



European Federation  
for Services to Individuals

# Commission proposal for a Directive on transparent and predictable working conditions

## *EFSI's views*

July 2018

### **I Introduction**

EFSI represents national federations and associations as well as companies involved in the development and the provision of personal and household services in Europe. Through its members, EFSI is present in 22 EU Members' States (Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxemburg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United-Kingdom). The EFSI seeks to ensure that the specificity of the sector is recognised and that the provision and access to high quality and affordable personal and household services are granted thanks to adequate economic, social and legal conditions.

Personal and household services (PHS) comprises of a broad range of activities that contribute to the well-being of families and individuals which are: home services (housework, ironing, gardening, small repair work, delivery of food, etc.), child care facilities including all kind of services (nursery, nanny, shared childcare, holiday centres, baby-sitting, etc.), tutoring (school help, IT assistance etc.) and services to enable disabled, dependants and elderly people to continue to live in their own home. In 2016, employment in the PHS sector represented almost 8 million jobs in the EU 24. It amounted to almost 4% of total employment. Furthermore, it was the second-fastest growing sector behind ICT between 2011 and 2013<sup>1</sup> and the tendency is expected to continue in the future. Indeed, Cedefop's skills forecasts estimate that employment will grow by 0,4% for personal care workers and by 0,7% for cleaners and helpers in the EU28 by 2030.

On 21<sup>st</sup> December 2017, the European Commission published its proposal for a Directive on transparent and predictable working conditions in the European Union (COM (2017) 797 final)<sup>2</sup> based on Article 153(1) (b) TFEU. The general objectives of the proposal is to modernise the Written Statement Directive (91/533/EEC) and to promote more secure and predictable employment while ensuring labour market adaptability and improving living and working conditions. In this regard, the

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<sup>1</sup> European Federation for Services to Individuals (2018), "[PHS Industry Monitor: statistical overview of the personal and household services sector in the European Union](#)".

<sup>2</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union*, [COM\(2017\)797 final](#).

proposal seeks to enhance the situation of workers in non-standard forms of employment, and domestic workers are one of the categories of workers identified as presenting the important needs for further compliance.

Whereas the Council adopted its general approach on the 21<sup>st</sup> of June 2018 and the European Parliament's Committee on Employment and Social Affairs is about to adopt its 1<sup>st</sup> reading report, **with this position paper EFSI would like to offer views on the proposal as regards the personal and household services sector's specificities only**. Furthermore, it recalls that any actions to modernise the Written Statement Directive need to strictly respect the principles of subsidiarity and proportionality, especially regarding definitions, access to information and minimum working conditions.

## **II Employment relationships within the PHS sector**

First and foremost, it is essential to acknowledge the variety of employment relationships existing within the PHS sector. As such, some PHS workers – or domestic workers – fall within the scope of the existing Written Statement Directive and others don't. The situation varies greatly among Member States as the Impact Assessment carried out for the proposal shows.

Two types of employment models prevail in the PHS sector: the direct employment model and the provider organisation model. The direct employment model was historically the first one to be developed. It is characterized by the fact that the private householder is legally the employer of the domestic worker (often described as a bilateral relationship). Instead, in the provider employment model the domestic worker is employed by an organisation (private for profit or not) who sells services on the market or by an organisation providing the services (e.g. a public organisation). The beneficiary of the service simply buys this service on the market or receives the service from public entities. In this employment relationship, enterprises or organisations are legally the employers of domestic workers. As a result, this relationship is often described as an "intermediated" or triangular form of employment).

It is estimated that at present in the EU, 70% of PHS workers are hired through the provider employment model and 30% through the direct employment one. The latter is predominant in countries such as Cyprus, France, Greece, Italy, Portugal, Spain and Romania<sup>3</sup>. Furthermore, any analysis of the sector must take into account that the predominant form of employment in private households is undeclared, with the exception of countries where the PHS sector is well regulated.

## **III Domestic workers' coverage under the current Written Statement Directive**

In both employment models, the domestic worker is a salaried employee but the question whether or not the worker would be covered by the Directive varies greatly. Indeed, it is generally assumed that workers hired through the provider organisation model are covered by the Directive (as they work more than 8 hours per week) whereas the level of coverage could be particularly low in the direct employment model. The main reasons are:

- excessively heavy administrative procedures might lead some private households to decide not to comply with the obligations and not to declare their domestic workers;
- many bilateral employment relationships fall within the exemption provided in Article 1(2) a) of the current Written Statement Directive, allowing Member States to exempt from the scope of the Directive those employees having a contract or employment relationship with a working week not exceeding 8 hours;

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<sup>3</sup> European Federation for Services to Individuals (2018), "PHS Industry Monitor: statistical overview of the personal and household services sector in the European Union".

- domestic workers operate under the terms of an informal or verbal agreement rather than a contract or employment relationship defined by national law;
- the fiscal burden associated with formal employment lead private households not to declare their domestic worker, as it would be unaffordable to them<sup>4</sup>.

In addition, it's worth stressing that the Impact assessment has demonstrated that the level of compliance with regard to domestic workers depends mostly on the national context (e.g. ease of application, fiscal and social security obligations on employers, etc.). In countries in which the lowest levels of compliance have been registered, the main reasons identified were the wish to avoid the fiscal and administrative burden associated with employment and to retain the flexibility to terminate the employment relationship as and when the employer wishes.

Therefore, it appears that the non-compliance with the current Directive of private households employing a domestic workers should be addressed both from the point of view of administrative burden and from the point of view of ensuring to citizens an affordable access to formal personal and household services.

## IV Enhancing domestic workers' rights

Generally speaking, **EFSI fully supports any initiative enhancing domestic workers' rights**. Indeed, EFSI has plead over the years for initiatives that would reinforce the quality of employment in the PHS sector by giving these jobs professional status, with regular employment contracts, paid leaves and social protection equivalent with workers' general status, training and career progression. In this regard, two provisions of the European Commission's proposal deserve particular attention.

### ▪ *The scope of the Directive (Article 1)*

Reducing the derogation enabling Member States not to apply the provisions of the Directive to an employment relationship from 8 hours per week to 8 hours per month (**Art. 1(3)**) would mean that more private households will need to provide written statements for domestic workers. As such, **this proposal is welcome as it seeks to ensure more equal rights among domestic workers regardless the fact that they are employed by a private household or an organisation**. However, as stressed by the Impact Assessment study, the benefit of this new provision will depend on the level of compliance of private householders.

Furthermore, the exemption provided in **Article 1(6)** according to which Member States may decide not to apply the obligations set out in Articles 10, 11 and 14(a)<sup>5</sup> to private households acting as employers is deplorable. Whereas the objective of avoiding excessive burden on private household acting as employers is understandable, this measure **could lead to unequal treatment of domestic workers based on their employment relationship**. That would be an inequality that contradicts the whole objective of the Directive to level a currently uneven playing field for businesses.

In addition, EFSI questions whether or not this exemption - and the unequal treatment resulting from it – are complying with the ILO Convention No 189 on decent work for domestic workers which has been ratified by several EU countries. The Convention states that domestic workers should be "*informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner [...] in accordance with national law*". Those provisions must apply to all domestic workers, no matter with whom they have signed their employment contract (a private household or a provider) and regardless the number of hours of work they perform each week or each month.

<sup>4</sup> The prevalence of undeclared work in the PHS sector is linked to its inherent characteristics. For more information about it, please refer to the part 6 of the PHS Industry Monitor ([http://www.efsi-europe.eu/fileadmin/MEDIA/publications/2018/PHS\\_Industry\\_monitor\\_April\\_2018.pdf](http://www.efsi-europe.eu/fileadmin/MEDIA/publications/2018/PHS_Industry_monitor_April_2018.pdf)).

<sup>5</sup> These articles introduce for employers the obligation to consider and respond to a request for a different type of employment, to provide cost-free mandatory training, and from coverage of the redress mechanism based on favourable presumptions in the case of missing information in the written statement.

Therefore, EFSI believes that these proposals will only have a limited impact on domestic workers' rights.

- **Means of information (Article 4, § 2 & 3)**

EFSI welcomes the new provision that requires Member States to produce templates for the written statement and to make information on national law and provisions and relevant collective agreements available to employers in an accessible format. EFSI believes that such template could be helpful as far as private households are concerned, as they are often not aware of their responsibilities and duties as employer of a domestic worker. However, EFSI considers that it is important that such templates are developed taking into account the specific requirements of the PHS sector and in close consultation of social partners.

- **Modification of employment relationship (Article 5)**

EFSI believes that **the delay for informing employees on employment changes should be reasonable** and that different ways of information (online and offline) should be allowed.

For the evaluation of provisions included in the proposal and other than the three points here above, EFSI relies on the official statement of the European social partners on the matter.

## V Conclusions

Generally, **EFSI welcomes the European Commission's willingness to improve domestic workers' rights. The provisions foreseen in the Directive proposal aims at decreasing the gap between workers employed by a private household and those employed by a provider, which will benefit the PHS sector as a whole. However, EFSI believes that their impact will be limited** and therefore underlines that:

- the proposal for a Directive on transparent and predictable working conditions should be in line with the ILO Convention No 189 and should not prevent the European Commission to encourage Member States to ratify it,
- the European Commission should encourage social dialogue within the PHS sector, as social partners are the most suited to elaborate solutions that would improve domestic workers' rights,
- the European Union should develop a comprehensive approach towards the PHS sector in order to tackle the interlinked challenges (prevalence of undeclared work, job and service's quality, professionalization, increasing demand, lack of investment, etc.) which impact greatly on domestic workers' rights and job quality. In this regard, successful practices implemented in various EU countries<sup>6</sup> should be promoted through various EU tools such as the European Semester process, the EMCO Committee, the European Platform tackling Undeclared Work or the European Social Fund, to name but a few.

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<sup>6</sup> In this regard we can mention the Service voucher system (*Titres-services/Dienstencheques*) implemented in Belgium, the tax incentives and the Universal Service Employment voucher (*CESU*) implemented in France, as well as the tax-deduction for domestic service work (*RUT-avdrag*) implemented in Sweden.