

‘HANDLE WITH CARE’? PERSON-CENTRED LIVE-IN CARE PROVIDED BY POSTED WORKERS AND OTHER CARE-RELATED PHENOMENA IN THE EU

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Abstract This article examines the growing phenomenon of live-in care in the European Union, with particular focus on services provided by posted workers, including third-country nationals. It situates live-in care within the broader EU socio-legal framework, tracing the evolution of recent policy developments such as the European Pillar of Social Rights, the European Care Strategy, and documents arising therefrom. The article analyses the latest phenomena in cross-border live-in care, including deinstitutionalisation of care, highlighting how person-centred and community-based models are reshaping the field. Special attention is devoted to gender dimensions, including the disproportionate burden on women and the 'daughterhood penalty' and 'motherhood penalty'. By linking legal, economic, and social aspects, the article assesses whether EU policies effectively address current challenges in that regard and their future impact concerning more sustainable care provision.

Keywords

person-centred live-in
care,
carers,
posted workers,
deinstitutionalization of
care,
'daughterhood penalty',
European Care Strategy

1 Introduction

‘Caring for someone you love is the most precious time of all’ (von der Leyen, 2021). Indeed, care is central to human, social, economic and environmental well-being, and sustainable development. Care work, paid and unpaid, is essential to all other work (International Labour Organization Statistical Brief, 2024, p. 2). Inevitably, at some stage of life - whether through the effects of ageing or the onset of illness (Caracciolo di Torella & Masselot, 2020, p. 1)- every individual will require care. Likewise, at some juncture, most people will assume the role of carer (caregiver)¹, whether in the capacity of a parent or in support of dependent adults. Therefore, care and caregiving constitute universal and pressing concerns, touching individuals from all walks of life on a practically daily basis (Tronto, 2020). Indeed, at some point, during the course of our lives, we all need care to thrive, and in some cases, to survive (Caracciolo di Torella, 2023, p. 56).

The concept of care is multifaceted and the relationship of care permeates and interacts with multiple dimensions of legal systems (Herring, 2007, p. 8 *et seq.*), and it concerns different manifestations thereof. In this article I shall focus on care provided at homes of 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 (Council Recommendation of 8 December 2022, 2022, para 3(a), p. 6 – there is no doubt that this category covers also chronically ill people, even though they were not listed in detail in the Recommendation) - provided by live-in care workers – domestic long-term care workers who live with the care recipient and provide long-term care (Council Recommendation of 8 December 2022, 2022, para. 3(i), p. 6). They have also been defined as “*paid professionals, with or without formal care training, whose work primarily involves LTC (long-term care²) provision while living in a private residence with the care receiver*” (Andriescu et al., 2024, p. 199).

¹ I opted for the notion of ‘carer’ (in line with e.g. in para. 7 *et seq.* of the Council Recommendation of 8 December 2022).

² The Council Recommendation of 8 December 2022 does not define ‘live-in care’ (but only the notion of ‘live-in care worker’ – para. 3(i)). Hence those two terms are often used interchangeably in academic discourse on the matter, although live-in carers are often persons who had been employed e.g. on the basis of a civil law contract. For more concerning the concept of supporting elderly, ailing and helpless persons – see e.g. Hoens & Smetcoren, 2023, p. 497 *et seq.*; Safuta et al., 2022, p. 303 *et seq.*; Matuszczyk, 2021, p. 1 *et seq.*; Fernández-Reino & Vargas-Silva, 2020; Shutes & Chiatti, 2012, p. 392 *et seq.*

The demand for live-in care has been steadily increasing, driven primarily by population ageing - a widespread phenomenon in highly developed countries, closely linked to declining birth rates and rising life expectancy. Globally, the proportion of older persons has expanded at a remarkable pace, also in comparison to the working-age population that constitutes the primary potential source of care provision (OECD, 2020). In Europe, the population aged over 65 is projected to increase by 14% between 2022 and 2030, and by 38% over the next three decades, reaching 129.8 million. By 2030, the number of individuals requiring long-term care is estimated at 33.7 million, with this figure expected to rise further to 38.1 million by 2050 (Council Conclusions of 27 November 2023, para. 3, p. 4).

In this (a rather challenging) picture, an ever-growing phenomenon is care arrangements in which migrating people (in various capacities) care for elderly people on a live-in basis (Böcker et al., 2021, p. 4) - in particular, live-in care provided by posted carers, who have been posted within the framework of intra-EU posting of workers (Kielbasa, 2023, p. 402 *et seq.*), including the so-called 'third-country nationals'³ ('TCNs').

In the present article, I shall tackle the issue of 'person-centred' live-in care, provided by such persons as well as other most important phenomena in care, including the disproportionate impact of care responsibilities on women (Communication from the Commission, 2022, p. 2).

2 Live-in Care and the EU Policies - Between Mutual Necessity and Enduring Friction?

Despite the key importance of care to sustain our lives, the European Union lacks express competencies in this area. Accordingly, the EU legislator has traditionally been unable to address care effectively, either as a concept or in terms of its structure. Thus, in the very area, the EU has, at best, had traditionally provided a forum where Member States could exchange good practices (Caracciolo di Torella, 2023, p. 58).

³ Under Article 2(6) of the Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) - a third-country national is any person who is not a Union citizen within the meaning of Article 20(1) TFEU and who is not covered by point 5 of this Article [*members of the family of a Union citizen exercising the right to free movement to whom Directive 2004/38/EC (...)*].

Despite the claim in one of the latest reports commissioned by the European Commission – that most LTC workers are covered by general EU labour law (Bakirtzi, 2024, p. 17) – the Union’s approach to supporting carers has largely been uneven. On the one hand, the position of specific categories of carers, most notably mothers, has received growing attention – reflected in a series of legislative measures designed to enhance their protection⁴. However, the EU’s engagement with carers of elderly or disabled individuals, particularly in the context of live-in care, has been limited. This is notwithstanding the fact that various policy documents addressing their situation have been issued. Notwithstanding this rhetorical recognition, the legislative framework in this area remains underdeveloped. As indicated in literature, measures aimed at carers were organised around a two-tier structure that differentiated between the care of children (childcare) and the care of elderly and/or disabled children and dependent adults (LTC) and, as such, it lacked conceptual cohesion (Caracciolo di Torella, 2023, p. 59; Daly, 2021, pp. 108-118).

Concerning the former, economic considerations cannot be ‘decoupled’ from normative arguments that recognise and value carers for the substantive contributions they make to society. Such an approach emphasises the intrinsic worth of carers’ activities. Because the EU is no longer merely an economic structure but embraces and promotes human and social rights, the need to address the economic and moral elements of the caring relationship becomes more pressing than ever (Caracciolo di Torella, 2023, p. 60; James & Spruce, 2015, pp. 463-464).

Regarding the latter dimension, care provision constitutes a fundamental prerequisite for attaining key economic objectives within the EU. It plays an essential role in sustaining the operation of the EU’s internal market and serves as a critical component of general employment policy and robust gender equality measures. From an economic standpoint, a direct and substantive relationship can therefore

⁴ E.g., the Council Directive 92/85/EEC of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (Official Journal of the European Communities L348 28.11.1992, p. 1, as amended); or the Council Directive 97/81/EC of 15 December 1997, concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work, Official Journal of the European Union L14, 20.1.1998, pp. 9–14 or Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019, on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, Official Journal of the European Union L188, pp. 79–93. Those legislative acts were further reinforced through the jurisprudence of a proactive Court of Justice of the European Union (CJEU) – see e.g., judgments in *Z v A Government Department*, 2012 or *Jessy Saint Prix v Secretary of State for Work and Pensions*, 2012 – see also Caracciolo di Torella, 2023, p. 58.

be identified between the provision of care and fulfilling the internal market's objectives (Caracciolo di Torella & Masselot, 2020, p. 22).

Moreover, it is also becoming increasingly apparent that care cannot be addressed solely within national borders. As a service, it can be provided freely across the Union's internal market. Thus, the demand for and the offer of care directly affect the free movement provisions within the EU (including especially free movement of services). As a regulator of the internal market and a global actor (care, including especially live-in care, is rapidly changing into services accessible on the global market, too), the EU is well placed to address care and should lead the Member States' reaction in this very area.

Events over the past decade have underscored a growing recognition that care constitutes a fundamental prerequisite for individual lives, social cohesion, and economic stability, and that the legal framework has a crucial role to play in fostering them. At the EU level, this awareness has catalysed the emergence of a new policy orientation, one more closely aligned with the needs and realities of individuals. The articulation of this shift may be seen in the proclamation of the European Pillar of Social Rights (Interinstitutional Proclamation on the European Pillar of Social Rights, 2017) in 2017 as well as the adoption of the Work-Life Balance Directive (Directive 2019/1158 of the EP and of the Council, 2019).

Then, along came the Covid-19 pandemic, triggering further EU actions, signalling a commitment to embedding care-related considerations more firmly within the EU's socio-legal agenda and culminating in the adoption of the European Care Strategy, and further documents, characterised in more detail below.

3 Live-in Care Carried Out by Posted Workers

Given both the considerations above and the drastic ageing of most of the EU Member States' populations, the growing need for live-in care became the order of the day. As demographic changes with shifts in the population pyramid lead to an increasing demand for long-term care, formal care provisions do not seem able to keep up (Steiner et al., 2020, pp. 69-70). The lack of adequate, affordable and easily accessible long-term care services in many Member States therefore results in unmet (domestically) care needs (Andriescu et al., 2024, p. 199) – hence also the growing

need for posted workers in the very sector and the ever-more widespread presence of posted carers.

Posting of workers, constitutes one of the most important forms of temporary labour mobility in the EU (Jorens, 2022, p. 1-2; De Wispelaere & Rocca, 2023, p. 5). It is also described as a hybrid type of intra-EU labour mobility based on free movement of services, which has experienced a substantial upward evolution during the last two decades. This is to be differentiated from other important forms of labour mobility, especially migration to another EU Member State under the free movement of workers / persons (Article 45 *et seq.* TFEU⁵), 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, are sent (or ‘post themselves’) as part of a cross-border service provided by their employer (or by themselves) pursuant to Article 56 *et seq.* TFEU (Davies & Kramer, 2024, p. 24). They are sent abroad by a posting entrepreneur, to provide a service (Lasek-Markey, 2024, p. 741). Also, the TCNs, holding a valid work and residence permit in one Member State, may be posted within the EU (Kielbasa, 2025, p. 647 *et seq.*).

In general, posted workers retain a connection with their country of origin, which is typically the sending Member State, through the employment relationship (established *via* a contract of employment or a civil-type contract). Principally, they remain affiliated with the social security system of their home Member State (Jorens, 2022, p. 145 noted the differences between the concept of posting in the Posting of Workers Directives and social security coordination regulations), subject to the distinction between workers posted under Article 12 of Regulation 883/2004 (Regulation of the European Parliament and of the Council (EC) 883/2004, 2004) and those active in two or more Member States pursuant to Article 13 thereof (De Smedt et al, 2023, p. 27, footnote 26). Simultaneously, such workers become subject to certain terms and conditions of employment in the host Member State (Lens, Mussche & Marx, 2021, pp. 28-29; Kielbasa, 2022).

⁵ Treaty on the Functioning of the European Union – consolidated versions – Official Journal of the European Union C202, pp. 1–388.

Yet, the phenomenon of posting extends beyond its intricate legal framework. It has significant implications for broader spheres of social and economic life, as well as for politics and public policy. Scholars analysing the care sector actually emphasise that posting of workers is the only mechanism through which legal live-in care services may be provided in Germany, the largest recipient of such services (and services on the whole) in the EU (Matuszczyk, Salamońska & Brzozowska, 2022, p. 9).

The example of Germany (the largest recipient of posted workers altogether in the EU, including also live-in care posted workers) in this regard is also very telling when it comes to assessing, whether the EU migration policy (or more generally – the policy of labour mobility within the Union's internal market) adequately promotes support for ailing and vulnerable individuals. Sadly, as of now, the answer cannot be in the affirmative. Until now, contrary to the CJEU's ruling in *Commission of the European Communities v Federal Republic of Germany* and the subsequent case law (e.g. the Court's judgments in *Commission of the European Communities v Republic of Austria* or *Commission of the European Communities v Kingdom of Belgium*) Germany continues to require TCNs to obtain the so-called Vander Elst visas from German embassies (in some cases they are virtually impossible to obtain – as examples of Lithuania or Poland clearly demonstrate) before a third-country national may be posted (also within the framework of live-in care) to Germany (Danaj et al., 2023, p. 4).

4 Live-in Care– De-Institutionalisation of Care in the EU – 'Building Back Better'?

One of the major trends that could be inferred from the recent EU policy documents is de-institutionalization of live-in care (combined with the promotion of autonomy and independent living in all long-term care settings). It represents a fundamental reorientation of social and health policy in the Union, a signal of moving away from large residential institutions towards community-based, home-based, and person-centred services. Such reorientation is strongly driven by most care recipients' desire to be cared for at home, as demonstrated in literature, reflecting in this regard the opinions of the persons being taken care of⁶ (Kuhn & Seidlein, 2023, p. 384). From

⁶ Those persons are also referred to as 'people in need of long-term care' – see e.g., para 4(c) of the 2022 Council Recommendation or 'recipients of care'

this perspective, institutionalized long-term care is not seen as a ‘good alternative’, e.g. to care provided at home, but as a sort of ‘final option’ to be avoided at all costs (Höpflinger & Van Wezemaal, 2014).

At the heart of this policy shift arguably lies the UN Convention on the Rights of Persons with Disabilities (CRPD⁷), which obliges Member States not only to ensure (to persons with disabilities) the opportunity to choose their place of residence but also that they are not obliged to live in a particular living arrangement (Article 19 CRPD). Within the framework of the EU law, this concept has been first mirrored by the EU’s Charter of Fundamental Rights⁸, which recognised the rights of older adults to lead a life of dignity and independence (Communication from the Commission, 2022, p. 8).⁹ The very concept has then been further developed (this time, it has also been extended to other categories of persons) in the European Pillar of Social Rights. Its Principle 18 spells out the right to access quality and affordable long-term care, in particular home care (and community-based services) (Communication from the Commission, 2022, pp. 8-9; Grossi et al., 2024, p. 55; Sabato & Vanhercke, 2017). It indeed verbalizes a preference for home-based and community-based solutions over institutional settings.

A document that expands upon the Pillar, including its Principle 18 (and which is also firmly rooted therein) in this regard is the European Care Strategy. The Strategy has arguably been the most significant and evolved EU policy programme ever in the field of ‘care’ – seen as an overarching concept, suggesting, as some authors rightly note, another sort of recognition by the EU of care as a broader social phenomenon (Daly, 2025, p. 11). Hardly did the EU speak in such terms beforehand, especially in terms of policy.

Such a relationship between the Pillar and the Strategy has also helped to define the latter’s aim (the goal which had not been envisaged to such an extent beforehand in the EU documents, either) - ‘integrated and person-centred long-term care that is accessible, affordable and of high quality’ (Daly, 2025, p. 12; Commission Staff Working Document 2022). The Commission emphasized that *‘person-centredness entails*

⁷ Adopted at the sixty-first session of the General Assembly by resolution A/RES/61/106, entry into force: 3 May 2008.

⁸ OJ, C-326/391.

⁹ This concept has been taken up by e.g. the Council Recommendation of 8 December 2022 and 2023 Council Conclusions.

offering a choice of services in line with people's needs and improving the transition from institutional care to home care and community-based services'. At the same time, it acknowledged the 'approaches that are person-centred and conducive to independent living are often lacking, exacerbated by insufficient integration between long-term care and healthcare, or between informal care, home care, community-based and residential care' (Communication from the Commission, 2022, pp. 10-11).

The Commission proposes to plug those holes *inter alia* by '*offering direct technical support from the Technical Support Instrument to the Member States under a new flagship project "Towards person-centred integrated care". Such support aims at 'facilitating reforms in line with the proposal for a Council Recommendation (...). That flagship is meant to help Member States, upon demand, to design and implement relevant reforms aimed, e.g. at 'putting the person at the centre of services to ensure (...) better quality of care at every stage of life' (Communication from the Commission, 2022, p. 11).*

In parallel, the Commission acknowledges the plethora of challenges to successfully implementing the above-mentioned 'person-centredness' of care. Among them are labour shortages, caused *inter alia* by frequently difficult working conditions and the reduction of the working age population (Communication from the Commission, 2022, p. 12). According to the Commission, one of the key drivers to remedy labour shortages in care can be 'legal migration'; including from third countries.¹⁰ Indeed, as the EC conceded, '*already today, many people from non-EU countries work in the care sector*'. To attract them, the Commission, *inter alia* recommended that Member States, in collaboration with respective stakeholders, address skills needs and worker shortages in long-term care by '*exploring legal migration pathways for long-term care workers*' (Council Recommendation of 8 December 2022, para. 8(d), p. 7). Moreover, the Commission then proposed a series of new initiatives in a Skills and Talent Mobility package to make the EU more attractive to talent from outside the EU, and to facilitate mobility within.¹¹ Significantly, the acts proposed within the very package, and especially the Proposal for a Regulation establishing an EU Talent Pool, provides for a direct employment of third-country nationals (Proposal for a Regulation of the European Parliament and of the Council Establishing an EU

¹⁰ That is countries from outside the EU/EEA/Switzerland. The Commission rightly points out that '*these opportunities may also be valuable to people fleeing the Russian aggression in Ukraine, especially experienced care workers, who want to seek employment while residing in the EU*' – Communication from the Commission, 2022, p.14.

¹¹ Commission proposes new measures on skills and talent to help address critical labour shortages, Press release, 15 Nov. 2023, retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5740.

Talent Pool, 2023; the proposed Article 4(1)(3) refers to ‘*jobseekers from third countries*’, who, when registered in the the EU Talent Pool IT platform may search for job vacancies – see also Article 11(4) thereof). Indeed, the wording of the solutions envisaged within the package presupposes that such third-country nationals would become migrant worker-carers (within the framework of Article 45 *et seq.* of the TFEU), instead of becoming posted workers (within the framework of Article 56 *et seq.* TFEU). I am pointing to this legal basis as the evidence collected by doctrine demonstrates, that long-term care is mostly provided by posted workers (including third-country nationals), and that employment contracts are not used in principle in the field of posted live-in care (especially in the Polish-German context, which arguably constitutes the most significant flow of such live-in carers in the EU) (Leiber, Matuszczyk & Rossow, 2019, p. 377).

Moreover, the Skills and Talent Mobility Package is yet to be adopted. Accordingly, what actually makes a robust impact and fills in the void caused by labour shortages in this area is freedom to provide services and posting of workers and not migration.

Yet, it is the Council Conclusions on the transition of care systems of 27 November 2023, where deinstitutionalisation of care had been mentioned on such a scale in an EU polity document for the first time. The Council firstly referred to the EESC Opinion of 2022¹², affirming the need to respond ‘to the *call to generally deinstitutionalise care for older people in care homes by promoting dependent older people’s autonomy, independence, ability to look after themselves, and social relations*’ (Council Conclusions of 27 November 2023, 2023, para. 15, p. 9).

Further, the Council in its Conclusions acknowledged that ‘*greater awareness of the right of all persons to enjoy a full and dignified life have led to the questioning of institutional care models, which in many cases entail segregation and limit fundamental freedoms. This paradigm shift has been accompanied by (...) changing ideas of what care should look like. It has also been supported by scientific evidence confirming many inadequacies of institutional care, by heightened social awareness (...) of gender mainstreaming (...) and by increasing social sensitivity and a widespread preference for person-centred and community-based models*’ (Council Conclusions of 27 November 2023, 2023, para. 1, p. 2; its para. 15 cited the EESC Opinion ‘*Towards a*

¹² *Opinion of the European Economic and Social Committee. Towards a new care model for older people: learning from COVID-19*, adopted at plenary on 19 January 2022, SOC/687.

New Care Model for the Elderly: learning from the Covid-19 pandemic (2022) affirming 'the need to respond to the call to generally deinstitutionalize care for older people in care homes'). Therefore, arguably for the first time in such an EU text, the Council invited the Member States to '[r]ecognise the individual right to be cared for, under equal conditions, (...), that holistically define and ensure the right to sufficient, appropriate and affordable high-quality, person-centred and community-based care. It is important that this care is in accordance with the choice of the person, who has the right to be accompanied in that process and that decision. The right to care implies supporting care givers (e.g. by providing social protection and training, counselling and respite care), and recognising their right to make decisions about how much, and whom to care for' (Council Conclusions of 27 November 2023, para. 18, p. 10).¹³ The Council also invited the Member States to ensure 'person-centered long-term care and support that enable those who require it, and who so wish, to prevent institutionalization, to live dignified lives, to live in self-determination, to conserve their autonomy, to live independently in the community and to be able to freely exercise control over where, with whom and how they want to live' (Council Conclusions of 27 November 2023, para. 19a), p. 10) – thereby upholding the choice of the recipient of care (and not, e.g., the needs of the system alone).

It is indeed this particular aspect that undoubtedly constitutes a breakthrough in both social and medical law. It changes the perception of how care to elderly, ailing and helpless should be provided, as it puts in the spotlight both the choice of the recipient of care and their will. Therefore, they have their (substantive) say on the conditions of that stage of their lives and they become subjects (and not objects) of care. Such a choice also determines the manner in which the care is to be carried out, directly influencing also medical procedures and the manner in which they are provided (in some cases making it swifter and more accessible to the recipient of care) and influencing also the mobility of medical practitioners (who are to take care of persons in their familiar, home environments, different from sometimes depersonalized hospital settings).

One significant downside of the European Care Strategy, the Council Recommendation of 8 December 2022, and the Council Conclusions of 27 November 2023, is that they lack binding force. Instead, they have a power to exhort and to persuade – but they do not offer an enhanced protection (Andone & Coman-

¹³ Arguably for the first time, the EU document also refers 'to combating 'undeclared work in care services, paying particular reference to domestic care work, which is often carried out by migrant workers' (Council Conclusions of 27 November 2023, para. 24 a), p. 13).

Kund, 2022, p. 31 *et seq.*; *Belgium v Commission*, 2016, para. 26 *et seq.*). Yet, considering the use of soft law in the context of social and labour law, they ‘*can be used as a fulcrum against the standstill of European social policies, when hard law seems to be a faraway achievement.*’ (Caracciolo di Torella, 2023, p. 68). Accordingly, they have the potential to lay the groundwork for more authoritative commitments.

5 Women Providing Live-in Care – ‘Unsung Heroes’ or Victims of Daughterhood Penalty?

Another crucial issue (and a challenge at the same time) in the latest discussions on care is women's participation in caregiving. Indeed, as the phenomenon of live-in care in the EU has grown into a pivotal pillar of contemporary long-term care systems, it remains predominantly carried out by women, many of whom are third-country nationals. Sometimes referred to ‘unsung heroes’ (Opinion of the AG Cosmas in *Molenaar v Allgemeine Ortskrankenkasse Baden-Württemberg* (1997, footnote 3, p. I-848) where he stated that ‘*they are the unsung heroes in the case of persons reliant on care, in particular where the latter remain at home*’, ‘true angels’ or ‘silent heroines’ (Steiner et al., 2020, p. 69), women carry out the burden of care – both internationally and within the EU. According to the latest ILO global and regional estimates presented in an ILO brief, care responsibilities remain the main reason for women to be outside the labour force. In 2023, 748 million people aged 15 and above (708 million women and 40 million men) cited care responsibilities as the reason for being outside the labour market. The deeply entrenched gendered division of care responsibilities continues to limit women's access to decent work, restricting their ability to engage in paid work and to advance in their career (International Labour Organization Statistical Brief, 2024, p. 2).¹⁴ The same holds true also for the EU, where care responsibilities often act as a barrier to women's participation in the labour market. According to estimates, 7.7 million women across the EU remain outside the labour market due to care responsibilities, compared to just 450,000 men. The authors of the International Labour Organization Statistical Brief (2024, p. 19) demonstrated that the share of women and men outside the labour force due to care responsibilities varies between the countries (for example, for Poland that share for women

¹⁴ Of the more than 37 million Americans who are providing unpaid care to adults aged 65 or older, 59% are women, according to 2023 data from the U.S. Bureau of Labor Statistics – Travis, 2025.

amounted to 9.6%, while for men to merely 1.3%; in the case of Slovenia – it was lower, amounting to 4.7% for women and 0.6% for men only.

The above also impacts women's ability to undertake full-time employment, with many reducing their working hours to perform care duties. This has further implications both for the gap in earnings between men and women and long-term impacts, e.g. on women's pension payments (Grossi et al., 2024, p. 6; Communication from the Commission, 2022, p. 2).

Apart from the above-described challenges, one could devise at least two further (yet related) phenomena. Firstly, the so-called '*daughterhood penalty*' – capturing the disproportionately adverse economic and career effects experienced by women, particularly daughters, who assume caregiving responsibilities (often – unpaid) for elderly or disabled relatives. While such caregiving, by and large, does not cause women to exit the workforce (Glauber, 2019, p. 417 *et seq.*), it is very likely to have real economic consequences for women at the height of their careers.

A longitudinal American study (whose results are universal and perfectly transferable to the EU context), published in 2024 (Brady, 2024), examined the professional trajectories of 460 employed women aged between 50 and 60 who undertook caregiving responsibilities for an ageing parent or parent-in-law. The findings reveal that these women experienced, on average, a 4.2% decline in inflation-adjusted hourly wages, with the decrease reaching 9.5% among those providing high-intensity eldercare. By contrast, the study compared those results with 966 women in the same age group who were not caring for ageing parents. The women without eldercare responsibilities experienced a 2.7% increase in inflation-adjusted hourly wages during the same period (Travis, 2025).

From a legal and policy perspective at the EU level, the imbalance in unpaid family care duties contributes to persistent labour market inequalities. The European Parliamentary Research Service (2022, p. 1 and 4) estimated that women providing unpaid care earn roughly 3 % less per hour than women without such responsibilities, whereas no comparable wage penalty was observed for men. The so-called '*unpaid care penalty*' amounts to an annual loss of at least €242 billion across the EU - an astonishing amount that underscores the economic magnitude of caregiving inequality.

In the context of live-in care, these findings suggest a structural risk: daughters, who disproportionately undertake continuous, informal caregiving within households, face compounded disadvantages. The interplay of enduring societal norms, fragmented EU regulation of long-term care, and insufficient legal protection frameworks perpetuates this '*daughterhood penalty*'.

The second phenomenon has been described as the '*motherhood penalty*' (further exacerbated in the case of the so-called '*sandwich generation*'¹⁵) with a corresponding '*fatherhood bonus*'. When women become mothers, they are viewed as less committed to their careers and tend to receive less pay, smaller raises, and fewer promotions. In contrast, when men become fathers, their breadwinner status often results in higher raises and more promotions than other men (Travis, 2025).

Consequently, it is no wonder that it has been acknowledged that the EU action in the care sector has the potential for high returns for society. Fostering the 'equal earner – equal carer model' could generate benefits of between €24 billion and €48 billion a year. EU action to promote affordable, high-quality care could produce an additional €90 billion to €160 billion in benefits each year (European Parliamentary Research Service, 2022, p. 1).

How do the EU policies aim to respond to these challenges, as evidenced by the latest EU policy documents? Do they provide effective solutions?

The latest EU policy documents, analysed above, refer to those challenges – arguably the first of such documents to date. First, the Commission in the European Care Strategy stated that inadequate care services have a disproportionate impact on women, as supplementary or informal care responsibilities still fall predominantly on them, and this affects their work-life balance and options to take on paid work. This leads to women reducing working time and withdrawing early from the labour market. For many women, it results in fewer career opportunities and lower wages and pensions than those enjoyed by their male peers (Communication from the Commission, 2022, p. 2). These considerations were largely reiterated in the Council Recommendation of 8 December 2022, where the Council confirmed (a rather

¹⁵ This notion is being referred to persons who are simultaneously taking care of elderly parents and children (Rogalewski & Florek, 2020, p. 26).

obvious truth) that women make up most carers and shined a light on '*the gender-based gap in the distribution of care work*', claiming it '*one of the key drivers of gender inequality in the labour market*' (Council Recommendation of 8 December 2022, 2022, motive 4 of the Preamble, p. 1) and that among informal carers – most of them are women, who '*traditionally carry out the bulk of caregiving, often due to a lack of accessible and affordable formal long-term care*' (Council Recommendation of 8 December 2022, motive 20 of the Preamble, p. 4). As one of (relatively scarce) solutions, the Council recommends that Member States, in '*in collaboration, where relevant, with social partners, long-term care providers and other stakeholders*' *inter alia* '*address skills needs and worker shortages implementing measures to tackle gender stereotypes and gender segregation*' (Council Recommendation of 8 December 2022, para. 8(f), p. 8).

Finally, considerations in the Council Conclusions of 27 November 2023, were set out in the similar vein, reiterating the statement on '*a significant gender dimension*' of care as well as consequences of that fact for career development projects, labour market participation and labour shortages in the EU; while putting the *ratio* of women gainfully employed in the sector at nearly 90% of all working therein, estimated at 9.1 million in Europe.¹⁶

To sum up this thread, it is important to underline that while so many of the issues discussed above were taken up for the first time in the documents I have identified, it is also true that they contain no significant attack on prevailing gender norms, the feminisation of the sector or the widespread gender-asymmetrical distribution of care. In essence, the underlying model of the distribution of care is essentially *status quo*. It is connected with the fact that carers' rights in the EU are employment-related rights (Daly, 2025, p. 14) (which in turn does not mean that carers need to be employed on the basis of a contract of employment – e.g., in Polish conditions it could well be – and in the majority of occasions it actually is – a so-called 'civil law contract' (Danaj et al., 2023, p. 22).

¹⁶ And with the number of jobs that could be created over the coming 10 years (from 2023) estimated at eight million and potential earnings foregone by women due to this unbalanced distribution of unpaid care work has been found to total at least 242 billion euros per year (Council Conclusions of 27 November 2023, 2023, para 2, p. 3).

6 Conclusions

The phenomenon of live-in care provided by posted workers, including third-country nationals, epitomises the opportunities, the indispensability of such arrangements and the profound tensions they generate within the EU legal and policy framework. On the one hand, the freedom to provide services and the social security coordination system underpin the functioning of this transnational care model, ensuring that thousands of households across Europe can meet urgent long-term care needs. On the other hand, the Union's lack of explicit competences in the field of care has resulted in a fragmented and largely soft-law approach. While the framework of free movement of services and Regulation 883/2004 enables the transnational provision of indispensable care, it also exposes the structural limits of the Union competences in social policy.

Recent Union initiatives, most notably the European Pillar of Social Rights, the European Care Strategy, and other documents resulting from them and analyzed herein, signal a shift towards recognising care as a legal and policy priority. Yet, they remain mainly anchored in soft law essentially exhortative rather than enforceable. If these policy instruments had been able to create judicially enforceable rights, they would have offered a more robust protection (Caracciolo di Torella, 2023, p. 68). At the same time, these documents mark a significant discursive shift: they firmly place care - and especially person-centred, community-based and home-based care - on the EU agenda, aligning European policy with global commitments such as the UN Convention on the Rights of Persons with Disabilities and broader human rights discourses.

Simultaneously, the care sector (and especially live-in care) remains profoundly gendered. Women, many of them migrants, bear the overwhelming share of caregiving responsibilities, both in unpaid family care and in live-in care, leading to phenomena such as the '*daughterhood penalty*' and '*motherhood penalty*' which systematically depress women's earnings, career prospects, and pensions and underscore the need for more robust guarantees of fairness and equality. The EU's challenge is to reconcile the logic of dignified care which is so desperately needed with the imperative of women's prospects and , ensuring that both carers and care recipients are afforded genuine rights rather than aspirational rhetoric. One of the manners to achieve that aim could be to allow to posted workers (including third-

country nationals) to be able to carry out live-in care work under the existing EU law framework. Maintaining available live-in care services, which are affordable to both persons being taken care of and their families will result in that numerous relatives, mostly women, will be able to practice their learned professions or carry out their business ventures, thereby benefitting both themselves (and their future) and the society.

Finally, the developments surveyed suggest that the EU has entered a new stage in recognising care as a legal and policy priority. Indeed, the above-analyzed policy documents have unequivocally put care (including live-in care) quite firmly on the EU agenda. This is the case both of the care as such, but especially of the deinstitutionalizing of the live-in care. Nevertheless, the Union's sphere of interventions remain constrained by soft-law instruments. The Union's central challenge in this regard seems therefore to be to reconcile the economic freedom that enables live-in care through posting of workers (which enables to meet the ever-rising care needs, caused by population ageing) with the imperative of safeguarding local (domestic) competences of national legal orders. Achieving truly person-centred and equitable care will require not only rhetorical recognition, but also binding legal guarantees capable of addressing structural inadequacies.

While the present framework offers only indirect legal impact, the influence the EU policies exert may be particularly useful (especially for the persons taken care of). It is precisely within the previously delineated spheres that the policy instruments under consideration may provide for an 'indirect legal impact,' serving, simultaneously as a precursor to more formal and binding measures to be adopted in due course. Such measures should start with the phenomena described herein, including especially person-centred live-in care as well as addressing gendered dimension of care by.

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Legal Acts, Case-law

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Povzetek v slovenskem jeziku

Ta članek obravnava rastoči pojav oskrbe na domu v Evropski uniji, s posebnim poudarkom na storitvah, ki jih opravljajo napoteni delavci, vključno z državljani tretjih držav. Oskrbo na domu umešča v širši socialnopravni okvir EU ter sledi razvoju nedavnih političnih pobud, kot so Evropski steber socialnih pravic, Evropska strategija za oskrbo in dokumenti, ki iz njih izhajajo. Članek analizira najnovejše pojave na področju čezmejne oskrbe na domu, vključno z deinstitutionalizacijo oskrbe, ter poudarja, kako modeli, usmerjeni v posameznika in skupnost, preoblikujejo to področje. Posebna pozornost je namenjena spolnim dimenzijam, med katerimi izstopata nesorazmerno breme za ženske

ter tako imenovani "kazni hčerinstva" in "kazni materinstva." Z povezovanjem pravnih, ekonomskih in socialnih vidikov članek ocenjuje, ali politike EU učinkovito obravnavajo trenutne izzive na tem področju in kakšen bo njihov prihodnji vpliv na bolj trajnostno zagotavljanje oskrbe.