

# Comparative Report on Care Workers' Job Quality and Inclusive Working Conditions<sup>1</sup>

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## 1. Executive Summary

This comparative report, corresponding to WP2 of the “CARE4CARE: We care for those who care” research project, examines job quality and inclusive working conditions for care workers in six EU Member States: France, Germany, Italy, Poland, Spain, and Sweden. The comparative analysis focuses on labour law but also covers industrial relations, policy, and labour market characteristics, as well as the interplay between national and EU/international law.

CARE4CARE targets care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal and/or health assistance to elderly persons, sick persons, or persons with disabilities, particularly those with at most a Bachelor's degree. The report synthesises and compares findings from national reports authored by experts from each country, using a common questionnaire to ensure consistency.

The content of the report includes the following sections:

- the legal and policy framework (Section 3), discussing international standards from the ILO, Council of Europe, and EU.
- the care work context (Section 4), detailing sector characteristics and ongoing debates.
- trade union rights and industrial relations (Section 5), including collective bargaining and employee influence.

<sup>1</sup> The contents of this report were finalized on December 31, 2023.

- employment status, flexible forms of employment, and employment protection (Section 6).
- wages and benefits (Section 7), including minimum wage regulations.
- working time and health and safety (Section 8), including implications of the COVID-19 pandemic, and training and competence development.
- social security (Section 9), examining coverage and benefits.

The report stresses the marked diversity of labour law and industrial relations systems across the six countries. France and Germany represent the Continental-European system, Italy and Spain represent the Southern-European system, Poland represents the Eastern-European system, and Sweden represents the Nordic system. This diversity profoundly influences various aspects, including legal culture, the balance between legislation and collective bargaining, the degree of state influence, the presence and role of trade unions, and the mechanisms of employee representation. In terms of welfare state and social security systems, France, Germany, and Poland reflect the Bismarck model, Italy and Spain reflect a mix of the Bismarck and Beveridge systems, and Sweden reflects the Scandinavian system. All countries, except Sweden, have a family-based welfare model, which has implications for care work. Social security coverage is extensive in all countries, though there are gaps, such as limited coverage for home caregivers in Italy. Spain recently extended unemployment insurance to domestic workers following EU case law, highlighting the importance of EU gender equality law in enhancing social security for domestic workers.

This report identifies common challenges and potential improvements through comparative analysis, highlighting synergies between labour law and industrial relations. It underscores the importance of integrating various legal perspectives to enhance job quality and inclusive working conditions for care workers across Europe.

## 2. Methodology<sup>2</sup>

This comparative report within the framework of CARE4CARE WP2 includes a comparative analysis of job quality and inclusive working conditions of care workers in six countries and EU Member States, namely, France, Germany, Italy, Poland, Spain, and Sweden. The focus of the comparative analysis is on labour law, but also includes aspects of industrial relations, policy, and labour market characteristics, as well as an analysis of the interplay between national law and EU/European and international law.

CARE4CARE studies a selected group of care workers, namely, care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal assistance and/or health assistance

<sup>2</sup> This study has received ethical approval by the Swedish Ethical Review Authority (project title: 'CARE4CARE: en studie av arbetsvillkoren och arbetssituationen för care workers', dnr 2023-04438-01).

to elderly persons, sick persons, and persons with disabilities. Focus is on care workers who have at most a Bachelor's degree (Section 3).

The content and outline of this comparative report is as follows. Section 3 presents the ILO, Council of Europe, and EU legal and policy framework. Section 4 discusses various aspects of care work and domestic care work, including the care sector, care workers, and current debates. Section 5 addresses fundamental trade union rights, social partners and industrial relations, collective bargaining, and employee influence. Section 6 presents a discussion on employment status, flexible forms of employment, and employment protection, while Section 7 presents a discussion on wages and benefits, including minimum wage regulation. Section 8 focuses on working time, health and safety, implications of the COVID-19 pandemic, and training and competence development. Section 9 discusses social security coverage and benefits. Section 10, finally, contains some concluding remarks.

This report is the outcome of international research collaboration. The comparative analysis is primarily based on the rich information and analysis provided by the following CARE4CARE WP2 national reports:<sup>3</sup>

- the French National Report on “Care Workers, Job Quality, and Inclusive Working Conditions”, WP2 (partner: COMPTRASEC – UMR CNRS 5114 – University of Bordeaux, authors: Isabelle Daugareilh, Guillaume, Santoro, Haousssetou Traore) (see chapter 2, *infra*),
- the German National Report on “Care Workers, Job Quality, and Inclusive Working Conditions”, WP2 (partner: European University Viadrina Frankfurt (Oder), authors: Ziga Podgornik-Jakil, Dominic Andres, Eva Kocher) (see chapter 3, *infra*),
- the Italian National Report on “Care Workers, Job Quality, and Inclusive Working Conditions”, WP2 (partner: University of Florence, authors: Maria Luisa Vallauri, William Chiaromonte, Giulia Frosecchi, Samuele Renzi, Michele Mazzetti) (see chapter 4, *infra*),
- the Polish National Report on “Care Workers, Job Quality, and Inclusive Working Conditions”, WP2 (partner: University of Rzeszow, authors: Agata Ludera-Ruszel, Hubert Kotarski) (see chapter 5, *infra*),

<sup>3</sup> This comparative report also partly draws on previous comparative labour law and industrial relations research carried out by the author, see Mia Rönnmar, Marcus Kahmann, Andrea Iossa, Jan Czarzasty, and Valentina Paolucci, “Trade Union Participation and Influence in Decentralised Collective Bargaining,” in *Pathways in Decentralised Collective Bargaining in Europe*, edited by Frank Tros, (Amsterdam University Press, 2023), 211–38; Mia Rönnmar, “Age Discrimination and Labour Law: A Comparative Analysis,” in *Age Discrimination and Labour Law. Comparative and Conceptual Perspectives in the EU and Beyond*, edited by Ann Numhauser-Henning, and Mia Rönnmar (Alphen aan den Rijn: Kluwer Law International, 2015), 415–47, and Mia Rönnmar, “Labour and equality law,” in *European Union Law*, edited by Catherine Barnard, and Steve Peers (Oxford: Oxford University Press, 2023<sup>4</sup>), 630–61. See also the Swedish WP2 National Report on “Care Workers, Job Quality, and Inclusive Working Conditions” by Mia Rönnmar and Jenny Julén Votinius. I would also like to express my thanks to the participants at the European stakeholder meeting for generously sharing their time and providing important comments.

- the Spanish National Report on “Care Workers, Job Quality, and Inclusive Working Conditions”, WP2 (partner: Universitat de Girona, authors: Ferran Camas Roda, Maria Antonia Barceló Rado, Dolors Juvinyà Canal, Marc Sáez Zafra, Anna Maria Molina Garcia, Andrea Cano Redondo) (see chapter 6, *infra*), and,
- the Swedish National Report on “Care Workers, Job Quality, and Inclusive Working Conditions”, WP2 (partner: Lund University, authors: Mia Rönmar, Jenny Julén Votinius) (see chapter 7, *infra*).

These national reports are drafted on the basis of a common questionnaire and written by distinguished experts in the field, who are familiar with the specific national labour law and industrial relations systems, legal cultures, and primary legal sources. In this comparative report, a reference made to a specific national context implies, if not otherwise stated, a reference to the corresponding national CARE4CARE WP2 report. The author of this comparative report is solely responsible for the interpretation of the findings and for any errors or omissions in the text of this report.

This comparative report combines a legal-analytical method, i.e. an analysis of legal sources in order to clarify, systematise, and evaluate the content of labour law, with a socio-legal approach and an integration of labour law, industrial relations, and labour market perspectives.<sup>4</sup> The materials subjected to study are legislation and preparatory works at national, EU/European, and international level, collective agreements at various levels, case law and decisions from national, EU/European and international courts and supervisory bodies, legal doctrine and other research, statistics, and policy documents at national, EU/European, and international level.

The comparative analysis highlights similarities and differences between national developments in the selected six countries. Through a comparative approach, common challenges and potentials can be identified and critically analysed. Furthermore, important synergies between labour law and industrial relations, and between various areas of law, including labour law, fundamental rights and constitutional law, and social security law, can be highlighted.<sup>5</sup>

The six countries represent institutional diversity, and variety in terms of labour law and industrial relations systems and welfare state and social security systems. In the scholarly discourse, various comparative typologies have been

<sup>4</sup> See e.g. Mark Van Hoecke, edited by, *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011) and Amy Ludlow and Alysia Blackham, edited by, *New Frontiers in Empirical Labour Law Research* (Oxford: Hart Publishing, 2015).

<sup>5</sup> See e.g. Bob Hepple and Bruno Veneziani, edited by, *The Transformation of Labour Law in Europe. A comparative study of 15 countries 1945–2004* (Oxford: Hart Publishing, 2009) and Matt W. Finkin and Guy Mundlak, edited by, *Comparative Labor Law. Research Handbooks in Comparative Law* (Cheltenham: Edward Elgar, 2015).

used to illustrate such variety.<sup>6</sup> Thus, France and Germany can be said to represent the Continental-European labour law and industrial relations system, Italy and Spain can be said to represent the Southern-European labour law and industrial relations system, Poland can be said to represent the Eastern-European labour law and industrial relations system, and Sweden can be said to represent the Nordic labour law and industrial relations system. This multitude of labour law and industrial relations systems is reflected in differences as regards, for example, legal culture and the importance of constitutional principles, the balance between legislation and collective bargaining, the degree of state influence or voluntarism, the role of courts and case law, the degree of trade union and employer organisation and collective bargaining coverage, and forms of employee representation and influence (Section 5). In relation to welfare state and social security systems, France, Germany and Poland can be said to reflect mainly the Bismarck system, Italy and Spain can be said to reflect a mix of the Bismarck and Beveridge systems, and Sweden can be said to reflect the Scandinavian system (Section 9). In addition, all countries, except Sweden, can be said to reflect a family-based welfare model, which in turn has implications for care work, such as an emphasis on family caregiving and unpaid, informal, and outpatient care.<sup>7</sup>

The character of the overall national labour law regulatory framework also varies between the countries. In France, Germany, Poland, and Sweden, there is, in principle, a uniform regulatory framework for the entire labour market, including the care sector (although, in France there are some elements of specific regulation of the care sector in the public health code). In Italy and Spain, the regulatory framework is more diversified with important elements of specific labour law regulation of the care sector and/or specific care occupations, for example, for home caregivers.

There is also variation between the countries when it comes to the degree of differences between the labour law regulation in the public and private sector. In Poland, Spain, and Sweden there are minor differences between the public and private sector. In contrast, in France and Italy there are major differences as regards labour law regulation in the public and private sector, although a recent statutory reform in France has increased the similarities between the two regulatory regimes and there has been a process of contractualisation of the civil service in Italy since the late 1980s. In Germany there are major differences as regards labour law regulation in part of the public sector.

<sup>6</sup> See e.g. Gøsta Esping-Andersen, *The three worlds of welfare capitalism* (Cambridge: Polity Press, 1990); Peter A. Hall and David Soskice, edited by, *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001); Greg J. Bamber et al., *International & Comparative Employment Relations. Global Crises and Institutional Responses* (London: Sage, 2021<sup>7</sup>), and Paul Marginson and Keith Sisson, *European integration and industrial relations. Multi-level governance in the making* (Basingstoke: Palgrave MacMillan, 2004).

<sup>7</sup> See e.g. Silvia Borelli, *Who cares? Il lavoro nell'ambito dei servizi di cura alla persona* (Napoli: Jovene, 2020).

In all countries, with the exception of Poland, the regulatory framework is characterised by an emphasis on the interplay between statutory regulation and collective bargaining. In Poland the emphasis is instead on the interplay between statutory regulation and employment contract regulation.

### 3. ILO, Council of Europe, and EU Legal and Policy Framework

The six countries are covered by a common legal and policy framework related to job quality and inclusive working conditions of care workers emanating from the ILO, the Council of Europe, and the EU. This international and EU/European framework interplays with national regulation in important ways.<sup>8</sup>

The ILO provides a fundamental rights framework through Fundamental Conventions on, for example, freedom of association and occupational safety and health,<sup>9</sup> and numerous ILO Conventions and Recommendations on various aspects linked to job quality and working conditions, including domestic work, flexible forms of employment, employment protection, wages, working time, health and safety, violence and harassment at work, and social security and social protection.<sup>10</sup>

The fundamental rights framework of the Council of Europe entails the European Convention of Human Rights and the revised European Social Charter, including a recognition of fundamental trade union rights, such as the freedom of association, right to collective bargaining, and right to collective action, and several other rights linked to aspects of job quality and working conditions.<sup>11</sup>

In the EU, the Lisbon Treaty of 2009 made the EU Charter of Fundamental Rights legally binding and part of primary EU law (Article 6 of the Treaty of the Functioning of the European Union (TFEU)). The EU Charter of Fundamental Rights encompasses rights, freedoms and principles of great relevance to EU

<sup>8</sup> For a discussion on the international and EU/European legal and policy framework related to care workers and aspects of gender equality, non-discrimination, and labour migration, see CARE4CARE WP3 comparative and national reports. This Section draws on previous EU law research, see Rönmar, “Labour and equality law,” 630–61. See also e.g. Teun Jaspers, Frans Pennings, and Saskia Peters, edited by, *European Labour Law* (Antwerp: Larcier Intersentia, 2024<sup>2</sup>).

<sup>9</sup> See ILO Conventions No 87, 98, 155, and 187.

<sup>10</sup> See, for example, General Surveys of the ILO Committee of Experts on the Application of Conventions and Recommendations, Jean-Michel Servais, *International Labour Law* (Alphen aan den Rijn: Kluwer Law International, 2022<sup>7</sup>); Edoardo Ales et al., edited by, *International and European Labour Law. Article-by-Article Commentary* (Baden-Baden: Nomos, 2018), and Adelle Blackett and Anne Trebilcock, edited by, *Research Handbook on Transnational Labour Law* (Cheltenham: Edward Elgar, 2015).

<sup>11</sup> See, for example, Matti Mikkola, *Social Human Rights of Europe* (Helsinki: Karelactio, 2010); Niklas Bruun et al., edited by, *The European Social Charter and the Employment Relation* (Oxford: Hart Publishing, 2017), and Filip Dorssemont, Klaus Lörcher, and Isabelle Schömann, edited by, *The European Convention on Human Rights and the Employment Relations* (Oxford: Hart Publishing, 2013).

labour law and the regulation of job quality and working conditions, including, for example, the respect for private and family life (Article 7), the freedom of expression and information (Article 11), the right to information and consultation (Article 27), the right to collective bargaining and collective action (Article 28), the protection against unjustified dismissals (Article 30), and the right to fair and just working conditions (Article 31), including aspects of working time, annual leave, and health and safety.

EU labour law is an area of shared competence, which is regulated by a mix of Treaty provisions, fundamental rights and general principles of EU law, secondary law, collective agreements at EU level, case law from the Court of Justice, and various policies and soft law measures. The European social dialogue, involving the European social partners, takes place at both cross-sectoral and sectoral level (Articles 152 and 154–155 TFEU). Care work is addressed by a multitude of European social partners and civil society organisations, active in both the public and private care sector. There is development in sectoral social dialogue linked to the adoption of the European Care Strategy (see further below), such as the setting up of a new European social dialogue committee for social services, in addition to the existing social dialogue committees, for example, for hospitals and healthcare.<sup>12</sup> This important European social partner and civil society element is also integrated into CARE4CARE through the partner involvement of EFFE (European Federation for Family Employment) and EFSI (European Federation for Services to Individuals) and collaboration with ETUI (European Trade Union Institute), and the organisation of various stakeholder meetings at EU and national levels.

In addition to EU primary law and provisions on social policy and labour law in the Treaty on European Union and the Treaty on the Functioning of the European Union, numerous EU Directives address issues linked to job quality and working conditions, such as collective bargaining, employee influence, whistleblowing, flexible forms of employment, transparent and predictable working conditions, minimum wages, employment protection, working time, leave, and health and safety. Thus, working conditions and their improvement, are important aspects of EU labour law.

The personal scope of most EU Directives is defined in relation to the different notions of an employee developed and existing in each of the EU Member States. However, in the area of free movement of workers, EU law contains an autonomous and far-reaching notion of a worker. This uniform notion of a worker has, through the case law of the Court of Justice, been applied also in other areas, such as equal pay and working time.<sup>13</sup> In several recent EU Directives, for

<sup>12</sup> See European Commission, *Commission decision setting up the European social dialogue committee for social services*, 230710, <<https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=10630#navItem-1>> (accessed June 17, 2024).

<sup>13</sup> See Cases C-66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, C-53/81 *Levin v Secretary of State for Justice* [1982] ECR 1035, and C-428/09 *Union syndicale Solidaires Isère* [2010] ECR I-9961.

example, the Directives on work-life balance, transparent and predictable working conditions, and adequate minimum wages, a “hybrid” notion of worker has been introduced, which refers both to national notions of an employee and the EU notion of a worker.

EU law emphasises employee influence and aims for a partial harmonisation of regulation on information, consultation, and employee participation through regulation on this topic in, for example, the Directives on Transfers of Undertakings, Collective Redundancies, European Works Councils, and Information and Consultation.<sup>14</sup> The Whistleblowing Directive<sup>15</sup> aims to enhance the enforcement of Union law and policies in specific areas and lays down common minimum standards of protection of persons reporting breaches of Union law.

EU law regulates aspects of flexible forms of employment through the Part-Time Work Directive, the Fixed-Term Work Directive, and the Temporary Agency Work Directive, which also form part of the EU law flexicurity strategy aimed at a combination of flexibility and security.<sup>16</sup> Thus, these Directives share some common features, such as a combination of promotion of flexible employment and protection of flexible employees. The Directive on Transparent and Predictable Working Conditions<sup>17</sup> sets out to increase the protection for employees, including precarious groups of flexible employees, such as digital platform workers, on-demand workers, and workers with zero hours contracts. The aim of the Directive is to improve working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability. At EU level, employment protection is only partly regulated, for example by Article 30 of the EU Charter of Fundamental Rights, the Fixed-Term Work Directive, and the Directives on Transfers of Undertakings and Collective Redundancies, as well as by different non-discrimination directives, which ban discriminatory dismissals.

In the area of health and safety a number of Directives, so-called Workplace Directives, related to health and safety and the working environment in the workplace, have been adopted.<sup>18</sup> The Framework Directive on Health and Safety<sup>19</sup> aims at introducing measures to encourage improvements in the health and safety of workers at work, and lays down minimum standards in this area.<sup>20</sup> It stipulates general principles on the prevention of occupational risks, the protection of health and safety, the elimination of risk and accident factors, and consultation of workers and their representatives. The employer has a duty to ensure the

<sup>14</sup> Directives 2001/23/EC, 98/59/EC, 2009/38/EC, and 2002/14/EC.

<sup>15</sup> Directive 2019/1937/EU.

<sup>16</sup> Directives 97/81/EC, 1999/70/EC, and 2008/104/EC.

<sup>17</sup> Directive 2019/1152/EU.

<sup>18</sup> In addition, several Directives, so-called Product Directives, related to the harmonization of Member State regulation in the area of free movement of goods and the character and control of different products to ensure the goods are safe have also been adopted.

<sup>19</sup> Directive 89/391/EEC.

<sup>20</sup> On the basis of the Framework Directive a number of more specific ‘daughter Directives’ have been adopted.

safety and health of workers in every aspect related to work. The Working Time Directive<sup>21</sup> aims to lay down minimum health and safety requirements for the organization of working time. The Directive contains provisions on, for example, daily rest, breaks, weekly rest periods, maximum weekly working time, night work, and annual leave. The Directive also provides for adaptations through the use of collective agreements, as well as an “opt-out” for Member States in relation to Article 6 and the maximum 48-hour week. In relation to leave, the Work-Life Balance Directive<sup>22</sup> lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents or carers. The Directive provides for individual rights related to paternity leave, parental leave and carers’ leave, and flexible working arrangements for parents and carers.

The aim of the Directive on adequate minimum wages in the EU<sup>23</sup> is to establish a framework for setting adequate levels of minimum wages, and access of workers to minimum-wage protection, in the form of wages set out by collective agreements or, where it exists, in the form of a statutory minimum wage. The Directive also includes provisions on measures to promote collective bargaining.

As regards the policy framework, there is important policy discussion and research at the ILO level, in and after the COVID-19 pandemic, on the key role of the care economy and care work and the need to ensure decent work.<sup>24</sup> Similarly, at the EU level, there is vital policy discussion and soft law developments related to the care economy and the promotion of improved working conditions in care work. The European Care Strategy aims to ensure quality, affordable and accessible care services across the European Union and improve the situation for both care receivers and the people caring from them, professionally or informally. The European Care Strategy emphasises the need for decent working conditions for all workers in the care sector.<sup>25</sup> The European Pillar of

<sup>21</sup> Directive 2003/88/EC.

<sup>22</sup> Directive 2019/1158/EU.

<sup>23</sup> Directive 2022/2041/EU.

<sup>24</sup> See, for example, ILO, *Care Work and Care Jobs for the Future of Decent Work* (Geneva: ILO, 2018); ILO, *Decent work and the care economy*, Report VI, International Labour Conference, 112<sup>th</sup> Session, 2024 (Geneva: ILO, 2024); ILO, *Securing decent work for nursing personnel and domestic workers, key actors in the care economy. General Survey concerning the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977, and the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part B) (Geneva: ILO, 2022), and ILO, *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery* (Geneva: ILO, 2022). See also Mia Rönnmar and Susan Hayter, edited by, *Making and Breaking Gender Inequalities in Work* (Cheltenham: Edward Elgar, 2024; ILERA Publication Series, 4).

<sup>25</sup> See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European care strategy, COM/2022/440 final.

Social Rights aims to deliver new and more effective rights for citizens and to express a number of essential principles to support well-functioning and fair labour markets and welfare systems. The Pillar relates to a wider notion of social policy and contains 20 principles on equal opportunities and access to the labour market, fair working conditions, and, adequate and sustainable social protection. These principles have been integrated into the European Semester and a number of legal initiatives have been taken on the basis of the European Pillar of Social Rights, including adoption of EU Directives in the labour law area. The European Care Strategy will support the implementation of European Pillar of Social Rights, especially the principles on gender equality, work-life balance, childcare and support to children and long-term care.

#### 4. Care Work and Domestic Care Work

In all six countries developments in the care sector are set against the background of trends, such as the ageing population, increasing care needs, lingering effects of and lessons learned in the COVID-19 pandemic, and digitalisation and technological development. There is an overall trend in all six countries towards increased privatisation of the care sector. In France, Germany, Italy, Poland, and Spain there are both public and private care sectors, and care services are provided by both public and private entities (and in some cases also by “hybrid” entities, between public and private, such as the *Wohlfahrtsverbände* in Germany). In Sweden, there is mainly a public care sector, although the private care sector is growing. In Italy, there is a clear trend towards marketisation and increased contracting out of care services, *inter alia* related to economic effects of the economic and financial crisis of 2007 and 2008 and the COVID-19 pandemic, the contraction of public welfare, and limited public spending on personal care services. The national reports reflect a multitude of public and private actors and entities, in both the public and private care sector, which provide care services in the six countries, such as regions and municipalities, private commercial companies, including temporary work agencies and placement agencies, and private non-profit associations. Care services are also offered by individual care workers, often domestic care workers, who provide care services directly to the care recipient, for example, by way of live-in-care. Thus, in care services, an important distinction is made between residential care services, where care is provided in establishments to groups of care recipients, and home care services, where care is provided in the individual home of the care recipient. Two different models of employment are commonly used in home care services: either care work is carried out by domestic care workers who are employed directly by the care recipient or his or her family, for example, in France, Germany, Italy, Poland, and Spain, or care work is carried out by domestic care workers who are employed by public or private entities, for example, in France and Sweden.

There is a major element of domestic care work in all six countries. However, there are country variations when it comes to its regulation, institutional set-up, and practical organisation, and the level of precariousness and vulnerability of

domestic care workers. Germany, Italy, Spain, and Sweden, but not France and Poland, have ratified ILO Convention No 189 on Domestic Work. Article 1 of the Convention states that

[f]or the purpose of this Convention: a) the term domestic work means work performed in or for a household or households; b) the term domestic workers means any person engaged in domestic work within an employment relationship; c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

The Convention applies to all domestic workers (Article 2.1.), but there is scope for wholly or partly excluding some categories of workers from the scope of the Convention (Article 2.2.–2.3.). The Convention entails *inter alia* an obligation to take measures to ensure the effective promotion and protection of human rights of all domestic workers, including the freedom of association and effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination (Article 3) and an obligation to take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions, and if they reside in the household, decent living conditions that respect their privacy (Article 6).<sup>26</sup>

There is a major element of domestic care work in France, although most of the care is provided in residential care services, and institutional care workers outnumber domestic care workers. In France, there is discussion on the problem of effective enforcement of labour law protection in domestic care work and labour inspectors' potentially limited access to the workplace when care work is carried out in private homes. The national reports, for example, in relation to Italy and Spain, highlight a number of concerns as regards the working conditions of domestic care workers, especially domestic care workers employed directly by the care recipient and live-in-care workers, such as low wages, limited social security protection, health and safety risks, for example, related to excessive working hours, strong dependence on the goodwill of the employer, and violence, harassment, and discrimination. Live-in-care is often provided by migrant workers, from Central and Eastern European countries or from third countries. In some countries domestic care workers are subject to specific, more limited, labour law protection (as allowed and provided for by the ILO Convention, Article 2). In Sweden, for example, a specific statute regulates domestic workers, including domestic care workers who are directly employed by the care recipient, a very small group of

<sup>26</sup> For scholarship on domestic workers, and the role of international and EU law in promoting rights of domestic workers, see, for example, Adelle Blackett, *Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law* (Cornell University Press, 2019); Virginia Mantouvalou, "Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor," *Comparative labor law & policy journal* 34 (2012): 133, and Vera Pavlou, *Migrant Domestic Workers in Europe. Law and the Construction of Vulnerability* (Oxford: Hart Publishing, 2021).

all domestic care workers in Sweden. This statute contains specific provisions on working hours, overtime, and limited employment protection.

Undeclared work is present in care work in the EU, especially in domestic care work and live-in-care. The national reports highlight that there is a minor element of undeclared work in the care sector in France, Germany, and Sweden, and a major element of undeclared work in the care sector in Italy, Poland and Spain.

CARE4CARE studies a selected group of care workers, namely, care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal assistance and/or health assistance to elderly persons, sick persons, and persons with disabilities. Focus is on care workers who have at most a Bachelor's degree.

In the six countries, there is a multitude of care worker categories and care occupations, related to the national context and welfare state, care sector, and labour law and industrial relations features. It is difficult to make a direct comparison of the various care occupations due to different national care work dynamics and characteristics. The definition of a specific care occupation and its characteristics can follow, for example, from statutory regulation, from professional occupational titles, licenses, authorisations or qualification criteria, and from trade union and labour market organisation.

The national reports contain a systematisation and discussion of the care worker categories who are included in CARE4CARE. In France there are three main care worker categories: nurses and care assistants who provide care in institutions or at home, and home helps/life assistants, who only provide care at home. In Germany there are two main care worker categories: nursing staff and domestic care workers. The category of nursing staff is divided into the care occupations of nursing assistants, nursing professionals, health professionals in nursing. The category of domestic care workers is divided into the care occupations of care assistants and live-in workers. In Italy there are four main care worker categories: home caregivers, basic care workers, social and care workers, and health professionals with at most a Bachelor's degree. In Poland there are two main care worker categories: basic care work and specialized care work. The category of basic care work is divided into the care occupations of technicians and associate professionals, service providers, and basic workers. The category of specialized care is divided into the care occupations of health professionals and technicians and associate professionals. In Spain there are three main categories of care workers: home caregivers, professional carers (including nursing assistants and nursing care technicians) and health professionals (incl. nurses and midwives). In Sweden there are four main categories of care workers: home caregivers (personal assistants for persons with disabilities), basic care and nursing workers (care assistants and assistant nurses), health professionals in nursing with a Bachelor's degree (nurses), and health professionals in nursing with a Master's degree (specialized nurses, incl. midwives).

A rich discussion on the labour market characteristics of care workers and various care occupations in the national contexts are provided in the national reports. The discussion explores aspects, such as gender and age composition of the work-

force, migratory status of the workforce, employment and unemployment rates, average retirement age, and rate of fixed-term work, part-time work, temporary agency work and other forms of flexible or precarious employment. National developments in the six countries confirm European and global trends, also highlighted in research and policy reports from e.g. the EU and the ILO (Section 3), of a female-dominated workforce (in all six countries), a migrant-dominated workforce (in Italy and Spain, in particular in domestic care work) or a workforce with an important element of migrant and/or immigrant workers (in France, Germany, Poland, and Sweden), and of a flexible and/or precarious workforce, with, for example, high rates of fixed-term and part-time work (in all six countries).

Current national debates on care work are explored in the national reports. Two key debates stand out, and are highlighted in all six countries as well as in overall international and European policy discussion, namely, the debate on the skills and staff shortage and challenges of recruitment and talent management in the care sector, and the debate on the low level of wages and poor quality of working conditions, including aspects related to flexible forms of employment, health and safety concerns, and lack of effective enforcement of working conditions and protection for care workers. In Poland, the staff shortage in the care sector is also related to an outflow of skilled workers, including health care professionals. In Sweden, the rare industrial conflict, including strike action, in the care sector between the employers' organisations in the public sector of regions and municipalities (the Swedish Association of Local Authorities and Regions (*SKR*) and *Sobona*) and the nurses' trade union (the Swedish Association of Health Professionals, *Vårdförbundet*) in the spring and summer of 2024 was related, not primarily to the level of wages, but to these debates. The social partners have partly different perspectives and proposed solutions on how to address the skills and staff shortage, future recruitment and talent management, and health and safety concerns, including stress and workload. The main conflicting issue was the trade union's claim for general working time reduction for all members.

Current national debates on care work also include, for example, the debate on the undervaluing of care work and the need for recognition of the professional qualifications of care workers and the debate on the risk of exploitation and discrimination of care workers. The risk of exploitation and discrimination is highlighted specifically in countries with a migrant-dominated care workforce and an emphasis on domestic care work, live-in-care and presence of undeclared work, such as in Italy, Poland, and Spain. This risk is also related to health and safety and aspects of violence and harassment in the workplace.

## 5. Fundamental Trade Union Rights, Social Partners and Industrial Relations, Collective Bargaining, and Employee Influence

### 5.1 Social Partners and Industrial Relations

The six countries present a variety in terms of labour law and industrial relations and represent the Continental-European labour law and industrial relations system (France and Germany), the Southern-European labour law and

industrial relations system (Italy and Spain), the Eastern-European labour law and industrial relations system (Poland), and the Nordic labour law and industrial relations system (Sweden). The labour law and industrial relations systems differ in various ways in relation to, for example, the importance of legislation, collective bargaining, and employment contracts, state influence or voluntarism, trade unionisation, employer organisation, and collective bargaining coverage, and employee representation and influence (Section 2).

Italy and Sweden represent the Southern-European and the Nordic system, respectively, but share a strong emphasis on voluntarism, collective autonomy, and a private law approach and contractual regulation of terms and conditions of employment through collective agreements and employment contracts. For example, in Sweden and Italy, most of an employee's terms and conditions of employment, including wages, are set by collective agreements, and there is no minimum wage legislation or system for extension of collective agreements. In Sweden, autonomous collective bargaining is complemented, and strengthened, by statutory regulation on trade unions, collective bargaining, and employee influence, including information, consultation, and co-determination. In addition, most statutory regulation is "semi-compelling", and provides room for deviations by way of collective agreements. France and Spain represent the Continental-European and the Southern-European system, respectively. In France, in similarity with Spain, labour law and industrial relations are characterised by a legalistic tradition, extensive statutory regulation in working life and on trade unions, collective bargaining, and employee influence, and state intervention in industrial relations. In France, there is minimum wage legislation, and a statutory system for extending collective agreements, resulting in an almost complete collective bargaining coverage of care workers. In recent years, state intervention and statutory reform have reframed the system of employee representation and influence and introduced a compulsory division of collective bargaining topics between company and industry levels. In Germany, which represents the Continental-European system, labour law is influenced by a legalistic tradition and characterised by an elaborate constitutional and statutory framework for collective bargaining and employee influence and workplace co-determination. At the same time, there is strong emphasis on collective autonomy and collective bargaining. There is a system in place for extending collective agreements, but in recent years fewer collective agreements have been declared generally binding. Minimum wage legislation was introduced in 2015, in response to an "erosion of collective bargaining". In Poland, which represents the Eastern-European system, labour law and industrial relations have been influenced by the processes of democratic transformation, EU enlargement, and marketisation, resulting *inter alia* in fragmented collective bargaining.<sup>27</sup>

<sup>27</sup> See also Rönmar et al., "Trade Union Participation," 211–38 and Andrea Iossa, *Collective Autonomy in the European Union. Theoretical, Comparative and Cross-border Perspectives on the Legal Regulation of Collective Bargaining* (Lund: Lunds universitet, 2017).

There is a multitude of trade unions, employer's organisations, and other social actors in the care sectors of the six countries. This multitude is related to the national context and the dynamics and characteristics of the care sector, including the balance and interaction between the public and private care sector. The industrial relations system also plays an important role, including the adversarial or cooperative character of social partner relations, strategies of trade unions and employer's organisations, and traditions of labour market organisation and trade union structures, including aspects of trade union pluralism and trade union demarcation (e.g. industrial or craft trade unions, blue-collar, white-collar, professional or general trade unions, political or religious affiliations of trade unions, and the existence of "yellow trade unions").

There are varying trade unionisation rates in the six countries. With reference to a leading industrial relations database, the OECD and AIAS, *Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS)*, and from a comparative perspective, the trade unionisation rate can be described as low in France, Germany, Poland, and Spain, as medium-high in Italy, and as high in Sweden. Similarly, the collective bargaining coverage rate can be described as restrictive in Poland, as medium-high in Germany, and as extensive in France, Italy, Spain, and Sweden. The collective bargaining coverage rate is related *inter alia* to the legal framework of collective bargaining, the legal effects of collective agreements, and existing mechanisms of extension of collective agreements (Section 5.2).<sup>28</sup>

In general, there is a minor influence of the social partners in the labour market in Poland (although, there is an element of tripartite social dialogue), and a major influence of the social partners in the labour market in France, Germany, Italy, Spain, and Sweden. At the same time, in some countries, such as Italy and Spain, the influence of the social partners in the care sector is less than the general influence of social partners in the labour market, due to, for example, a lower rate of trade unionisation of care workers and the specific conditions of, and related risks in, for example, domestic care work and live-in-care (Section 4).

## 5.2 Fundamental Trade Union Rights, Collective Bargaining, Employee Influence, and Whistleblowing

The ILO, the Council of Europe and the EU provide a strong and common fundamental rights framework for fundamental trade union rights, including freedom of association, right to collective bargaining, right to collective action, and employee representation and influence. Throughout the years, national law and international and EU/European law in this area have interplayed in complex ways. Fundamental trade union rights have been challenged by political, soci-

<sup>28</sup> See OECD and AIAS, *Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts* (OECD Publishing, 2021), <[www.oecd.org/employment/ic-twss-database.htm](http://www.oecd.org/employment/ic-twss-database.htm)>.

etal, and economic developments, and case law and decisions from international and EU/European courts and supervisory bodies have shaped, and re-shaped, the content and strength of these fundamental trade union rights (Section 3).

Fundamental trade union rights, and aspects of freedom of association, collective bargaining, collective action, and employee influence, are also subject of elaborate national constitutional, statutory, and collective bargaining regulation of varying content and strength in the six countries.

Regulation on trade unions includes issues of freedom of association, formation and representativeness of trade unions, and internal affairs of trade unions. The representativeness of trade unions can be the subject of statutory regulation, as in France, or, as in Sweden, there can be minimal formal requirements for forming a trade union, and recognition of trade unions can be automatic. Furthermore, regulation on rights to time-off, training, and practical facilities for trade union representatives provides important support for trade union organisation and activities. In the care sector the right to collective action may to varying degrees be subject to restrictions with reference to the important societal role played by care work and the notion of essential public services (for example, in France and Italy) or the notion of industrial conflict which threatens public interest (in Sweden).

EU law provides some regulation of collective bargaining, by way of the European social dialogue framework and the provisions on measures to promote collective bargaining in the Directive on adequate minimum wages in the EU. There is a statutory legal framework of collective bargaining in the six countries and regulation on the right to, and sometimes, as in France, an obligation of, collective bargaining, and provisions on actors, processes, and outcomes of collective bargaining. Collective agreements have normative and binding effects, although the specific regulation and definitions and legal effects of collective agreements vary between the countries. There are systems for extension of collective agreements in France, Germany, Poland, and Spain. Multi-employer collective bargaining exists, or dominates, in France, Germany, Italy, Spain, and Sweden, while single-employer collective bargaining prevails in Poland. Decentralisation developments influence collective bargaining in several countries, in both “organised” forms (for example, in Sweden) and “disorganised” forms (for example, in Poland).<sup>29</sup> The collective bargaining coverage rate varies from restrictive (in Poland), to medium-high (in Germany), to extensive (in France, Italy, Spain, and Sweden) (Section 5.1). Collective bargaining plays a minor role in regulating the care sector and care work in Poland, and a major role in regulating the care sector and care work in France, Germany, Italy, Spain, and Sweden, although collective bargaining in the care sector is fragmented in some of these countries, in Germany, Italy, and Spain.

<sup>29</sup> See Tros, *Pathways in Decentralised Collective Bargaining in Europe* and Franz Traxler, “Farewell to labour market associations? Organized versus disorganized decentralization as a map for industrial relations,” in *Organized Industrial Relations in Europe: What Future?* edited by Colin Crouch, and Franz Traxler (Aldershot: Dartmouth Publishing, 1995), 3–19.

In France, Germany, and Sweden, for example, collective agreements are legally binding, both for the contracting parties and for their members. In Sweden, an employer bound by a collective agreement is obligated to apply this agreement to all employees, irrespective of trade union membership. Furthermore, unless otherwise provided for by the collective agreement, employers and employees being bound by the agreement may not deviate from it by way of an individual employment contract. In France, and Germany, as in many other countries, deviations from the collective agreements are permissible if they are favourable to the employee. Furthermore, in Germany the dual-channel model of employee representation and influence (see below) also results in a dual structure of collective agreements, i.e. a collective agreement (*Tarifvertrag*) concluded between a trade union and an employer/an employer's organisation and a works agreement (*Betriebsvereinbarung*) concluded between a works council and an employer, where collective agreements take precedence. Overall, in the six countries, the relation between collective agreements at various levels and between collective agreements and other workplace agreements are determined by way of statute, collective bargaining, or case law on, for example, principles on the binding effect of the collective agreement, favourability, opening clauses, and derogations.

The national reports provide a systematisation and discussion of the national systems of collective bargaining in the care sector and existing collective agreements.<sup>30</sup>

EU law provides regulation on employee representation and influence and specific provisions on information, consultation, and employee participation in, for example, the Directives on Transfers of Undertakings, Collective Redundancies, European Works Councils, and Information and Consultation. There is statutory regulation of employee representation and influence in the six countries, with complementary collective bargaining regulation in some countries (for example, in Sweden). The national models for employee representation and influence, as well as the regulation and its content, differ in the six countries. In a single-channel model, as in Sweden, employee influence is channeled only through trade unions. Here, trade unions both negotiate and conclude collective agreements on wages and other terms and conditions of employment at various levels, and take part in information, consultation, and co-determination at workplace level. In a dual-channel model, as in France, Germany, Italy, Poland, and Spain, employee influence is channeled both through trade unions and works councils (or similar bodies). In addition to trade unions, the following works councils or similar bodies take part in employee influence: social and economic committees in France, "Workplace Union Structure" (RSA)<sup>31</sup>

<sup>30</sup> In Sections 6 to 9 of this comparative report the discussion on national developments includes aspects of substantive collective bargaining regulation on working conditions.

<sup>31</sup> According to Italian labour law scholarship, the RSA is conceived as a single-channel representation, since it can be established upon employees' request, but only within the context of trade unions that have negotiated or concluded a collective agreement within the company.

or “Unitary Workplace Union Structure” (RSU) in Italy, and works councils in Germany, Poland, and Spain.

In France there has been a statutory reform of employee representation and works councils, and in Poland, the impact and activities of works councils are limited. In countries with dual-channel models of employee influence the relation between trade unions and works councils at company-level can differ and be characterised either by collaboration or by competition and conflict. This in turn may impact on trade union activity and strength, and company-level collective bargaining.<sup>32</sup>

Whistleblowing can fill an important function in the care sector to bring attention to problems, risks, and signs of corruption and breaches of the law, which in turn may impact negatively on the quality of care and on the protection and quality of working conditions of care workers and on the rights of care recipients and care workers. In addition to international, EU/European, and national-constitutional protection of freedom of expression, EU law provides some whistleblowing protection through the Whistleblowing Directive, which has been implemented in national law. In some countries, for example, in France and Sweden, additional protection for whistleblowers is offered by statute and/or by case law principles on the employee’s right to criticise the employer, whistleblowing about health and safety at work, and by general employment protection.

## 6. Employment Status, Flexible Forms of Employment, and Employment Protection

Employment status, and the legal notion of an employee, is of key importance, as it defines the scope of labour law protection. EU law, and the personal scope of EU Directives, relate in differing ways to the autonomous EU notion of a worker, to the national notions of an employee, and to the new “hybrid” notion of worker (Section 3). There is extensive labour law scholarship on the employment status, and critical debate on the relevance of the employment status and the need to extend the scope of labour law to cover precarious and vulnerable groups of workers.<sup>33</sup>

There is a statutory definition of the notion of an employee in France, Germany, Italy, Poland, and Spain, whereas the definition is only case-law-based in Sweden. According to the national reports, care workers are mainly employees in all six countries. At the same time, in some countries, there is debate on “bogus self-employment” in parts of the care sector and on the employment status of certain categories of care workers. In Germany, for example, there is debate on

<sup>32</sup> See Rönmar et al. “Trade Union Participation,” 211–38.

<sup>33</sup> See e.g. Bernd Waas and Guus Heerma van Voss, edited by, *Restatement of labour law in Europe. Volume I, The concept of the employee* (Oxford: Hart Publishing, 2017), Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (Oxford: Oxford University Press, 2011), and Guy Davidov and Brian Langille, edited by, *Boundaries and Frontiers of Labour Law. Goals and Means in the Regulation of Work* (Oxford: Hart Publishing, 2006).

the employment status of care workers in the live-in-care sector. In Poland, care workers can be both employees and self-employed and there is current concern about the incidence of “bogus self-employment” in the care sector.

EU law regulates flexible forms of employment through a number of EU Directives. Part-time, fixed-term, and temporary agency work are frequent forms of flexible employment, both in the labour market as a whole, and in the care sector and in care work. The Part-Time Work Directive, Fixed-Term Work Directive, and Temporary Agency Work Directive are linked to the EU flexicurity discourse and combine the promotion of flexible employment with protection of flexible employees. At the same time, these forms of flexible employment also have specific characteristics. Part-time work, in the six countries studied and in the European labour market in general, is also—and perhaps more importantly—closely connected to the gendered governance of labour markets and gendered care work practices. In EU gender equality law, these gendered patterns of part-time work have over the years, and in landmark judgments from the Court of Justice of the European Union, successfully been legally challenged as indirect sex discrimination.<sup>34</sup> In some of the countries, for example, Italy, part-time work is, from a legal-systematic perspective, viewed as working time regulation. The Directive on Transparent and Predictable Working Conditions, which is more recent, adds to these three Directives, and aims at increasing the protection for precarious groups of flexible employees, including on-demand workers, workers with zero-hours contracts, and digital platform workers.

The national reports present rich information and discussion on the regulation and labour market incidence of these flexible forms of employment. There is a major element, and high incidence, of these flexible forms of employment in the care sector in all six countries. The national statutory regulation varies in content and “legal strictness” as regards the access to these flexible forms of employment. In several countries, collective bargaining regulation complements the statutory regulation. Furthermore, in some countries, for example, in Sweden, the legal regulation, by way of statute, collective bargaining, or case law principles, allow for on-demand work and zero-hours contracts. In Italy, collective agreements may regulate, as mandated by law, specific aspects of flexible forms of employment, and for instance specify the grounds on which an employer may enter into a fixed-term employment contract with an employee. Here, flexible employment contracts are subject to the same economic and regulatory provisions as those applicable to standard employment contracts, to the extent that they are compatible. In Spain, a regulation adopted in 2021 has resulted in a considerable reduction in the number of fixed-term employment contracts. In Sweden, temporary agency work is covered by collective bargaining and well-integrated into the labour law and industrial relations system. Temporary agency work is utilised in the Swedish care sector, especially as regards nurses and medical doc-

<sup>34</sup> See e.g. Case C-96/80 *Jenkins* [1981] ECR 911 and Case C-170/84 *Bilka-Kaufhaus* [1986] ECR I607. See also further CARE4CARE WP3.

tors. However, there is current debate on this use of temporary agency work and on whether it is an effective way to address staff shortage, talent management, and labour market inclusion in the care sector.

EU law only partly regulates employment protection, for example, by way of the Fixed-Term Work Directive, the Directives on Transfers of Undertakings and Collective Redundancies, and various non-discrimination directives, which ban discriminatory dismissals.<sup>35</sup> Employment protection regulation is also underpinned by a fundamental rights framework, including the ILO Termination of Employment Convention No 158, Article 24 of the Council of Europe revised European Social Charter, and Article 30 of the EU Charter of Fundamental Rights.

In all six countries, there is statutory regulation of employment protection, with complementary collective bargaining regulation in some countries. The national reports provide rich information and discussion on the main elements of the employment protection regulation. There is varying regulation on summary dismissals, dismissals for personal reasons, dismissals for reasons of redundancy, and collective dismissals. The employer obligations in the context of dismissals differ and relate to the strictness and interpretation of the just cause-requirement for dismissal, the obligation to provide alternative work, training, and rehabilitation, and the obligation to apply selection criteria, including e.g. seniority principles, in dismissals for reasons of redundancy and collective dismissals. In France, for example, there are extensive employer obligations in the context of dismissals and different rules apply in the public (civil service) and private sector. In Italy, varying rules apply depending on the size of the enterprise and whether it is public or private. In the case of individual employers and home-caregivers some employer obligations are less strict. In Poland, the employer obligations are rather extensive, and in Sweden a major recent employment protection reform, where legislation and collective bargaining interact in interesting, and debated ways, has partly re-shaped the regulation of dismissal for personal reasons and of redundancy. The form and strength of employee influence in dismissal situations differ between the countries and are also linked to the single- or dual-channel model of employee representation and influence in the country (Section 5).

## 7. Wages and Benefits

The national reports provide rich information on the regulation of wages and various benefits in the care sector, including wage levels and minimum wage levels for care workers and various care occupations, as well as information on the national minimum wage regulation and debate and impact of the Directive on adequate minimum wages in the European Union.

<sup>35</sup> See also Mia Rönmar, “Fixed-term and zero-hours contracts,” in *Oxford Handbook of the Law of Work*, edited by Guy Davidov, Brian Langille, and Gilian Lester (Oxford: Oxford University Press, forthcoming) and Bernd Waas, edited by, *Restatement of labour law in Europe*. Volume III, *Dismissal protection* (Munich: Beck, 2023).

In the six countries, there is statutory, collective bargaining or employment contract regulation of wages and other benefits, or a combination of these forms of regulation, and various processes of wage formation and wage coordination. In Italy, the Constitution forms a legal basis upon which collective bargaining and employment contracts regulate wages and other benefits. In Spain, statutory, collective bargaining, and employment contract regulation wage regulation interact. The statute sets the key wage concepts and recognises the right to a minimum wage, and collective agreements regulate the wage structure and wage levels. The collective agreement is binding on the employment contract, and provisions in the employment contract can improve on wages and benefits in favour of the employee. In Sweden, the so-called “industry mark” links wage increases in the labour market to wage increases set by national, sectoral collective agreements in the industrial export sector, and functions as a cross-sectoral mechanism for collective-bargaining coordination. However, the “industry mark” is criticised from the perspective of gender (in)equality by scholars and trade unions in female-dominated sectors, including the care sector.<sup>36</sup>

The national reports confirm previous research and concerns that wage levels and minimum wage levels for care workers in Europe are low (Sections 3 and 4). This also relates to ongoing policy and labour law scholarly discussion on the working poor in the EU and the ways in which minimum wage regulation and other measures can effectively address this problem.<sup>37</sup>

In France, Germany, Poland, and Spain there is statutory regulation of minimum wages, and in Italy and Sweden there is collective bargaining regulation of minimum wages (however, in Sweden, not all collective agreements contain minimum wage provisions). In France, statutory minimum wage was introduced in the 1950s. In Germany, despite a traditional strong emphasis on collective bargaining autonomy, statutory minimum wage was introduced in 2015 as a response to industrial relations developments and an “erosion of collective bargaining”.

The Directive on adequate minimum wages in the EU establishes a framework for setting adequate levels of minimum wages and access of workers to minimum wage protection and includes provisions on measures to promote collective bargaining. Although the Directive includes guarantees for national systems of industrial relations built on autonomous collective bargaining, such as Italy and Sweden (cf. Article 1.1.–1.3.), the proposal was strongly opposed by, for example, Sweden and Denmark, where it was seen as a threat to the autonomous collective bargaining system.

<sup>36</sup> See Mia Rönmar and Andrea Iossa, *CODEBAR. Comparisons on Decentralised Bargaining: Towards New Relations between Trade Unions and Works Councils? Swedish Country Report (2022)*, <[https://researchportal.hkr.se/ws/portalfiles/portal/46623344/codebar\\_sweden\\_website\\_version.pdf](https://researchportal.hkr.se/ws/portalfiles/portal/46623344/codebar_sweden_website_version.pdf)> (Accessed Month June 25, 2024).

<sup>37</sup> See e.g. Luca Ratti, edited by, *In-Work Poverty in Europe. Vulnerable and Under-Represented Persons in a Comparative Perspective* (Alphen aan den Rijn: Kluwer Law International, 2022; Bulletin of Comparative Labour Relations 111).

The national reports reflect the varying debate on and legal and industrial relations impact of the Directive in the six countries.<sup>38</sup> At the beginning of 2023, a proposal was made in Italy to introduce statutory regulation of minimum wages. However, this proposal, linked to discussions on the implementation of the Directive, opposed by the government, was rejected by the parliament following also a negative opinion of the National Economic and Labour Council (CNEL). In Sweden, a Government Inquiry set to review measures to implement the Directive has concluded that Swedish law basically fulfils the requirements of the Directive and that no introduction of statutory minimum wages or other legal reforms are necessary.

#### 8. Working Time, Health and Safety, Implications of the COVID-19 Pandemic, and Training and Competence Development

Working time, leave, and health and safety represent core aspects of job quality and working conditions. There is important EU law regulation, by way of EU Directives, in these areas, and dynamic development in the case law of the Court of Justice in recent years, specifically in relation to working time regulation and the fundamental right of fair and just working conditions in Article 31 of the EU Charter of Fundamental Rights.<sup>39</sup>

The national reports provide rich information and discussion on regulatory and practical aspects on these topics, both in the labour market in general and in the care sector in particular, in the six countries. There is statutory and collective bargaining regulation on working time and leave in the six countries. The current, and sometimes contentious, discussion in various national contexts relates to issues, such as working time allocation, including daily and weekly rest, on-call work, and inconvenient hours, part-time work, and over-time work. In the area of leave, statutory and collective bargaining regulation specify rights and legal and practical conditions of, for example, annual leave and parental, maternity, and paternity leave. In France, labour inspection plays an important role in enforcing working time regulation. The working time regulation in Italy entails some particular provisions and limitations for home caregivers. In Sweden, working time aspects of daily rest are high on the agenda, and collective bargaining regulation, for example, in the public care sector, has undergone reform in response to a legal challenge from the European Commission and claims that Swedish collective agreements contravened the Working Time Directive.

There is statutory and collective bargaining regulation on health and safety in the six countries. EU and national health and safety regulation aims at the elimination of risk and at proactive measures to ensure the safety and health of

<sup>38</sup> See also Luca Ratti, Elisabeth Brameshuber, and Vincenzo Pietrogiovanni, edited by, *The EU Directive on Adequate Minimum Wages. Context, Commentary and Trajectories* (Oxford: Hart Publishing, 2024).

<sup>39</sup> See e.g. Alan Bogg and Michael Ford, "Article 31," in *The EU Charter of Fundamental Rights: A Commentary*, edited by Steve Peers et al. (Oxford: Hart Publishing, 2021<sup>2</sup>), 875–922.

workers. The national reports provide rich information and discussion on the regulation of health and safety, including employee influence, employer obligations, physical and psychosocial work environment risks, violence and harassment at work, stress and workload, and proactive measures. The regulation and practices of employee influence play a key role in health and safety and there are varying forms of employee influence in the countries, for example, through local health and safety representatives, trade union representatives, or works council representatives. In Germany, for example, there is also an involvement of health and safety specialists. The current discussion in various national contexts relates to health and safety aspects, such as stress, workload, long working hours, and violence and harassment. The risk of violence and harassment is prevalent especially in domestic care work and live-in-care (Section 4). Here, there are important links between health and safety regulation and non-discrimination regulation, and the ILO Convention on Violence and Harassment No 190 may play an important role. In Spain, statutory health and safety protection was recently extended to domestic workers and there are widespread risks of violence and sexual harassment in the Spanish domestic care sector.

The COVID-19 pandemic had an important impact on the care sector and care workers. The national reports discuss the short-term and long-term implications of the COVID-19 pandemic for working conditions and job quality of care workers. Care workers were negatively affected by the COVID-19 pandemic in multiple ways and there are some remaining effects in the care sector, such as staff shortage and stress.<sup>40</sup> In France, one effect of the COVID-19 pandemic is a future focus on health and safety risk assessment and prevention of spread of infection. In Italy and Germany domestic care workers were excluded from some protections in the COVID-19 pandemic.

The social partners, social dialogue, and collective bargaining played a major role in the handling of the COVID-19 pandemic in Sweden, a moderate role in Italy (e.g. in establishing COVID-19 health protocols), and a minor role in France, Germany, Poland, and Spain. In Sweden, for example, quick and flexible adaptations to national, sectoral collective agreements were made in the pandemic and crisis management agreements were put in place in the public health-care sector.<sup>41</sup>

Training and competence development is of key importance not only for the job quality in care work but also for the quality of the care provided. There are multiple perspectives of training and competence development and crucial links to the general educational system, to life-long learning, active labour market policy, and job transitions, and to rights of competence development and training on the job within the framework of the employment contract.

Training and competence development also relate to the current debate on skills and staff shortage and the overall, and important role of education, train-

<sup>40</sup> See also, for example, ILO, *Social Dialogue Report 2022* and Rönmmar and Hayter, *Making and Breaking Gender Inequalities*.

<sup>41</sup> See Rönmmar and Iossa, *CODEBAR*.

ing and competence development for general talent management and recruitment in the care sector. There is statutory and collective bargaining regulation of training and competence development in the six countries and rich information in the national reports on various national traditions and practices in this area.

## 9. Social Security Coverage and Benefits

Labour law and social security law have close links. Social security has developed as part of industrial society and is complementary to, and dependent on, wage work. Social security provides protection against risks and maintenance in situations in which a person is unable to earn a living through wage work, owing to, for instance, old age, sickness, unemployment or childbirth.<sup>42</sup>

In the EU, the substantive content of social security is, in principle, a matter for the respective Member States and national legislation. However, the coordination of social security in the EU and between the Member States was implemented early on as a way to facilitate the free movement of workers.<sup>43</sup> Through soft law and the open method of coordination, various welfare state, social policy, and social security aspects are also being coordinated, for example, as regards health care, long-term care, and pensions.

The six countries present a variety of welfare state and social security systems. All countries but Sweden reflect a family-based welfare model. Furthermore, France, Germany, and Poland mainly represent the Bismarck system, Italy and Spain represent a mix of the Bismarck and Beveridge systems, and Sweden represents the Scandinavian system (Section 2).

The national reports contain rich information and discussion on the regulation of social security, including the main characteristics of the national social security system, the social security coverage, a number of social security benefits, including pensions, sickness insurance, unemployment insurance, and parental benefits, and the complementary role of collective bargaining.

In principle, the social security coverage is extensive in all six countries. However, for example, in Italy, the coverage is somewhat limited for home caregivers. In Spain, the coverage of the unemployment insurance was recently extended to domestic workers as a result of case law from the Court of Justice. In the landmark judgment *CJ v Tesoreira General de la Seguridad Social (TGSS)*<sup>44</sup> the Court of Justice found that the exclusion of domestic workers from access to Spanish statutory unemployment benefits was contrary to EU law and constituted indirect discrimination on grounds of sex according to Article 4(1) of Directive on

<sup>42</sup> See Anna Christensen, “Normativa grundmönster i socialrätten,” *Retfaerd* 78 (1997), and Anna Christensen, “Normative Patterns and the Normative Field: A Post-Liberal View on Law,” in *From Dissonance to Sense. Welfare State Expectations, Privatisation and Private Law*, edited by Thomas Wilhelmsson and Samuli Hurri (Aldershot: Ashgate, 1999).

<sup>43</sup> See Regulation 883/2004 (OJ [2004] L 166/1). See also Frans Pennings, *European Social Security Law* (Antwerp: Larcier Intersentia, 2022<sup>7</sup>).

<sup>44</sup> See *CJ v Tesoreira General de la Seguridad Social (TGSS)*, Case C-389/20.

gender equality in matters of social security.<sup>45</sup> This is an important judgment on rights of domestic workers and domestic care workers also from a general perspective. It illustrates how EU gender equality law can be used to challenge the exclusion of domestic workers from social security and labour law protection. In addition, there is an important interplay between EU and international law in this area. In his Opinion, Advocate General Szpunar explores the link to the international legal framework, and explicitly refers to the ILO Domestic Workers Convention No 189 (para. 104).<sup>46</sup>

Social security regulation in the six countries include benefits in the areas of pensions, sickness insurance, unemployment insurance, and parental benefits. However, the qualification requirements, benefit levels, and lengths of payment periods vary depending on the national regulatory framework.

In Sweden, collective bargaining has a major and complementary role in social security. Collective agreements regulate various social security benefits, including, for example, pension, sickness, and parental benefits, and collective bargaining often improve upon statutory levels of compensation. In France, Germany, Italy, Poland, and Spain, collective bargaining has a minor role in social security. In France, collective bargaining provides some supplementary coverage as regards health and retirement, in Germany, collective bargaining is relevant around occupational pensions, and in Italy, collective bargaining plays a minor role, and this is especially the case as regards individual employers and small businesses.

## 10. Concluding Remarks

This comparative report analyses job quality and inclusive working conditions of care workers in France, Germany, Italy, Poland, Spain, and Sweden. The focus of the comparative analysis is on labour law, but also includes aspects of industrial relations, policy, and labour market characteristics, and the interplay between national law and EU/European and international law.

The analysis highlights core labour law topics and a multitude of similarities and differences between the six countries as regards care work and domestic care work (Section 4), legal and policy frameworks (Section 3), industrial relations, collective bargaining, and employee influence (Section 5), employment status, flexible employment, and employment protection (Section 6), wages and benefits (Section 7), working time and health and safety (Section 8), and social security (Section 9).

<sup>45</sup> Directive 79/7/EEC.

<sup>46</sup> See also Mia Rönnmar, “Court of Justice of the European Union (Third Chamber) CJ v Tesoreira General de la Seguridad Social (TGSS), Case C-389/20,” *International Labour Law Reports* 42 (2023): 59–72 and Elisa Chieragato, “The role of EU law in challenging the unjustified differential treatment of domestic workers: An analysis of the Court of Justice decision in CJ v Tesorería General de la Seguridad Social (TGSS) (C-389/20),” *European Law Review* 47, 6 (2022).

The international and EU/European legal and policy framework forms an important common basis for the labour law regulation of the care sector and various aspects of care work. High-level policy discussion on the care economy, in and after the COVID-19 pandemic, has highlighted the importance of care work. Developments in the ILO connected to the fundamental right of occupational safety and health and the Conventions on domestic work and violence and harassment at work have further highlighted challenges in care work and domestic care work and improved national regulation. Similarly, EU law regulation, and important case law developments in the Court of Justice, in the areas of, for example, fundamental rights, flexible forms of employment, working time, minimum wage, and gender equality, have challenged national regulation and practices and resulted in increased protection and improved working conditions for domestic care workers and care workers.

The comparative analysis reveals current debates and future challenges for the care sector and care workers in the six countries, including, for example, staff and skills shortage, health and safety concerns, risks of exploitation, discrimination and vulnerability of domestic care workers, live-in care workers, and care workers in undeclared work, low rates of trade unionisation, fragmentation and low coverage of collective bargaining in some parts of the care sector, high incidences of flexible, often precarious, forms of employment, and low wage levels.

At the same time, national developments and the overall discussion highlight a number of best practices and potentials for innovation in the improvement of working conditions of care workers. Furthermore, the analysis displays how national developments, regulation, and policy are closely interconnected with the characteristics of labour law and industrial relations systems, welfare state and social security systems, and care sector dynamics, and follow patterns of path dependency.

The comparative analysis confirms the crucial role of the care sector and care work in light of ongoing societal transformation.

One key area in moving forward is the promotion of employee representation and influence for care workers and the strengthening of collective bargaining and social dialogue at both EU and national levels.

Another key area is effective enforcement of care workers' protection and working conditions. In this context, the characteristics of the national systems of labour law, industrial relations, and social security must be taken into account, and processes of industrial relations, administrative, and judicial enforcement be combined.<sup>47</sup>

Lastly, the development of digitalisation, AI, and new technology, involving aspects, such as E-health and remote care, presents both an important future potential and challenge for the care sector and for care work. In order to promote

<sup>47</sup> See Jonas Malmberg, "Effective Enforcement of EC Labour Law: A Comparative Analysis of Community Law Requirements," *European Journal of Industrial Relations* 10, 2 (2004): 219–29.

improved working conditions, job quality, and care quality in this context, it is imperative to engage employers, care workers, social partners and other social actors, and to take health and safety concerns into account.

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