentation in several languages. For instance, Italy has translated summary of the national collective agreement into many of the languages of domestic workers (e.g. Albanian, Arabic, English, Eritrean, Filipino, French, Polish and Spanish).<sup>63</sup>

55. See Eurofound, *Universal Service Employment Cheque, France*, online: <<http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/fr003.htm>>.

56. URSSAF, *Tout savoir sur le CESU*, online: <<http://www.cesu.urssaf.fr/cesweb/pdf/Tout.savoir.sur.le.cesu.pdf>>.

57. *Ibid.*

58. *Household Service Cheque Act* (Dienstleistungsscheckgesetz, DLSG).

59. Sénat de Belgique, Document législatif n° 4-887/1, *Proposition de résolution relative à la problématique de l'économie domestique, 29 juillet 2008*, online: <<http://www.senate.be/www/?Mval=/publications/viewPub&COLL=S&LEG=4&NR=887&PUID=67110192&LANG=fr>>.

60. International Labour Organization, *Decent Work for Domestic Workers*, 99th Session, 2010, Report IV (1) at 42.

61. *Ibid.*

62. *Ibid.* at para. 260.

63. *Ibid.* at para. 261.



## Module VII – Access to Social Security for Migrant Domestic Workers – TEST YOUR KNOWLEDGE



1. In terms of social security for migrant workers, there are several essential principles. Spot the wrong one:
  - a. Equality of Treatment Between Nationals and Non-Nationals
  - b. Maintenance of Acquired Rights and export of Benefits Abroad
  - c. Reciprocity and mutual administrative assistance
  - d. Residence condition
2. Access to health care for irregular MDW in Europe: which one of the following assertions is true?
  - a. In every Member State of the EU, MDW have access for free to basic health services
  - b. Health entitlements in EU hugely vary from a country to another
  - c. Apart from emergency care, none of the EU country offer access to primary and secondary care
3. What is the protective legal framework applicable to irregular migrants employed in the domestic work sector in Europe? Spot the wrong one:
  - a. The EU Directive on Safety and Health at Work (89/391/EEC) includes irregular migrants & domestic workers
  - b. The 2009 Employers' Sanctions Directive provides for the possibility of granting temporary residence permits to third country nationals who are children or victims of particularly exploitative working conditions
  - c. The Employers' sanction directive says that an Employer is responsible to pay outstanding remuneration to irregular workers

4.

When we talk about international social security concepts, we refer to the transportability of the social security benefits. How do we call the social security cooperation mechanism among EU Member States, and the one among EU national Member States and third countries?

- a. Harmonization, external cooperation
- b. Coordination, and association or bilateral agreements
- c. Harmonization, and cooperation
- d. Cooperation, and external cooperation

## Responses to the quiz

- 1. The correct answer is d)
- 2. The correct answer is b)
- 3. The correct answer is c)
- 4. The correct answer is b)

# Notes

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