



Mobilecare

Social dialogue as a tool to improve the
conditions of functioning of intra-EU labour
mobility in home-based care services

MobileCARE - Social dialogue as a tool to improve the conditions of functioning of intra-EU labour mobility in home-based care services

Case of Poland



Co-funded by
the European Union

Introduction

Care is an essential and universal feature of our lives. It is essential in the sense that it is ‘an inevitable part’ of life and a ‘basic human need [that] is central to our flourishing’¹. Indeed, it concerns everybody² – at some point, during the course of our lives, we all need care to thrive, and in some cases, to survive³. The European Commission in its 2022 European Care Strategy⁴ went even further and stated that *‘it creates the fabric that holds our societies together and brings our generations together. Throughout our lives, we and our loved ones will either need or provide care’*. The Commission further added that *high-quality and affordable long-term care empowers older people by helping them to maintain their autonomy and to live in dignity. This is particularly important in a context of demographic change, where Europeans are living longer and healthier lives, and the demand for care is increasing exponentially*⁵.

Indeed, the population of Europe is ageing drastically, hence the growing need for live-in care. Ageing of society has been a mainstay process bearing negative consequences in the European Union countries (EU-27). Ageing affects every aspect of our lives in the Union. As the European Commission rightly pointed out to, there has been a truly remarkable development in this regard: never before have so many Europeans enjoyed such long lives. In the last five decades, life expectancy at birth has increased by about 10 years for both men and women. While this is a very positive trend in itself, however it contributes very much to the fact that although Europe is by no means the only continent with an ageing population, the process is most advanced within the Union. By way of illustration, today’s median age in Europe of 42.5 years is more than double the figure for Africa. This gap will remain large in the coming decades⁶. Indeed, the number of people aged ≥ 80 years has been projected to increase 2.5-fold between 2019 and 2100, from 5.9% to 14.6%⁷.

¹ Cf. K. Lynch, ‘*Affective Equality: Who Cares?*’, (2009) 52 *Development*, p. 410 et seq.

² Cf. J. Herring, *Caring and the Law*, Hart 2013.

³ Cf. E. Feder Kittay, *Love’s Labour: Essay on Women, Equality and Dependency*, 1999, p. 107-108, p. 187. See: **C. E. Caracciolo di Torella, *Re-thinking care after the pandemic: a European Care Strategy for Caregivers and Care Receivers***, ERA Forum 2023, 24, p. 56.

⁴ 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, 7.9.2022, COM(2022) 440 final (hereinafter also referred to as ‘**the European Care Strategy**’), p. 1.

⁵ *The European Care Strategy*, op. cit., p. 1.

⁶ Cf. Green Paper on Ageing. *Fostering solidarity and responsibility between generations*, p. 2.

⁷ Cf. Eurostat Statistics Explained. *Population structure and ageing; 2020*: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_structure_and_ageing#The_share_of_elderly_people_continue_to_increase.

25 % of Europe's population were aged 60 and above in 2020 – compared to 5.6 % in Africa and 13.3 % in Asia. As projected, by 2050, 34 % of the population in Europe will be over 60 years old⁸. Within the EU, the share of people aged over 80 is set to double over the same period: from 6% in 2020 to 11% in 2050.

As demographic changes with shifts in the population pyramid lead to an increasing demand for long-term care, formal care provisions don't seem able to keep up⁹. The lack of adequate, affordable and easily accessible LTC services in many Member States therefore results in unmet (domestically) care needs¹⁰ – hence also the growing need for posted workers in the very sector and the ever-more widespread presence of posted carers.

When it comes to Poland, one may say that while ageing is a common trend across the European Union, Poland's population is getting old particularly rapidly. Eurostat data reveals that from 2013 to 2023, Poland ranked second only to Moldova in the increase of people over 65 years old¹¹.

To describe the very process, one may first emphasise that in 2023, life expectancy at birth for a male was 74.7 years, whereas for a female – 82.0. In the case of women it was by 0.9 year more than in 2022, while in the case of men – by 1.2 year more. In 2023, a male at the age of 60 had 19.6 years ahead of him, i.e. by 0.9 year more than a man who reached this age in 2022. In the case of women that age, life expectancy was 24.4 years, which is growth by 0.8 year in comparison with 2022¹².

When it comes to the process of population ageing, at the end of 2023, the number of persons aged 60 and more amounted to 9893.7 thousand and was by 1.0% higher than a year before. The percentage of older persons in Polish population amounted to 26.3% – an increase by 0.4 pp in

⁸ Cf. W. He, I. Aboderin, and D. Adjaye-Gbewonyo, “ *Africa Aging: 2020 International Population Reports* ” (U.S. Department of Commerce” African Population and Health Research Center, U.S. Department of Health and Human Services: 5, 2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p95_20-1.pdf.

⁹ Cf. J. Steiner, V. Prieler, M. Leiblfinger, A. Benazha, *Truly legal!? Legal Framing and legality narratives in live in care in Austria, Germany and Switzerland*, [in:] *Towards a Scarcity of Care*, eds. N. Katona, A. Melegh, Friedrich-Ebert Stiftung, Budapest, p. 69-70.

¹⁰ Cf. M. Andriescu, S. Buckingham, A. Broughton, F. De Wispelaere, L. De Smedt, O. Gascon, A. Ongono Pomme, E. Voss and K. Vitols, *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU. The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Luxembourg 2024, p. 199.

¹¹ Cf. *Poles suffer more health issues than other nations: report*, Polskie Radio.pl, 06.06.2024, <https://www.polskieradio.pl/395/7789/artykul/3387917,poles-suffer-more-health-issues-than-other-nations-report#:~:text=Poles%20are%20among%20the%20fastest,the%20population%2C%20the%20agency%20wrote.>

¹² Cf. Statistics Poland [GUS]. Statistical Office in Białystok, *The situation of older people in Poland in 2023*, Warsaw, Białystok 2024, p. 10.

comparison with the previous year. According to the projection of the Statistics Poland, the number of population aged 60 and more in Poland will grow gradually to 2060. It is expected that in 2060 11.9 million older people will live in Poland, i.e. by 19.9% more than in 2023. Older people are supposed to constitute about 38.3% of the total population of Poland then¹³.

Given the above-mentioned outlook of the situation, it is therefore no wonder that long-term care (and live-in care within its framework – see below) is expected to be the fastest-rising ageing-related public expenditure item, projected to increase to 2.5% of GDP by 2050 (to various extent in respective Member States)¹⁴.

The above-mentioned considerations fit perfectly within the aim hereof "*Social dialogue as a tool to improve the conditions of functioning of intra-EU labor mobility in home-based care services - MobileCare*". Below, we describe the most important conclusions from the current phase of the present Project, as seen from Poland.

Intra-EU labour mobility in home-based care services (live-in care) - what's in a name (in the EU and in Poland)?

When it comes to intra-EU labour mobility concerning home-based care services, it is firstly important to provide for the background, including remarks concerning terminology.

When researching relevant literature describing the phenomenon of home-based care services and speaking with both interviewees and other experts, one comes across especially terms ‘live-in care’ and ‘long-term care’. **The Council Recommendation of 8 December 2022 on access to affordable high-quality long-term care**¹⁵ in its para. 3 defines the notions of ‘**long-term care**’, “**domestic long-term care worker**” and ‘**live-in care worker**’. Firstly, its para.3 (a) provides that ‘**long-term care**’ means *a range of services and assistance for people who, as a result of mental and/or physical frailty, disease and/or disability over an extended period of time, depend on support for daily living activities and/or are in need of some permanent nursing care. The daily living activities for which support is needed may be the self-care activities that a person must*

¹³*Ibidem*, p. 10 and p. 13.

¹⁴ Cf. European Commission and Economic Policy Committee, 2021, The 2021 Ageing Report – Economic and budgetary projections for the 27 EU Member States (2019-2070).

¹⁵ See - 2022/C 476/01, OJ C 476/1 of 15.12.2022, hereinafter “2022 Council Recommendation” / “Council Recommendation on affordable high-quality LTC”)

perform every day, namely activities of daily living, such as bathing, dressing, eating, getting in and out of bed or a chair; moving around, using the toilet, and controlling bladder and bowel functions, or may be related to independent living, namely instrumental activities of daily living, such as preparing meals, managing money, shopping for groceries or personal items, performing light or heavy housework, and using a telephone.

This notion is further complemented in para. 3(h) by the notion of **‘domestic long-term care worker’**, defined as *any person engaged in domestic work who provides long-term care within an employment relationship.*

Para. 3(i) defines the notion of **‘live-in care worker’** meaning *domestic long-term care worker who lives with the care recipient and provides long-term care.* Given the above-mentioned definitions, **we opted to use the notion of ‘live-in care’** throughout the report, because it corresponds more than “long-term care” to the nature of the activities performed by such persons. Moreover, persons carrying out home-based services are not necessarily employed on the basis of an employment contract (at least as defined by the sending Member State and at least when it comes to Poland¹⁶). The above-mentioned terminology choice is common in many literature items, which deal with home-based care services – and treat live-in care as a sub-category of long-term care (LTC)¹⁷.

¹⁶ The Polish system distinguishes between employment contracts and civil law contracts. Employment contracts are the main basis for provision of paid labour in Poland, providing for the so-called subordination of the employee, in particular. It is indeed the very subordination of the employee, who undertakes to perform a specific work for the benefit and under the instruction of the employer and at a place and time designated by the employer that is a key difference with self-employment and civil law contracts under Polish law. In case of the latter, the self-employed person or a civil law contractor has (at least theoretically) leeway to act with a certain degree of flexibility in a relation with the other party, not being subordinated to them. See also: S. Danaj, M. Vah Jevšnik, M. Kielbasa, M. Szaraniec, *There and Gone Again? Migration to and Posting of Third-country Nationals from Slovenia and Poland*, *European Labour Law Journal* 2023, vol. 14, iss. 3, p. 411-412.

For more, cf. e.g.: L. Mitrus, *Social security in Poland in times of corona*, in S. Devetzi, E. Stergiou (Eds.), *Social security in times of corona. A legal comparison of selected European countries*, Athens-Thessaloniki 2021; M. Kielbasa, M. Szaraniec, M. Mędrala, M. Benio, ‘Posting of workers from and to Poland. Facts and Figures’ (2022) POSTING.STAT 1.0, available at: <https://hiva.kuleuven.be/en/news/docs/posted-workers-from-and-to-poland-factsand.pdf>

¹⁷ M. Andriescu, S. Buckingham, A. Broughton, F. De Wispelaere, L. De Smedt, O. Gascon, A. Ongono Pomme, E. Voss and K. Vitols, *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU*, *op. cit.*, p. 199. S. Leiber, K. Matuszczyk, V. Rossow, *Private Labor Market Intermediaries in the Europeanized Live-in Care Market between Germany and Poland: A Typology*, *ZSR* 2019, 65(3); J. Steiner, V. Prieler, M. Leiblfinger, A. Benazha, *Truly legal!? Legal Framing and legality narratives in live in care in Austria, Germany and Switzerland*, *op. cit.*

When it comes to form of labour mobility within the intra-EU internal market (Single Market), there are precious many manifestations of that mobility throughout the EU¹⁸. However, when it comes to one of the main (or, arguably – the very main one) channels of temporary labour mobility in the EU¹⁹ - it is indeed posting of workers²⁰. It was described as a hybrid type of intra-EU labour mobility based on the free movement of services²¹, which has experienced a strong upward evolution during the last two decade²². It is to be differentiated from another important forms of labour mobility, especially - migration to another EU Member State under the free movement of workers / persons (Art. 45 et seq. TFEU), as posted workers are persons who are sent by their employer to carry out a service in another EU Member State on a temporary basis. Posted workers, including also third-country nationals (also referred to as ‘TCNs’), are sent (or may actually ‘post themselves’) as part of a cross-border service provided by their employer (or by themselves) pursuant to Art. 56 et seq. TFEU²³. They are sent ‘posted’ abroad by their employer, to provide a service, be it a specialised and highly paid service in a multinational company or a low-skilled and low-paid service²⁴.

By and large, posted workers remain connected with their home country (usually – sending Member State), given their agreement concerning employment (contract of employment or a civil-type contract) and they generally remain affiliated to the social security system of their home Member State²⁵ (with a difference between being posted under Art. 12 of the Basic Regulation

¹⁸ Cf. e.g. N. Lillie, A. Brzozowska, K. Kall, J. Salamońska, K. Matuszczyk, *Transgovernmental Labour Standards Enforcement in a Pan-European Labour Market: An Arms Race Between Institutional Alignment and Regulatory Arbitrage*, *Journal of Common Market Studies* 2024, p. 4 et seq; D. Lens, N. Mussche, I. Marx, *A hole in the wall of fortress Europe: The trans-European posting of third-country labour migrants*, *International Migration* 2022; 60, p. 162 et seq.

¹⁹ Cf. F. De Wispelaere, M. Rocca, *Posting of workers and the border of the labour market*, *European Labour Law Journal* 2023, Vol. 14, issue 1, p. 91-92.

²⁰ Y. Jorens, *Cross-border EU Employment and its Enforcement. An Analysis of the Labour and Social Security Law Aspects and Quest for Solutions*, Springer 2022, p. 1.

²¹ M. Bottero, *Posting of Workers in EU Law (Bulletin of Comparative Labour Relations, 108)*, Wolters Kluwer International 2021.

²² Cf. F. De Wispelaere, L. De Smedt, J. Pacolet, *Posting of workers. Report on AI Portable Documents issued in 2023*, Luxembourg: Publications Office of the European Union, 2024.

²³ G. Davies & D. Kramer, *The Posting of Workers* [in:] R. Schütze, T. Tridimas (eds.), *Oxford Principles of European Union Law Vol. 2: The Internal Market*, Oxford (manuscript submitted for publication, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3939196), p. 5

²⁴ Cf. M. Lasek-Markey, *Effective enforcement of the EU framework on the posting of workers: Empirical evidence*, *European European Labour Law Journal* 2024, Vol. 15(4), p. 741.

²⁵ Of note are the differences between the concept of posting in the Posting of Workers Directives and Social security coordination regulations – cf. Y. Jorens, *Cross-border EU Employment*, op. cit., p. 145; and S. Schwarz, M. Kielbasa,

883/2004²⁶ and being active in two or more Member States according to Article 13 thereof²⁷), while they become subject to certain areas of the labour and employment legislation (terms and conditions) of the host Member State²⁸.

However, posting of workers is not only about complex legal framework, but also about the impact which it exerts in other areas of life, economy and politics and society. Experts researching care sector actually emphasise that posting of workers is the only mechanism to enable to provide legal live-in care services in Germany²⁹. And it is in Germany that this phenomenon is greatest (although it is not only present there). The sector is dominated by women - in German conditions there had been a widespread belief that female migrants from Poland were an appropriate support for dependent people because of their diligence, conscientiousness and their approach to care, captured by the expression »Polish pearls«³⁰

Social dialogue and its role in live-in care services

The present Project addresses the pressing need for improved social dialogue and intra-EU labour mobility, with a specific focus on the home-based care sector. Therefore, the project acknowledges the growing significance of the very sector and recognizes the challenges workers face in terms of mobility, working conditions, and national and EU-level social dialogue giving rise to various challenges for both workers and employers.

When it comes to its definition, the International Labour Organisation assumes³¹ that '**social dialogue**' includes "*all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common*

²⁶ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *OJL 166, 30.4.2004, p. 1–123*, hereinafter as 'Regulation 883/2004' / 'Basic Regulation'.

²⁷ Cf. L. De Smedt, F. De Wispelaere, *Country Report Belgium* [drawn up for the purposes of the project INFO-POW. Assessment of the channels of information and their use in the posting of workers], 2023, p. 27.

²⁸ See D. Lens, N. Mussche, I. Marx, *The different faces of international posting: Why do companies use posting of workers*, *European Journal of Industrial Relations* 2021, p. 2-3. Cf. also M. Kiełbasa, *Postcare. Posting of third-country nationals in care services* [drawn up for the purposes of the POSTCARE 1.0 Grant Project], retrievable at:

²⁹ Cf. e.g. K. Matuszczyk, J. Salamońska, A. Brzozowska, *Infrastruktura delegowania pracowników: przykład transgranicznego sektora opieki domowej*, *Studia Migracyjne - Przegląd Polonijny* 2022, p. 9.

³⁰ Cf. K. Matuszczyk, *Forgotten topic or invisible problem? Political discourse in Poland on live-in care migration* [in:] *TOWARDS A SCARCITY OF CARE? Tensions and contradictions in transnational elderly care systems in Central and Eastern Europe*, edited by Noémi Katona and Attila Melegh, FEP Budapest, p. 55. They were also referred to »angels« or »heroines«, sacrificing themselves for the benefit of all (see also therein, p. 10).

³¹ Cf. ilo.org/resource/social-dialogue

*interest relating to economic and social policy.” It may be **tripartite**: government, employers and workers, or **bilateral** – just between representatives of employers and workers.*

In the methodological notes, for the purpose of our project research phase it is recommended to broaden the scope of this definition as we have identified much more categories of stakeholders or actors and their interests may be lost in the negotiations or consultations of only social partners.

When it comes to the national, Polish definition of the term - there is no official one. It is assumed that this is a concept that covers the overall mutual relations between trade unions and employers’ organizations. It also includes their relationship (bipartite or tripartite) with state authorities such as the government and its agencies, local government and other state institutions. Social dialogue is a process of permanent interaction between dialogue stakeholders in order to reach agreement on the control of changing socio-economic factors on a macro and micro scale.

Social dialogue may be **institutionalized (formalized)**. In institutionalized dialogue a collective bargaining is conducted by expressly appointed institutions, councils or committees acting on the basis of legal acts or adopted agreements. Participation in the work of such institutions is limited to a few of the most representative organizations of trade unions and employers’ organizations which can have a real impact on the behavior of its members and urge them to comply with the arrangements of the tripartite body.

Non-institutional dialogue may be carried out by concluding collective labour agreements, consultations and giving opinions. Abovementioned embody the implementation of the social partners' organizations rights resulting from the respective legislation. It is possible to create a civil dialogue with the participation of non-governmental organizations in non-institutional forms of social dialogue.

A frequently practiced form of informal dialogue - especially in the event of a threat of social conflicts - are ad hoc contacts called incidental dialogue. It takes place outside of institutionalized contacts.

Social dialogue can be a method of mutual contacts between dialogue partners at different levels. There are several levels of dialogue:

International dialogue – is social dialogue conducted by international organizations of employers and employees and their associations of various character; an example of such a dialogue is the European social dialogue;

National dialogue – is conducted in a given country at the central level, most often through dialogue institutions such as social and economic councils (in Poland: the Social Dialogue Council);

Industry dialogue – concerns the issues of a specific sector of the national economy and is conducted through institutions formalized to different degrees (in the EU: sector committees, in Poland: tripartite industry teams; institutions of bipartite dialogue);

Regional dialogue – is conducted in the area of a given region or other administrative unit and refer to the problems of a given area (in Poland: voivodship social dialogue councils);

Company dialogue – comprise direct contacts between employers and representatives of company trade unions, employee councils or other employee representatives without the participation of the state administration representatives.

Social dialogue can have a bipartite, tripartite or even multilateral form.

Bipartite dialogue also known as autonomous dialogue is conducted by social partners (trade unions and employers' organizations) without the participation of government representatives.

Tripartite dialogue at the central level takes place between the social partners representing two parties of dialogue and the third party – the government. The participation of the government authorities in tripartite relations does not have to be equal. Government authorities can participate in the tripartite dialogue directly or only indirectly, using the results of autonomous arrangements and recommendations of the participants of given process.

Multilateral dialogue takes place when - in addition to the three parties: government, trade union and employers - representatives of another type of organization or institution, e.g. local government or representatives of corporate organizations, e.g. professionals and economic chambers (self-governments) participate in the discussion. Multilateral dialogue most frequently takes place in the case of sectoral dialogue. Representation of the parties extended to non-governmental organizations (NGOs: associations, foundations, etc.) - depending on the status granted to them during joint contacts - may give the social dialogue the features of a civic (civil) dialogue.

Many could therefore say that a source of hope in this regard could be represented by the social dialogue at the EU level. It is enshrined in the Treaty on the Functioning of the European Union (TFEU) and underlined by Principle 8 of the European Pillar of Social Rights and the Pillar Action Plan. Articles 154-155 TFEU lay down the Commission's obligation to consult social partners on

legislative proposals in the social policy field and allow them to negotiate agreements, that can be implemented through EU law.

In this regard, a particularly interesting and promising initiative could be the Pact for European Social Dialogue, signed by the European Commission and the European cross-industry social partners on 5 March 2025.

The Pact establishes a long-term framework with concrete actions to be taken by the Commission and social partners to strengthen, expand the scope of social dialogue, and promote a stronger consultation of social partners.

Especially, the Commission will:

- appoint a **European Social Dialogue Envoy**, who will promote timely and meaningful consultations of social partners and channel concerns about social dialogue at national level to the EU institutions, hereby improving awareness of social dialogue within the Commission
- work together with social partners on a **Quality Jobs Roadmap** to be delivered in 2025.
- exchange with social partners on their priorities regarding the **Commission's Work Programme** for the following year, ahead of its adoption.
- create a mechanism to receive joint reports from the social partners on social dialogue at EU level.
- consult social partners also on policy initiatives that do not fall under the scope of article 153 and 154 TFEU but are of particular relevance for social partners

The European cross-industry social partners will regularly prepare a multi-annual **work programme** to address the key economic and social challenges facing European labour markets and identify the appropriate instruments to tackle these challenges. Social partners will also establish joint procedures to improve their autonomous bipartite social dialogue, including negotiations of social partner agreements, and work together on the different types of social dialogue tools used at EU level.

Live-in care in Poland - practice

Live-in care businesses in Poland primarily serve clients from abroad, and inquiries from domestic clients are rare³². As evidenced by our research, as well as interviews and expert conversations, live-in services provided by a caregiver living with a patient are, in most cases, financially out of reach³³.

The main reason was relatively simple and it demonstrated right after 1989 – it turned out, that Germany was the most important destination in live-in care, mainly due to its geographical and cultural proximity, as well as the possibility of »easy« money that could be earned relatively quickly. What is more, it is worth pointing out the most important consequences of Poland's continuing status as a pool of »good workers« characterised by a »care drain«. Although care migration has a temporary, circular character (carers usually work for 6–8 weeks at a time), it means the loss of employees' unused potential, mainly limiting the supply of caregivers in smaller local communities. It is estimated that every year some 300–500,000 people are involved in this type of mobility, mainly women aged 45 or over³⁴. Becoming a »commuting worker« has become an extremely easy option, which, in turn, means that these people leave their families, including dependents, for shorter or longer periods of time, which means they require support from others. Despite the experience gained abroad, Polish women rarely want to work as caregivers in Poland, mainly because of the low earnings.

One of the practical responses was family members opting more frequently for the choice of leaving their jobs and dedicating themselves to the care of elderly or hiring someone illegally, rather than using the services of a caregiving company.

Another option – is trying to avail oneself of a third-country national's live-in care services. Indeed, as the shortage of domestic workers and the progressive marketisation of care services in Poland the demand for foreign labour intensified rapidly. The solution was the immigration of third-country nationals, mainly from Ukraine. This has been growing since the beginning of the twenty-first century, filling the gaps in those sectors in which Poles are not interested in taking up

³² Cf. S. Ziemacka, *Home care businesses in Poland*, 18 March 2024, <https://polandweekly.com/2024/03/18/home-care-businesses-in-poland/>

³³ S. Ziemacka, *Home care businesses in Poland*, 18 March 2024, <https://polandweekly.com/2024/03/18/home-care-businesses-in-poland/>

³⁴ Rogalewski A., Florek K., *The future of live-in care work in Europe*, 2020, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.eesc.europa.eu/sites/default/files/files/report_on_the_ees_c_country_visits_to_uk_germany_italy_poland_0.pdf

employment. Thanks to special facilitations and liberalisation of immigration regulations³⁵, Ukrainians have consistently provided the largest group of foreign workers in Poland for nearly three decades. According to empirical research, half of the Ukrainian women who come to Poland initially work in a private household³⁶. Importantly from the perspective of migration management, only one in three caregivers worked illegally. As rightly pointed out to by substantive researches in the case of Polish women working in Germany, Ukrainians do not have adequate training to work with the elderly. The vast majority of caregivers have completed only secondary or vocational education, and therefore there are many questions about the quality of services provided and the system of verification for people taking up employment in this sector. However, their industriousness and willingness to work for relatively lower wages is appreciated. Although official data indicate that no more than 20,000 Ukrainians work in this sector each year, experts estimate that the actual number of employees may exceed around 100,000 care workers in Poland³⁷.

Despite the phenomenon having been clearly analyzed and described in literature, the only substantive opportunity (before an initiative of M. Okła-Drewnowicz, described below) for an in-depth discussion on this issue was the initiative of Senator Mieczysław Augustyn and the bill (together with a report on the diagnosis of needs and challenges) on the development of a long-term care system in Poland, based on a new financial instrument (the so-called care voucher). Despite the favourable political situation, no new solutions could be introduced in this respect. Attention has been focused on the possibilities of financing benefits, while in-depth discussions on the situation of elder-care workers, including new channels for bringing them to Poland, have been omitted. A diagnosis of the emigration of Poles was set out, which, according to a team of experts, limits the possibilities of providing care for the elderly in Poland, while at the same time there is no proposal to extend solutions to encompass third-country nationals who could come to Poland fill the gaps in the home care sector³⁸.

³⁵ For more, cf. e.g.: Danaj S., Vah Jevšnik M., Kielbasa M., Szaraniec M., *There and Gone Again? Migration to and Posting of Third-country Nationals from Slovenia and Poland*, *European Labour Law Journal* 2023, vol. 14, iss. 3.

³⁶ Cf. K. Matuszczyk, *Forgotten topic or invisible problem? Political discourse in Poland on live-in care migration*, op. cit., p. 56.

³⁷ *Ibidem*, p. 56. See also in this regard: Rogalewski A., Florek K., *The future of live-in care work in Europe*, 2020

³⁸ Cf. K. Matuszczyk, *Forgotten topic or invisible problem? Political discourse in Poland on live-in care migration* op. cit., p. 58.

When it comes to the basic entities established to provide care services at the beneficiary's place of residence³⁹ in Poland, these are social assistance centres/social service centres (SACs/CUSs). They operate at the local government (municipality [gmina]) level, which results in a wide variety of services depending on the location. OPS operate in every municipality in the country, and in Warsaw in every district.

From 2019, under the Act on the Provision of Social Services by Social Service Centres, OPS can transform into CUS⁴⁰, but so far only 53 local governments (out of a pool of approximately 2,000 OPS) have decided on such a transformation. Benefits and services are provided by municipal OPS or CUS in the form of commissioned tasks or the municipality's own tasks. The provision of UO and SUO is the own task of the CUS, while the provision of access to SUO for persons with mental disorders is their commissioned task. Despite the fact that the provision of UO is the own task of the territorial self-government units of a mandatory nature, not every municipality implements it. Among the reasons for this are staff and financial shortages and sometimes the lack of favour of local authorities towards social services, including those of a caring nature, due to the belief that these are not priority tasks or legitimately entrusted to municipalities. UOs can be carried out independently by OPS or CUS staff or outsourced to external service providers (private sector institutions or non-profit organisations). According to the 2021 data, approximately 10 per cent of CSPs did not provide home care services.

Issues concerning the aging society have also been spotted by politicians. For the first time in the history of such acts, in December 2023, a Minister for Senior Citizenship Policy was appointed by the Prime Minister. Marzena Okła–Drewnowicz announced the enactment of a new law raising senior care standards and said that her aim was to ensure that seniors remain at their homes as long as possible and to avoid as much as possible placing them in senior care facilities. Her focus is on so-called 'senior grant', which was meant to be regulated in the Act on the System for Services Supporting a Family in Care of a Senior. The assumption behind the grant was to ensure that a family member who works and takes care of an elderly person will be supported by a caretaker who will provide care services to the senior citizen. The care services will have a maximum value of PLN 2,150.

³⁹ Cf. Bank Światowy [World Bank], *Przegląd strategiczny systemu opieki długoterminowej w Polsce*, June 2024, footnote 39, p. 73.

The Minister said the grant will be beneficial for the labor market in two ways: (i) it will ensure that family members taking care of their elderly family members remain active on the labor market and (ii) it will create new work positions for caregivers. It is predicted that over 0.5 million elderly people will be entitled to benefit from the grant, which shall be allocated by local governments. The services that will be offered to senior citizens will be simple care services concerning supporting daily needs, however a caretaker will need to complete the 30 hours training preparing them to work with seniors. Not everyone was meant to be eligible to benefit from the program, ascertain income criteria will need to be satisfied⁴⁰.

Conclusions

1. As is the case of other EU Member States, the ageing of the population is increasing (in Poland, in addition, it comes into being at the quickest pace in the EU), fueling the growing demand for live-in care. As evidenced herein, this issue may be further exacerbated by the scarcity of carers and the fact that majority of the existing carers are being posted, especially to Germany.
2. *Live-in* care within the framework as such has not been regulated by the provisions of law in Poland.
3. The challenges concerning live-in services have long been absent from substantive discourse.
4. The following should be done to promote better and fairer live-in care in Poland (and in the EU):
 - a) The development of legislation regulating live-in care in Poland (and therefore addressing the problems arising from the lack of a single, consistent definition thereof and the lack of transparency in live-in services). A law on live-in care (a separate or an amendment of the existing provisions) should primarily have a defining and coordinating function, while - given the already-existing provisions, it would not necessarily have to be the only document on the operation of live-in care institutions, but rather a document of a guiding nature / programming nature⁴¹.

⁴⁰ Cf. S. Ziemacka, *Senior care Sector at a pivotal moment*, Poland Weekly, 12 June 2024, <https://polandweekly.com/2024/06/12/senior-care-sector-at-a-pivotal-moment/>

⁴¹ Cf. Bank Światowy [World Bank], *Przegląd strategiczny systemu opieki długoterminowej w Polsce*, June 2024, p. 144 et seq.

- b) A key element of the new legal arrangements for live-in care should be to propose a single definition thereof that is valid in both systems (the health and social care sectors). It should follow the definition adopted by the Council of the EU or the Social Protection Committee⁴²
- c) The proposed legal amendments should either define the key live-in stakeholders - carers and beneficiaries - or confirm or modify existing definitions. Eligible beneficiaries of the scheme can be defined in the live-in care provisions, or references can be made in these laws to specific laws defining those entitled to the types of benefits applicable under each scheme. The law should also define who are the persons performing the functions of informal carers, including family carers. The latter definition is important in view of the benefits and support directed to this group, both monetary (e.g. transfers, tax credits) and non-monetary (e.g. respite care). In doing so, it is possible to formulate a general definition in the ODT Act, with reference to specific regulations in the laws on access to benefits or in the regulations governing other forms of support, such as respite care or care leave⁴³
- d) Another function of legislative amendments or a new law should be the coordination of benefits. The proposed legal amendments should indicate the types of institutions and the types of benefits and services that are part of the live-in care system. An important coordination element would also be the identification of bodies at the national level, as well as, where possible, at the regional and local (municipal) level, responsible for collecting information on the benefits provided, monitoring the demand for them, planning activities and coordinating the provision of live-in care services.
- e) Moreover, live-in care quality management issues should also be regulated by law. In terms of existing standards, a law in question can refer to existing legal regulations where these standards are established (e.g. in terms of equipment or minimum staffing in relation to the number of service recipients). In areas where standards are not defined (e.g. care services), the basis for their development may be formulated in the live-in care law or in relevant separate laws (e.g. the Social Assistance Act) or in (executive) regulations.

⁴² Cf. *Ibidem*; see also European Commission: Directorate-General for Employment, Social Affairs and Inclusion, *Long-term care report – Trends, challenges and opportunities in an ageing society. Volume I*, Publications Office, 2021, <https://data.europa.eu/doi/10.2767/677726>

⁴³ Cf. Bank Światowy [World Bank], *Przegląd strategiczny systemu opieki długoterminowej w Polsce*, p. 145.

5. Social dialogue is a reality in Poland, but it very rarely concerns issues of live-in care. The recent initiative of Minister M. Okła-Drewnowicz can be heralded as a step in the right direction in this regard.
6. The cooperation and networking at the European level (as evidenced e.g. by Joint Statement – Action to Tackle Labour and Skill Shortages) as well as initiatives such as New Pact for European Social Dialogue⁴⁴ will strengthen the role of social partners in shaping labour market, employment, and social policies. Such initiatives could also be connected with funding programs (national or EU-wide) to finance qualified training (+ language one) + enhancing digital administrative channels and capabilities
7. Phenomena in intra-EU labour mobility in home-based care services⁴⁵
 - person-centred care in the European Union
 - daughterhood penalty⁴⁶/ the phenomenon of the so-called ‘articulated generation’⁴⁷
 - ‘Time bank’ in Switzerland to help provide care to older people – Business Insider, as reported by Emilia Gawryluk on LinkedIn⁴⁸

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⁴⁴ Commission and social partners sign joint Pact to strengthen social dialogue in Europe – cf. https://employment-social-affairs.ec.europa.eu/news/commission-and-social-partners-sign-joint-pact-strengthen-social-dialogue-europe-2025-03-05_en

⁴⁵ They will be developed further in the MobileCARE comparative report.

⁴⁶ M. Travis, *Combating Hidden Career Penalties Against Women Who Provide Eldercare*, Forbes, Jan 28, 2025, <https://www.forbes.com/sites/michelletravis/2025/01/28/combating-hidden-career-penalties-against-women-who-provide-eldercare/>

⁴⁷ Cf. Bank Światowy [World Bank], *Przegląd strategiczny systemu opieki długoterminowej w Polsce*, June 2024, pp. 16-17.

⁴⁸ https://www.linkedin.com/feed/?highlightedUpdateType=REACTIONS_BY_YOUR_NETWORK&highlightedUpdateUrn=urn%3Ali%3Aactivity%3A7304514301816377345

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Mobilecare

Social dialogue as a tool to improve the conditions of functioning of intra-EU labour mobility in home-based care services



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