



PROMOTING THE INTEGRATION OF  
MIGRANT DOMESTIC WORKERS IN  
EUROPE



International  
Labour  
Organization



# EXTENSION OF SOCIAL PROTECTION OF MIGRANT DOMESTIC WORKERS IN EUROPE





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DOMESTIC WORKERS IN EUROPE

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ITC/LO

# EXTENSION OF SOCIAL PROTECTION OF MIGRANT DOMESTIC WORKERS IN EUROPE



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## Basic Data and Facts

- ▶ The number of domestic workers rose from roughly 33.2 to 52.6 million from 1995 to 2010;
- ▶ Domestic work accounts for 1.7 % of total employment worldwide and 3.6 % of all wage employment (2010);
- ▶ In Europe, the Gulf countries and the Middle East, the majority of domestic workers are migrant women;
- ▶ Spain, France and Italy employ the highest number of domestic workers.
  - In Spain, domestic work is largely taken up by female foreign-born domestic workers, mainly from Latin America;
  - 78.4 per cent of registered domestic workers in Italy were foreign-born, mainly from Eastern Europe (2008);
  - In France, a majority of domestic workers come from francophone Africa, mainly from Algeria, Morocco and Tunisia.

## Social Protection:

- ▶ ILO estimated that in 2011 75 to 80 % of the world's population had no access to social protection and lived in a state of social insecurity;
- ▶ Domestic workers remain one of the least protected groups of workers under national social security labour legislation yet specific data is difficult to find due to the fact that migrant domestic workers work largely in the

informal sector thereby constituting a particular vulnerable group.

- ▶ In Eastern Europe and CIS countries it is estimated that 45% of domestic workers are excluded from the scope of the country's labour laws; however, certain industrialized European countries have explicit coverage of domestic workers under social security legislation, namely:
  - Austria, Belgium, Denmark, France, Germany, Italy, Portugal, Spain and Switzerland (Canton of Geneva) have included domestic workers in workers' compensation schemes;
  - Belgium, France, Germany, Greece, Italy, Netherlands, Portugal, Spain and Switzerland (Canton of Geneva) have included domestic workers in general health care schemes;
  - Belgium, France, Germany, Greece, Italy, Portugal, Spain and Switzerland (Canton of Geneva) have included domestic workers in retirement schemes.

### Particular Challenges for Extending Social Security to Migrant Domestic Workers

- ▶ **Exclusion from social security legislation**
- ▶ **Overrepresentation in the informal sector**
- ▶ **Discrimination and lack of equality of treatment with other workers**
- ▶ **Remain on the sidelines of trade union activity therefore their interests are rarely represented**
- ▶ **Lack of enforcement of labour laws and in particular labour inspection**
- ▶ **Difficult access to justice**

### Principles surrounding the restriction of Migrant Domestic Workers Social Security Rights



- 1) **Principle of territoriality:** since social security legislation falls under national sovereignty and state responsibility, its scope of application is limited to the State in which the legislation was enacted.
- 2) **Principle of nationality:** social security coverage and entitlement is limited to nationals of a Nation-State. Foreign workers can be excluded from national schemes and the export of benefits abroad can be restricted.
- 3) **Lack of social security coordination:** Where there are no bilateral or multilateral agreements between Nation-States, there is no guarantee that social security rights acquired in one Nation-State will be maintained in another.

## EXISTING LEGAL FRAMEWORK

### ILO's SOCIAL SECURITY MANDATE

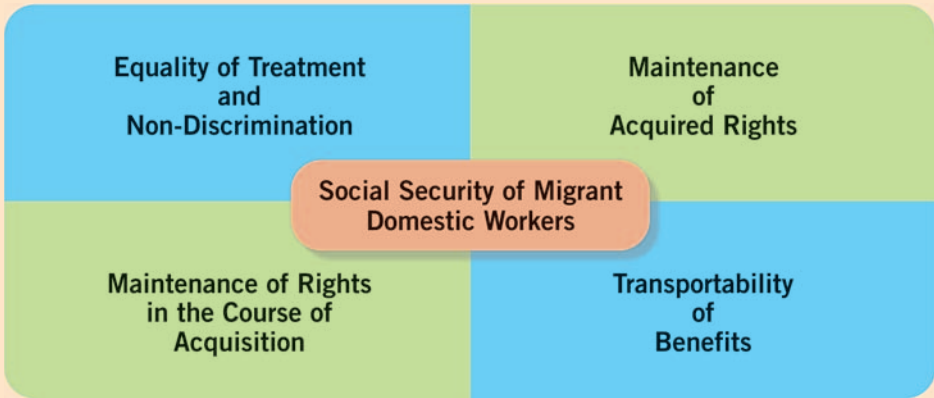
The concept of social security by and large emerged in the mid-twentieth century, however it was already an integral part of the ILO's original mandate in 1919, as witnesses the Preamble of the ILO Constitution. Its importance was later underlined in the Declaration of Philadelphia in 1944. There are currently **eight relevant up-to-date social security conventions and eight recommendations**, which guide the ILO in the realization of its mandate to extend social security to all. Unlike Recommendations which provide general or technical guidelines, Conventions create legally binding obligations for ratifying States. Yet there are no specific international instruments covering the social security rights of Migrant Domestic Workers. These rights are extended from the interaction between social security Conventions and Recommendations, migrant workers' Conventions and Recommendations and domestic workers' Conventions and Recommendations. In this regard, it should be underlined that all ILO Conventions apply to all workers, including domestic workers, unless otherwise stated.



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## KEY BASIC SOCIAL SECURITY PRINCIPLES



- 1) **Equality of treatment between nationals and non-nationals:** by virtue of this principle, Migrant Domestic Workers must benefit in the host country from the same conditions as nationals in terms of coverage and entitlement to social security benefits
- 2) **Maintenance of Acquired Rights:** Entitlement to certain social security benefits is at times subject to qualifying conditions such as a qualifying contributory period or the fulfilment of a certain period of residence. This principle requires States to guarantee that a Migrant Domestic Worker who has acquired entitlement rights in one territory, be entitled to maintain such rights in any other territory concerned. This is particularly important in the case of long-term benefits (invalidity, old-age and survivor's and annuities paid as result of employment accident or an occupational disease) where qualifying periods may be considerable.
- 3) **Maintenance of Rights in the Course of Acquisition:** This principle guarantees that where a right is conditional upon the completion of a qualifying period, account should be taken of periods completed by the migrant worker in each State. This is particularly relevant to long-term benefits where entitlement is often subject to lengthy qualifying periods. A migrant worker who has worked in various States could accumulate each qualifying period and be eligible for a benefit on the basis of the totalisation of all qualifying periods.
- 4) **Transportability of Benefits:** Also referred to as the export of benefits, this principle allows a person to preserve their social security rights regardless of where these rights were acquired. This is in contrast to the practice which ties the payment of benefits to certain minimum residency requirements.



## ILO Social Security Instruments

The Social Security (Minimum Standards) Convention, 1952 (No. 102) is the flagship convention as it defines the nine classical social security contingencies (medical care, sickness, old age, unemployment, employment injury, maternity, family, invalidity and survivors) and establishes a minimum set of qualitative and quantitative parameters including: definition of the contingency, persons protected, type and rate of benefit, length of the qualifying period, duration of benefit and waiting period. This Convention provides a benchmark

for the progressive extension of comprehensive social security systems.

Social Protection Floors Recommendation, 2012 (No. 202) provides guidance in building comprehensive social security systems and extending social security coverage by prioritizing the establishment of national floors of protection to all in need. It calls for, at a minimum, access to essential health care and basic income security throughout the life cycle. As such, migrants and their families should have access to these basic social security guarantees in the State where they reside, as well



as in their home countries. It seeks to ensure that social security policies address the needs of the unprotected, the poor, and the most vulnerable, including women, migrants, domestic workers and their families. It also recognizes the importance of social security as a tool to prevent and reduce poverty, inequality, social exclusion and social insecurity, and to promote equal opportunity and gender equality. Furthermore, it recognizes the need to support the transition from informal to formal employment. Within the context of EU social security coordination, national social protection floors can be used as a means to address gaps in social security coverage and palliate the lack of coordination arrangements between countries as for example with respect to short-term benefits, healthcare and non-contributory benefits.

Equality of Treatment (Social Security) Convention, 1962 (No. 118) covers nine branches of social security; for each branch accepted under the Convention, a ratifying State undertakes to grant within its territory equality of treatment to nationals of other ratifying States (and their dependents) with its own nationals (including refugees and stateless persons, if specifically accepted). It applies to the provision of benefits during periods of work abroad if such dispositions exist for nationals.

Maintenance of Social Security Rights Convention, 1982, (No. 157) and accompanying Recommendation No. 167: covers all nine contingencies

and provides the obligation to States parties to the Convention to maintain long-term benefits and employment injury benefits for nationals of all other ratifying States (including refugees and stateless persons, irrespective of their place of residence) for all the branches of social security in which each State has legislation in force. The Recommendation proposes model provisions for the conclusion of bilateral or multilateral social security agreements regarding all contingencies and provides rules on maintaining social security rights and exporting benefits. It also proposes a model agreement for the coordination of bilateral or multilateral social security instruments.

## **ILO Migrant Workers Instruments**

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Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) protects both regular and irregular migrant workers. It calls for equality of treatment for all migrant (regular and irregular) workers with respect of rights arising out of past employment as it pertains to social security and other benefits.

Migrant Workers Recommendation, 1975 (No. 151) promotes the equality of treatment for documented migrant workers with respect to social security measures, welfare facilities and benefits provided in connection with employment. Also, irrespective of legality of their stay, migrants should be entitled to benefits which

may be due as a result of any employment injury suffered and to the reimbursement of social security contributions which do not give rise to benefits.

### **ILO Domestic Workers Instruments**

Domestic Workers Convention, 2011 (No.189) calls for the progressive extension of social security protection of domestic workers. While the Convention aims at ensuring conditions not less valuable than those generally applicable to workers, it also recognizes the need to take into account the specific context and features of domestic work. Given the vast majority of women domestic workers, Convention No. 189 also specifically refers to maternity protection. Finally, the Convention emphasizes that measures to extend social security to domestic workers should be taken in consultation with the relevant workers and employers' organizations.

Domestic Workers Recommendation, 2011 (No. 201) encourages ILO Members to facilitate the payment of social security contributions, e.g. through simplified payment systems. This Recommendation also highlights the potential of both bilateral and multilateral agreements to provide equal treatment to migrant domestic workers as regards social security, the maintenance of acquired rights and the right to export benefits.



# EUROPEAN UNION SOCIAL SECURITY LEGAL FRAMEWORK

## European Social Security Coordination Rules

The right to social security within the EU is contained in the Charter of Fundamental Rights of the European Union which places social security and social assistance as fundamental rights and provides for the right to health care. The right to Social Security is also contained in the 1989 Community Charter on the Fundamental Rights of Workers and the 1989 European Parliament Declaration of Fundamental Rights and Freedoms.

### Harmonization vs. Coordination

Harmonization and coordination are two key concepts that help in understanding the interactions between social security systems. Harmonization occurs when national social security legislations are replaced with one single social security system that contains common rules and definitions. Coordination requires establishing mechanisms through which social security systems can work together since social security regulation remains under the jurisdiction of each State. The EU has opted for a framework of coordination that aims to facilitate movement within the EU yet allows Member States to regulate the personal coverage, the benefits granted, the qualifying conditions and the formulas and rules for the payment of contributions under their legislation.

## European Regulatory Framework

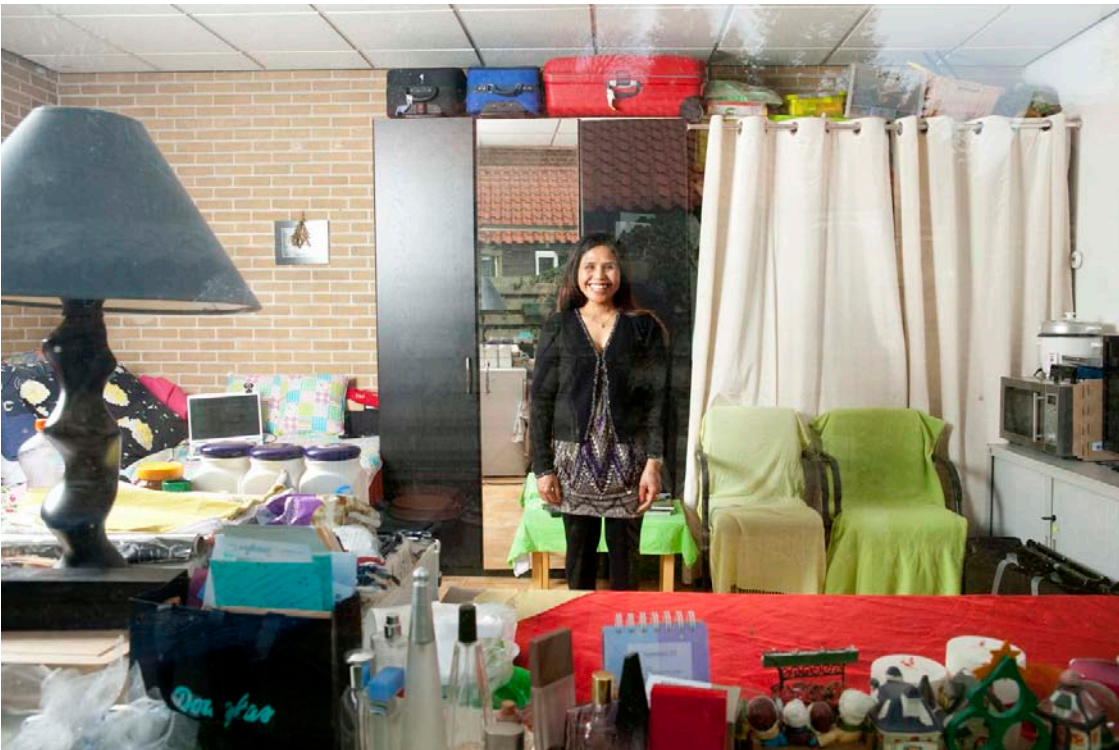
Regulation (EC) 883/2004 on the Coordination of Social Security Systems and its implementing Regulation (EC) 987/2009: sets the basic coordination principles regarding the application of social security schemes to employed persons, self-employed and members of their families moving with the community. It contains the four key basic social security principles described above.

Regulation 1213/2010 extends the personal scope of Regulation (EC) 883/2004 to legally residing non-EU nationals moving within EU Member States.

EEA Joint Committee Decision No 76/2011 and the EC-CH Joint Committee Decision No 1/2012 extends its application to the European Economic Area (EEA) and Switzerland

## Legal vacuums in the EU Regulatory framework

1. Equality of treatment of third country workers with EU nationals who have worked in one EU State;
2. Aggregation of insurance periods in a worker's State of origin and ;
3. The export of benefits to third countries (outside the EU and EEA).



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## Association Agreements

Agreements between the EU and non EU countries that govern the coordination of social security for workers and their families. The European Council is developing a common EU position for the implementation of social security coordination in relation to six existing Association Agreements. The EU has also sought to establish a single EU response to the external dimension of social security coordination (i.e. notably the recent European Commission communication and European Parliament's resolution regarding the External Dimension of EU Social Security Coordination).

## Bilateral and Multilateral Agreements

Agreements between Member States and third countries provide a system of coordination for social security rules for persons moving between those countries, mainly on the principles of equality of treatment and the export of pensions. The Gottardo Judgement of the Court of Justice of the European Union, extended the applicability of such agreements in deciding that all social security agreements made by an EU Member States with Third Countries cannot be limited to their own nationals. As such the principle of equality of treatment must be provided to all EU

Nationals whether or not they belong to a State who is a party to a bilateral/multilateral agreement. Equality of treatment does not however apply to Non-EU Nationals living in other EU States not party to the agreement.

### Shortcomings of bilateral and multilateral agreements:

1. Certain migrant sending social security systems are insufficiently developed which can impede the conclusion of reciprocal agreements;;
2. Migrant sending social security systems can be different to those of migrant receiving countries
3. Administrative capacity can be insufficient to ensure that contributions are paid and remitted in a cost efficient way, to ascertain whether all required conditions are satisfied and to periodically distribute social security benefits over several years.

### Some good practices

- ▶ Extending the scope of coverage of social security legislation to domestic workers (Spain, Germany)
- ▶ Recognising domestic work as employment through labour migration policies or collective agreements (Italy)
- ▶ Using collective agreements to provide social protection (France, Belgium)
- ▶ Using terminology which recognised domestic work as atypical employment (Canton Geneva)
- ▶ Addressing informality and formalizing domestic work through model contracts and service employment cheques (France and Geneva Canton)
- ▶ Raising public awareness (Canton of Geneva)
- ▶ Enforcing the role of organisations/associations/trade unions in representing domestic workers interests (Italy, NGOs, International trade Unions)
- ▶ Addressing language barriers by providing documents in the mother tongue of domestic workers (Italy)

### Further Reading

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



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