



UNIVERSITY OF AMSTERDAM



Amsterdam
Law Clinics

Amsterdam Fair Work and Equality Law Clinic

Coordinator: Dr. Marlies Vegter

Nieuwe Achtergracht 166

P.O. Box 15544

1001 NA Amsterdam

Telephone: +31(0)20 525 2958

E-mail: amsterdamlawclinics@uva.nl

<https://student.uva.nl/en/topics/amsterdam-law-clinics>

MEMORANDUM

Legal Position of Au Pairs in the Netherlands

To: FairWork, Nieuwezijds Voorburgwal 32, 1012 RZ Amsterdam

Authors: Imke Donkers, Kiara Marques Ferreira, Leonie Feurstein, Felix Molchanov

Date: 30 January 2025

DISCLAIMER

The Amsterdam Law Clinics (ALCs) are part of the Law Faculty at the University of Amsterdam (UvA). The ALCs' primary mission is to provide a select group of law students with an opportunity to participate in real cases on legal questions in the public interest under the supervision of professionals and other academics of the law faculty at the UvA. The UvA makes no representations that any information it provides is accurate and conforms to contract or is free from faults or defects, nor does it warrant that the use of the information provided or the activities executed will provide the desired objective or will not infringe third party rights.

Any report or advice or litigation done by the ALCs is solely intended to be used for which it was drawn up. No responsibility is accepted by the UvA for use by third parties. As a result, the UvA accepts no responsibility towards anyone other than the client with regard to the contents of any report or advice or litigation done by the ALCs. The Dutch Court has jurisdiction and Dutch law is applicable on any use of a report or advice or litigation by the ALCs.

Executive Summary

The Dutch au pair programme is designed to provide individuals aged 18–25 a cultural exchange experience by allowing them to assist host families with light household tasks and childcare for up to 30 hours per week, in exchange for a stipend of €340 per month, along with room and board. While this arrangement has benefited many au pairs, a significant number face excessive workloads, lack of cultural exchange opportunities, and inadequate protections. This memorandum examines the extent to which the current system prevents labour exploitation and proposes reforms to safeguard au pairs' rights while maintaining the program's cultural exchange objectives.

To understand the lived realities of au pairs, interviews were conducted with four individuals who had worked in the Netherlands as au pairs. A recurring theme was the gap between the agreed-upon terms with host families and actual working conditions. Many au pairs reported working well beyond the permitted 30 hours per week, performing a broad range of tasks, including cooking, cleaning, and providing care for children with special needs. These challenges were compounded by unfulfilled promises, such as funding for language classes or cultural activities, and inadequate living arrangements. In some cases, au pairs described strained and inappropriate relationships with their host families.

The analysis of international and European legal frameworks highlights the vulnerabilities of au pairs. The ILO's Domestic Workers Convention (No. 189) excludes au pairs from its protections, and the Netherlands has not ratified this convention. The Council of Europe's European Agreement on Au Pair Placement (1969), which directly addresses au pair rights, has limited ratifications and outdated provisions with limited relevance today. Whereas the EU Directive 2016/801 defines au pairs and emphasizes the goal of cultural and language learning, its provisions on au pairs are optional, meaning member states are not required to incorporate them into national law. As such, the available international and European legal frameworks regarding au pair work are very weak in nature.

At the national level, Dutch labour law lacks clarity on whether au pair agreements constitute employment contracts, creating legal uncertainty regarding available remedies. Liability law offers limited pathways for au pairs to claim damages, and criminal law protections for exploitation are difficult to invoke without strong evidence. Comparative analysis of regulations in Austria, France, and Germany reveals alternative approaches that could be used as an inspiration to improve the shortcoming of the Dutch au pair programme. Based on these insights, the memorandum outlines the following policy recommendations:

- **Standardized Contracts:** Implement state-approved agreements to clearly define au pairs' rights and obligations, ensuring consistency and reducing disputes.
- **Mandatory Host Family Training:** Require host families to undergo training on cultural sensitivity and programme expectations, fostering respectful and supportive relationships.

- **Enhanced Monitoring:** Introduce regular inspections of host families and agencies to verify compliance with programme rules and protect au pairs from unsafe conditions.
- **Employment Recognition:** Classify au pair work as employment in cases where tasks exceed light household duties or placements last over a year, granting access to labour protections such as fair wages and regulated working hours.
- **Hotline and Complaint Mechanism:** Establish a dedicated hotline for emergencies and a complaint mechanism to provide au pairs with immediate support and hold agencies accountable for misconduct.
- **European Standards:** Advocate for binding EU-wide rules to harmonize protections for au pairs across member states, reducing regulatory disparities and preventing exploitation.

These reforms aim to strike a balance between preserving the cultural exchange goals of the programme and providing more robust protections for au pairs. By addressing the legal and practical shortcomings of the current system, the Netherlands can ensure a fairer, safer, and more enriching experience for au pairs.

Table of Contents

1.	Introduction	1
2.	The Dutch Au Pair Programme in Practice	4
2.1.	Interviews with Au Pairs	4
2.2.	Interviews with FairWork Staff.....	5
2.3.	Existing Research on the Au Pair Programme	6
3.	International and European Legal Framework.....	8
3.1.	International Labour Organization	8
3.1.1.	Domestic Workers Convention, 2011 (No. 189).....	8
3.1.2.	Scope of Application regarding Au Pairs.....	9
3.2.	Council of Europe	9
3.2.1.	Context Leading to the Adoption of the Agreement	9
3.2.2.	Objectives and Key Features of the Agreement	10
3.2.3.	Limitations of the Agreement.....	10
3.3.	European Union.....	11
3.3.1.	Objectives and Scope of Directive 2016/801	12
3.3.2.	Key Provisions Related to Au Pairs	12
3.3.3.	Limitations of Directive 2016/801	13
3.4.	Summary	14
4.	Au Pairs in the Netherlands.....	15
4.1.	The Dutch Au Pair Programme	15
4.1.1.	Requirements for Au Pairs and Host Families	15
4.1.2.	Procedural Aspects	16
4.1.3.	Role of Agencies	17
4.1.4.	Alternative Programmes for Working as a Nanny	17
4.2.	Remedies regarding the Exploitation of Au Pairs	17
4.2.1.	Labour Law	18
4.2.2.	Liability Law	22
4.2.3.	Criminal Law.....	26
4.2.4.	Supervisory Authorities and Bodies to Protect Au Pairs from Exploitation	27
5.	Comparative Analysis	32
5.1.	Austria	32
5.1.1.	Application	34
5.1.2.	Rights and Obligations	36
5.1.3.	Labour Law Consideration.....	37
5.1.4.	Compliance.....	38
5.1.5.	Alternative Programmes for Working as a Nanny	40
5.2.	France	41
5.2.1.	Application	41
5.2.2.	Rights and Obligations	43
5.2.3.	Labour Law Consideration.....	44
5.2.4.	Compliance.....	45
5.2.5.	Alternative Programmes for Working as a Nanny	45
5.3.	Germany	47
5.3.1.	Application	48
5.3.2.	Rights and Obligations	50
5.3.3.	Labour Law Consideration.....	50

5.3.4. Compliance.....	52
5.3.5. Alternative Programmes for Working as a Nanny	52
5.4. Comparison	54
6. Policy Suggestions	58
7. Conclusion.....	61
8. Sources	63
8.1. Legislative Documents.....	63
8.2. Documents by Authorities.....	65
8.3. Cases.....	70
8.4. Bibliography.....	71
9. Appendix	75
9.1. Semi-Structured Interviews with Au Pairs.....	75
9.1.1. Guiding Questions.....	75
9.1.2. Summary of Answers.....	76
9.2. Semi-Structured Interviews with FairWork Staff	79
9.2.1. Guiding Questions.....	79
9.2.2. Summary of Answers.....	80
9.3. Example of a Weekly Schedule for an Au Pair.....	82
9.4. Forms to Contact or Report to the Netherlands Labour Authority	84
9.5. Sample Contracts.....	88
9.5.1. Austria	88
9.5.2. France.....	93
9.5.3. Germany	101

List of Abbreviations

CCS	European Committee for Social Cohesion
CoE	Council of Europe
DCC	Dutch Civil Code
EEA	European Economic Area
ELA	European Labour Authority
EU	European Union
ILO	International Labour Organization
INS	Immigration and Naturalization Service
NGO	Non-Governmental Organization
NLA	Netherlands Labour Authority
PICUM	Platform for International Cooperation on Undocumented Migrants

1. Introduction

Camila (fictional character) steps off her flight in Amsterdam with a head full of dreams. In her mid-twenties and full of ambition, the young woman from Peru envisions twelve months of cultural immersion, mastering the Dutch language, and preparing for a future that includes university studies in the Netherlands. She is set to live with a host family, assisting them with daily tasks and childcare, while embracing the experience of a cultural exchange in the Netherlands. Camila's experiences as an au pair, however, quickly shatter those expectations. Camila's first host family neglects her basic needs and disregards her wellbeing. She lives in a 5m2 room in the basement which she cannot even lock and is told that she must pay for her own food because the family does not want her to use the kitchen for her own private needs. The cultural exchange she had hoped for is replaced with feelings of isolation and exploitation. Hoping to escape these conditions, she moves to another host family, only to face an even greater burden. Here, she has to work double the legally permitted hours, starting at 7 a.m. and finishing at 6 p.m., six days a week - leaving her little time to explore the beautiful small cities of the Netherlands and enjoy the experiences that drew her to the Netherlands in the first place. Instead of the fulfilling journey she had envisioned, Camila finds herself trapped in a cycle of overwork and unmet expectations.

While for many au pairs their experience abroad can be a positive one - offering opportunities for personal growth, language acquisition, meaningful cultural exchange, and warm relationships with host families - Camila's story equally mirrors the struggles of many young people, primarily women, who arrive in the Netherlands as au pairs, hoping to embark on an enriching cultural exchange but instead find themselves in situations that blur the line between work and exploitation. For many families, hosting an au pair constitutes an attractive and cost-effective solution to the increasing problems of finding the right work-life balance. Expensive and inflexible childcare offers, combined with increasingly long and irregular working hours, often make au pairs the most affordable option available for childcare.¹ Accordingly, the growing demand for au pair labour, also within the Netherlands, must be understood within the broader context of labour shortages in Europe's care sector, and the scarcity of available and affordable formal care options for families. These gaps are often filled by precarious intra-EU migrants, or more commonly, non-EU workers, who take on the role of au pairs.²

In the Netherlands, the au pair programme is meant to be a cultural exchange experience. According to Dutch au pair regulations, au pairs should live with a host family, engage in cultural learning, and assist with light household tasks for no more than 30 hours a week, while earning around 340 euros per month. In exchange, they should receive room and board, as well as the opportunity to immerse themselves in Dutch society and culture. However, an increasing

¹ Rosie Cox, 'Gender, work, non-work and the invisible migrant: au pairs in contemporary Britain' (2018) 4 Palgrave Communications 121; Catharina Calleman, 'Cultural exchange or cheap domestic labour: constructions of "au pair" in four Nordic countries' in Lise Widding Isaksen (ed), *Global Care Work: Gender and Migration in Nordic Societies* (Nordic Academic Press 2010).

² Platform for International Cooperation on Undocumented Migrants, 'Joint Recommendations for the European Care Strategy Regarding Migrant Care Providers and Service Users' (2022) <<https://picum.org/wp-content/uploads/2022/03/Joint-recommendations-EU-Care-Strategy-migrant-care-providers-and-service-users-17-March.pdf>> accessed 21 November 2024.

number of au pairs report that their experiences do not align with these requirements.³ Far from engaging in cultural exchange, many au pairs are faced with heavy workloads, with some tasked with caring for children with special medical needs or performing work that goes far beyond light household tasks. Moreover, in addition to the often-missing cultural exchange component and/or work that exceeds the ‘light household work’ threshold, some cases also involve severe privacy violations, intimidation, (sexual) coercion or isolation.⁴

Under the current system, au pairs are expected to work approximately 30 hours per week, corresponding to roughly 120 hours per month, for a stipend of just 340 euros - ultimately amounting to a wage of approximately 2.8 euros per hour. The Dutch au pair programme may have originally been designed to offer young people from abroad opportunities for cultural exchange and international experiences while providing host families with childcare support. However, over time, it seems that the focus may have shifted, with the programme increasingly being advertised as a more cost-effective alternative to formal childcare. This raises serious questions about the true nature of the au pair programme and whether it is being exploited as a means to access cheap labour, rather than providing the cross-cultural experience for young people it was initially intended to offer.⁵

The purpose of this memorandum is to assess the current Dutch au pair programme, identify its shortcomings, and explore potential reforms or alternatives to improve the current system. In doing so, the analysis is structured around the following broad research question:

To what extent does the current Dutch au pair system prevent labour exploitation, and how can it be reformed to better protect au pairs while preserving its role as a cultural exchange programme?

The analysis will begin with an overview of how the current au pair programme operates in practice, drawing on empirical data from reports and interviews with both FairWork staff and au pairs themselves. This section will shed light on the lived experiences of au pairs, particularly regarding exploitation, working conditions, and the gap between the programme’s intended cultural exchange component and how it actually works in practice. Following this, the memorandum will examine the relevant international and European legal frameworks that govern au pair work, providing a broader context for the regulations in place. A detailed analysis of the present regulations in the Netherlands will then be conducted, including relevant case law. Here, the available remedies for au pairs experiencing exploitation will be explored, considering Dutch criminal law, liability law, and labour law. To further enrich the analysis, the memorandum will also include a comparative study of the au pair systems in Austria, France, and Germany. This chapter will highlight how these countries structure their au pair

³ La Strada International, ‘Netherlands proposes new Au Pair regulations to combat exploitation’ (10 November 2021) <<https://www.lastradainternational.org/news/au-pair-regulations-to-be-changed-in-the-netherlands-to-combat-exploitation/>> accessed 22 January 2025.

⁴ Ministerie van Sociale Zaken en Werkgelegenheid (Ministry of Social Affairs and Employment), ‘Exploratory study of labour exploitation and serious disadvantage in domestic work in the Netherlands’ (16 September 2021) <<https://www.nllabourauthority.nl/publications/reports/2021/09/16/exploratory-study-of-labour-exploitation-and-serious-disadvantage-in-domestic-work-in-the-netherlands---summary>> accessed 22 January 2025.

⁵ JMD Schans, M Galloway and L Lansang, ‘Au Pairs in Nederland: Culturele uitwisseling of arbeidsmigratie?’ (Au pairs in the Netherlands: Cultural exchange or labour migration?, 2014) <<https://berthub.eu/tkconv/document.html?nummer=2014D11604>> accessed 29 November 2024.

programmes. For all four countries investigated, it will also be examined whether there are alternative programmes that enable legal (temporary) work as a nanny. Based on the insights gathered, the memorandum will make an attempt to assess whether the current Dutch au pair programme provides for enough tools to effectively combat labour exploitation and provide recommendations for potential reforms or alternatives to the current system with the ultimate goal of preventing and combatting such exploitation.

It is important to note that this memorandum focuses specifically on au pairs from third countries, meaning citizens from outside the EU/EEA. These individuals face distinct challenges compared to their EU/EEA counterparts, particularly in terms of legal status, working conditions, and access to protection mechanisms. Additionally, the analysis is limited to documented au pairs – i.e. those who hold the appropriate residence permits.

2. The Dutch Au Pair Programme in Practice

Before examining the legal framework that governs the Dutch au pair programme, this chapter focuses on how the programme operates in practice, with a particular emphasis on the lived experiences of au pairs and the issue of exploitation. Using a combination of desk research and interviews, the aim is to provide a concise overview of the realities faced by au pairs in the Netherlands. Interviews were conducted with au pairs who have worked in the Netherlands and staff from FairWork. These conversations revealed key aspects of au pairs' day-to-day lives - including their working conditions, interactions with host families, and the challenges of living in a foreign country.

2.1. Interviews with Au Pairs

A total of four au pairs who worked in the Netherlands were interviewed. In order to protect their privacy, pseudonyms have been used throughout the memorandum. While the names have been changed, the experiences and accounts shared remain authentic. This section provides an overview of the general findings that emerged from these interviews, offering insights into recurring themes, such as the dynamics between au pairs and host families, the balance (or imbalance) between cultural exchange and work, and the vulnerabilities inherent in the au pair programme. Extended summaries of each respective interview have been included in the appendix (section 9.1). These summaries provide deeper insights into the personal stories of the au pairs, highlighting the unique challenges they encountered.

The most recurring theme was the disconnect between agreed-upon terms with the host families and actual working conditions. The au pairs interviewed described workloads that (far) exceeded the 30-hour weekly limit, often taking on a wide range of tasks beyond childcare - including cooking, cleaning, and physically strenuous chores such as moving heavy furniture. These excessive demands were aggravated by unfulfilled promises from host families, such as the failure to provide money to attend language classes, museum passes, or opportunities to engage in cultural activities. Moreover, interactions with the host families also presented difficulties, with some au pairs recounting awkward or inappropriate behaviour, such as being exposed to private family disputes or receiving unwelcome personal comments that made them feel uncomfortable and undervalued.

Privacy was another common concern; interviewed au pairs noted inadequate living arrangements, such as bedrooms without locks, which left them feeling vulnerable and deprived of personal space. Lastly, several au pairs reported insufficient or poor-quality food provided by their host families. Together, these challenges reveal a troubling pattern of exploitation and neglect, where the intended balance between cultural exchange and fair working conditions often seems to tip in favour of the host families.

In addition to poor working conditions and disappointing relationships with the host families, the au pairs interviewed also reported dissatisfaction with the support provided by their agencies. When issues arose during their stay in the Netherlands, many agencies tended to dismiss concerns as cultural misunderstandings or differences, often downplaying the seriousness of the problems the au pairs encountered. Instead of offering meaningful assistance, agencies sometimes pressured au pairs to remain in placements that were clearly problematic,

discouraging them from seeking alternatives or terminating their arrangements. This lack of effective support not only undermined the trust au pairs placed in their agencies but also left them vulnerable to continued exploitation, as they were often left to navigate difficult and uncomfortable situations on their own.

Despite the challenges faced by many au pairs, some still found value in the cultural exchange opportunities facilitated by their host families. For instance, several au pairs expressed appreciation for the opportunity to travel and visit new places, gaining exposure to European culture that they would not have experienced otherwise. Host families who genuinely engaged in these exchanges also introduced au pairs to traditional cuisines and local customs, creating moments of connection and learning that were appreciated.

Lastly, the au pairs were also asked for recommendations on how the au pair programme could be improved in their view. One key suggestion was the implementation of routine inspections or regular check-ins with au pairs throughout their placements. This would help ensure that the working conditions and living arrangements align with the programme's guidelines and allow for early identification of potential issues. Additionally, the interviewed au pairs stressed the importance of mandatory training for host families, including orientation on cultural sensitivity, expectations, and the specific guidelines of the programme. Such training could better equip host families to understand the needs and rights of their au pairs, which would ultimately foster healthier and more respectful relationships. Another recommendation was the introduction of stricter regulations, particularly clearer and more enforceable rules regarding working hours, living conditions, and the obligations of host families.

2.2. Interviews with FairWork Staff

In addition to the interviews with the au pairs, interviews were also conducted with three staff members from FairWork to gain a deeper understanding of the Dutch au pair programme and some common challenges au pairs face within this programme. These interviews provided valuable insights into the more systematic issues contributing to exploitation and mistreatment. The general findings of these interviews are again summarized in this section, with extended summaries of each respective interview being available in the appendix (section 9.2).

One of the primary concerns raised was the frequent exploitation of au pairs, who are often treated as inexpensive labour rather than as participants in a cultural exchange. Many au pairs report being assigned tasks that go well beyond the 'light household duties' that were agreed upon. These duties often extend into long working hours, sometimes involving demanding physical labour or caregiving responsibilities - including looking after individuals with special medical needs. Such tasks can be physically and emotionally demanding, especially when they were not part of the original agreement. FairWork staff also noted that verbal agreements between au pairs and host families often lead to confusion and exploitation. Without formal, written contracts, many au pairs find themselves subjected to discrepancies between what they were told before starting their placement at the host family and the tasks they are actually required to perform.

Regarding the role of agencies, FairWork staff highlighted that many agencies fail to properly mediate disputes between au pairs and host families or conduct regular check-ins to ensure that working and living conditions align with the programme's guidelines. While there are some

agencies that exhibit positive practices, such as offering conflict mediation services, these are unfortunately exceptions rather than the rule. In many cases, agencies do not actively intervene to protect au pairs, leaving them to resolve issues on their own.

In light of these ongoing issues, several recommendations for improvement were put forward. One key recommendation was the introduction of stronger government control, drawing inspiration from Belgium's monitoring system. In Belgium, authorities conduct routine checks to ensure compliance with programme standards. Such regular inspections could provide a safety net for au pairs, ensuring that any issues are identified and addressed before they escalate. Another crucial recommendation was for agencies to be held accountable for ensuring that host families comply with the programme's rules and guidelines. Agencies should take a more active role in overseeing placements and ensuring that both au pairs and host families fulfil their obligations. Finally, FairWork staff emphasized the importance of educating host families about cultural sensitivity and the true purpose of the au pair programme. Providing host families with a better understanding of the cultural exchange aspect and their responsibilities would help create more respectful and fair relationships between au pairs and their hosts.

2.3. Existing Research on the Au Pair Programme

The findings from the interviews with au pairs and FairWork staff align closely with insights from existing research on the Dutch au pair programme. Desk research highlights recurring issues of exploitation, inadequate support, and the failure to maintain the programme's intended focus on cultural exchange.

A report by La Strada International highlights that many au pairs are subjected to excessive workloads and tasks far beyond 'light household duties', confirming interview findings about the frequent disregard for programme guidelines. It also stresses the importance of stricter government oversight and routine inspections, mirroring recommendations from both au pairs and FairWork staff.⁶ An investigation by Journalismfund Europe corroborates reports of exploitation, noting that au pairs in the Netherlands often face unreasonable working conditions - including long working hours, inadequate living arrangements, and limited access to cultural activities. The study also describes how agencies frequently downplay complaints or fail to address disputes effectively, leaving au pairs vulnerable and unsupported.⁷

Prior research on Filipina au pairs in the Netherlands, conducted by a master's student in collaboration with FairWork, further illustrates the systemic challenges faced by participants in the Dutch au pair programme. The study emphasizes that au pairs are often treated as low-cost domestic labour rather than cultural exchange participants, with verbal agreements leading to unclear expectations and breaches of initial terms.⁸ Other (older) available literature on the working and living conditions of Filipina au pairs in the Netherlands confirms similar themes of

⁶ La Strada International, 'Netherlands proposes new Au Pair regulations to combat exploitation' (10 November 2021) <www.lastradainternational.org/news/au-pair-regulations-to-be-changed-in-the-netherlands-to-combat-exploitation/> accessed 4 January 2025.

⁷ Journalismfund Europe, 'The Pains of Au Pairs Living with Foreign Families' (16 February 2024) <www.journalismfund.eu/the-pains-of-au-pairs> accessed 3 January 2025.

⁸ FairWork, 'Who Cares about Au Pairs? A Study on the Work and Social Protection Experiences of Filipina Au Pairs in the Netherlands' (2 April 2023) <www.fairwork.nu/wp-content/uploads/2021/05/Research-Summary-Filipino-Au-Pairs-1.pdf> accessed 3 January 2025.

exploitation, poor working conditions, and inadequate agency support - underscoring the vulnerability of au pairs due to their dependence on host families and agencies, as well as their limited knowledge of their rights under the programme.⁹ This also aligns with interview accounts describing a lack of meaningful assistance from agencies.

Together, these sources confirm the recurring challenges faced by au pairs in the Netherlands, underscoring the need for improved oversight, stricter regulations, and better support mechanisms to ensure the programme functions as a true cultural exchange rather than a source of exploitative labour.

⁹ Diana Oosterbeek-Latoza, 'The Filipina Au Pairs in The Netherlands' in Filomenita Mongaya Hoegsholm (ed), *In the Olde Worlde: Views of Filipino Migrants in Europe* (Philippine Social Science Council 2007).

3. International and European Legal Framework

The previous chapter illustrated the discrepancies between the intended goals of the Dutch au pair programme and the realities many au pairs face, including excessive working hours, inadequate living conditions, and a lack of cultural exchange. These systemic issues raise critical questions about the adequacy of existing safeguards and the underlying structures that enable such exploitation. To address these challenges, it is essential to situate the Dutch au pair system within the broader legal context governing au pair placements on the international level. Given the cross-border nature of au pair placements, the regulation of such placements has been a subject of discussion within key international bodies, including the International Labour Organization (ILO), the Council of Europe (CoE), and the European Union (EU). The aim of this chapter is to provide a concise overview of the regulatory measures that these bodies have adopted in this area, as well as a brief discussion of the challenges and limitations of these frameworks, particularly in terms of implementation and enforcement. By analysing these frameworks, the chapter provides a basis for assessing whether the Dutch au pair system aligns with these standards and offers insights into whether and how the system can be reformed to better protect au pairs.

3.1. International Labour Organization

The ILO, a specialized agency of the United Nations, plays a crucial role in addressing labour and social issues worldwide.

3.1.1. Domestic Workers Convention, 2011 (No. 189)

In 2011, the ILO adopted the Domestic Workers Convention (No. 189)¹⁰, which aims to improve the rights and working conditions of domestic workers. The Convention establishes obligations for states regarding the rights of domestic workers. Key provisions include protection against violence¹¹, the establishment of a domestic minimum wage¹², and the regulation of private employment agencies¹³. The Convention was supplemented by a recommendation.¹⁴

So far, 38 states have ratified the Domestic Workers Convention, including several European nations such as Belgium, Finland, Germany, Ireland, Italy, Norway, Portugal, Spain, Sweden, and Switzerland.¹⁵ The Netherlands is not among the treaty parties.

¹⁰ Convention concerning decent work for domestic workers (adopted 16 June 2011, entered into force 5 September 2013) ILO C189 (Domestic Workers Convention).

¹¹ *ibid* art 5.

¹² *ibid* art 11.

¹³ *ibid* art 15.

¹⁴ ILO Recommendation R201; Recommendation concerning Domestic Workers Recommendation (Decent Work for Domestic Workers) (100th Conference Session 16 June 2011).

¹⁵ ILO, 'Ratifications of C189' (Normlex, Ratification by conventions) <<https://normlex.ilo.org>> accessed 12 January 2025.

3.1.2. Scope of Application regarding Au Pairs

The Convention defines ‘domestic workers’ narrowly, stipulating that they must work regularly within an employment relationship.¹⁶ This definition excludes au pairs, who typically participate in a cultural exchange arrangement rather than engage in a traditional employment relationship. Au pairs therefore do not benefit from this protection as they are not covered by the treaty. The Convention can only be relevant for au pairs if they are also classified as domestic workers in the context of an employment relationship. The question of when such an employment exists under national law is discussed later in the country reports for the Netherlands, Austria, France and Germany as part of their respective labour law consideration.

The drafting history of the Convention provides insight into the ambivalent perception of au pairs.¹⁷ On the one hand, a conference report from 2010 - one year before the Convention was adopted - pointed out the risks of abuse for au pairs. It called for the regulation of their working conditions and emphasised their dual role ‘as both workers and young people on a cultural exchange’.¹⁸ On the other hand, some states argued that au pairs should primarily be viewed through the lens of cultural exchange rather than labour rights. For instance, the Netherlands questioned ‘whether workers performing household work just a few half-days per week should be afforded the same protection as regular domestic workers.’¹⁹

As a result, au pairs remain unprotected at the ILO level – not only because the Netherlands has not ratified the Domestic Workers Convention, but also because the treaty's scope inherently excludes them. This situation underscores the ongoing debate regarding whether au pairs should be classified as workers or as a distinct category altogether. From an international law perspective, this has created a regulatory gap that remains relevant and requires attention from states.

3.2. Council of Europe

The CoE’s involvement in au pair migration dates back to the late 1960s when the growing popularity of au pair arrangements across the world highlighted the need for international regulation. This resulted in the European Agreement on ‘Au Pair’ Placement²⁰, which, up until today, remains the only international legal instrument specifically addressing au pair arrangements. Opened for signature in 1969, the Agreement came into force in 1971.

3.2.1. Context Leading to the Adoption of the Agreement

The preamble of the Agreement and the Explanatory Report to the Agreement provided by the CoE provides valuable insight into the context that led to its adoption. Historically, au pair

¹⁶ Convention concerning decent work for domestic workers (adopted 16 June 2011, entered into force 5 September 2013) ILO C189 (Domestic Workers Convention), art 1(b), (c).

¹⁷ Helle Stenum, ‘Abused Domestic Workers in Europe: The Case of Au Pairs’ (European Parliament Note, PE 453.209, 2011) 29f
<www.europarl.europa.eu/document/activities/cont/201110/20111020ATT29946/20111020ATT29946EN.pdf> accessed 12 January 2025.

¹⁸ ILO (99th Session 2010) Report IV(1): Decent work for domestic workers (2 April 2009) 34.

¹⁹ ILO (99th Session 2010) Report IV(2): Decent work for domestic workers (3 March 2009) 62.

²⁰ European Agreement on ‘Au Pair’ Placement (adopted 24 November 1969, entered into force 30 May 1971) ETS No 068.

placements had been informal agreements between families known to each other or arranged through mutual contacts. However, by the late 1960s, the practice had evolved into a broader social phenomenon involving tens of thousands of young people, predominantly women, traveling across Europe to seek cultural and educational exchange opportunities abroad. These individuals fall into a unique category as they belong neither to the students category nor to the workers category. Rather, au pairs constitute a special category which has features of both, focusing on cultural exchange. According to the CoE, it is exactly this distinct status, combined with the cross-border dimension of au pairing, that underscored the need for special arrangements and adequate social protection, ultimately leading to the creation of the European Agreement on ‘Au Pair’ Placement.²¹

3.2.2. Objectives and Key Features of the Agreement

The Agreement encompasses 22 Articles in total which aim to create a standardized framework to protect the rights and clarify the responsibilities of both au pairs and host families. It includes provisions to ensure that au pairs receive adequate board and lodging (ideally a separate room), cultural and language-learning opportunities, pocket money, and a balanced workload of no more than five hours per day.²² The agreement also requires written contracts to outline key terms of placement²³ and encourages states to provide social protection for au pairs in cases of illness, maternity, or accidents²⁴. However, the Agreement neither specifies the amount of free time, nor the minimum allowance that au pairs should receive. Rather, it merely stipulates that a contract must be formulated between the au pair and the host family to address these concerns.²⁵

3.2.3. Limitations of the Agreement

Despite its initial promise as a pioneering framework for regulating au pair arrangements on a cross-border basis, the agreement has faced significant challenges in its implementation. One of the most critical challenges has been its limited ratification. In 1984, the European Commission recommended EU member states to ratify the au pair agreement, considering the significant differences between the, at the time, ten member states as regards the protection offered to persons making use of the au pair placement system.²⁶ Yet, to date, only five member states of the CoE - France, Spain, Denmark, Italy, and Norway - have ratified the agreement. Luxembourg, one of the original signatories, revoked its ratification in 2002, further narrowing its scope.²⁷

Next to the limited number of ratifications, cooperation and evaluation among the contracting states also seems to have faded away. The Agreement, under Article 13, obliges the contracting

²¹ *ibid*; Council of Europe, ‘Explanatory Report to the European Agreement on Au Pair Placement’ (1969) <<https://rm.coe.int/16800c92f7>> accessed 21 November 2024.

²² art 8-9.

²³ art 6.

²⁴ art 10.

²⁵ art 6.

²⁶ European Commission, ‘COMMISSION RECOMMENDATION of 20 December 1984 concerning a European Agreement on au pair placement sponsored by the Council of Europe’ 85/64/EEC.

²⁷ Council of Europe, ‘Chart of signatures and ratifications of Treaty 068’ (28 November 2024) <<https://www.coe.int/en/web/conventions/full-List?module=signatures-by-treaty&treatynum=068>> accessed 28 November 2024.

states to report to the CoE on its implementation, with the European Committee for Social Cohesion (CCS) designated as the body responsible for monitoring compliance. However, this reporting mechanism has not been used since 1998.²⁸

Moreover, as briefly highlighted in the previous section, the agreement lacks clear and enforceable minimum standards. Although it outlines certain rights and responsibilities for au pairs and host families, those rights remain ambiguous and open for interpretation. For instance, Article 8 of the Agreement stipulates that au pairs should receive pocket money. Yet, it does not specify the amount or the intervals at which such pocket money should be paid. This lack of enforceable minimum standards leaves room for inconsistent practices among contracting states and undermines the Agreement's ability to promote a more harmonized framework for au pair placements. The inadequacy of the agreement is also reflected in a statement by the European Parliament in 2011, which acknowledged that the agreement 'cannot be characterized as a strong mechanism for the international regulation of au pair migration'.²⁹

However, despite its limited authority, the Agreement still exerts influence on certain states, even those that have not ratified it. For instance, Germany, although not a ratifying state, has drawn inspiration from the principles outlined in the Agreement to shape its own national laws on au pair placements.³⁰ This suggests that, even though the Agreement itself may not, by itself, be a significant regulatory tool, its core ideas inspire and inform the policies of certain countries.

3.3. European Union

Given the ineffectiveness of the European Agreement on 'Au Pair' Placement, au pairs continued to not be covered by any common European rules regarding the conditions of their admission and the rights and obligations they have during their stay – a matter of concern in view of the evidence of exploitation affecting this vulnerable group across the EU. However, the lack of regulation specific to au pairs was not the sole or even primary reason for legislative action at the EU level. In 2013, the European Commission came up with a legislative proposal aimed to address broader issues surrounding the admission and stay of third-country nationals participating in various cultural exchange and educational programmes within the EU (including au pairs - alongside other categories like researchers, students, and volunteers).³¹ This proposal ultimately culminated in the adoption of Directive 2016/801 in 2016.³²

²⁸ European Parliament, 'Abused Domestic Workers in Europe: The case of au pairs' (2011) <<https://www.europarl.europa.eu/document/activities/cont/201110/20111020ATT29946/20111020ATT29946EN.pdf>> accessed 26 November 2024.

²⁹ *ibid.*

³⁰ *Bundesagentur für Arbeit* (German Federal Employment Agency), 'Au pairs in German families' <www.arbeitsagentur.de/datei/au-pair-in-germany-en_ba030535.pdf> accessed 12 January 2025.

³¹ General Secretariat of the Council, 'Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing' COM/2013/0151 final.

³² DIRECTIVE (EU) 2016/801 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) (2016) OJ L 132.

3.3.1. Objectives and Scope of Directive 2016/801

Directive 2016/801 establishes a framework for the entry and residence of third-country nationals in EU member states for periods exceeding 90 days, covering various categories including research, studies, training, voluntary service, pupil exchange schemes, and au pairing.³³ The aim of the Directive is to provide a more coherent legal framework for different categories of third-country nationals coming to the EU, simplify and streamline existing provisions across member states, and set out general EU rules on conditions of entry and residence.³⁴ Importantly, the Directive does not regulate the admission or residence of third-country nationals for employment purposes. However, member states retain the discretion to classify specific categories covered by the Directive, including au pairs, as being in an employment relationship based on national law, collective agreements, or practice.³⁵ Accordingly, the employment status of au pairs is also not predetermined under EU law but rather left to member states' discretion.

As a minimum harmonization Directive, member states are allowed to maintain and adopt more favourable provisions for third-country nationals than those stipulated under the Directive. Moreover, the Directive should be applied without prejudice to more favourable provisions contained in EU law and applicable international instruments.³⁶

3.3.2. Key Provisions Related to Au Pairs

Under Directive 2016/801, an *au pair* is defined as 'a third-country national who is admitted to the territory of an EU member state to be temporarily received by a family in order to improve their linguistic skills and knowledge of the host country in exchange for light housework and taking care of children'.³⁷ This definition highlights the main objective of an au pair arrangement: to enhance the au pair's understanding of the language and culture of the host state. A *host family* is defined as 'a family temporarily receiving an au pair and sharing its daily family life in the territory of a member state on the basis of an agreement concluded between that family and the au pair'.³⁸

The Directive outlines specific conditions for the admission of au pairs under Article 16, which go beyond the general requirements for third-country nationals seeking admission to the EU – those including a valid travel document, sufficient resources to cover subsistence and return travel costs, and a valid health insurance for the whole duration of the planned stay.³⁹ Firstly, an au pair must provide a formal agreement with the host family, outlining the key aspects of the arrangement, such as the amount of the pocket money the au pair will receive, the number of hours they are expected to work, and provisions allowing the au pair to attend language courses.⁴⁰ Secondly, the au pair must be between the ages of 18 and 30, although member states may allow exceptions for older applicants in exceptional cases.⁴¹ Thirdly, the au pair must

³³ art 1.

³⁴ recital 2.

³⁵ recital 37.

³⁶ art 4.

³⁷ art 3(8).

³⁸ art 3(15).

³⁹ art 7.

⁴⁰ art 16(1)(a).

⁴¹ art 16(1)(b).

demonstrate that the host family, or an organization mediating the placement, will take responsibility for their living expenses, accommodation, and accident risk during their stay.⁴² In addition to those requirements, member states may, at their discretion, also ask third-country nationals applying to be admitted as an au pair on their territory to provide evidence of basic level of knowledge of the host country's language, proof of secondary education or professional qualifications.⁴³ Furthermore, member states may require that au pair placements can only be made through authorized organizations (i.e. agencies) that comply with national laws.⁴⁴

As for the duration of the stay, the maximum length of stay for an au pair is one year.⁴⁵ During their placement, an au pair is allowed to work a maximum of 25 hours per week and the au pair must have at least one full day off each week.⁴⁶ Moreover, member states may set a minimum amount of pocket money to be paid to the au pair for their work.⁴⁷ This minimum amount is not settled in the Directive but is left to the discretion of the individual member states.

3.3.3. Limitations of Directive 2016/801

Directive 2016/801, while aiming to establish a more coherent framework for the entry and residence of au pairs in the EU, suffers from significant limitations that ultimately undermine its effectiveness in safeguarding the rights of au pairs and ensuring uniform application across member states. The most critical limitation is that the provisions regarding au pairs are optional, meaning that member states are not obliged to transpose them into national law.⁴⁸ A 2024 ad-hoc query by the European Migration Network Netherlands, initiated by the European Commission, revealed that fourteen member states have not implemented the au pair provisions of the Directive into national law. While the Netherlands has transposed the provisions on au pairs into national law, many other EU member states lack specific regulations for au pairs - leaving them without tailored legal protection.⁴⁹

In addition to the optional nature of the au pair provisions, even in member states that have transposed the au pair provisions into national law (which, as previously mentioned, includes the Netherlands), the substantive rights that au pairs derive from the Directive remain poorly defined, offering significant discretion to national authorities. This issue was highlighted in a comparative report by the Belgium-based NGO Platform for International Cooperation on Undocumented Migrants (PICUM), which examined the implementation of the Directive's au pair provisions in Belgium, Germany, Luxembourg, and the Netherlands. The report⁵⁰ illustrates the variability in how these member states have interpreted and applied key aspects of the Directive, resulting in significant disparities in the rights and protections afforded to au pairs. Firstly, the au pairs' tasks and responsibilities remain vague under the Directive, referring

⁴² art 16(1)(c).

⁴³ art 16(2)(a-b).

⁴⁴ art 16(3).

⁴⁵ art 18.

⁴⁶ art 16(5).

⁴⁷ art 16(6).

⁴⁸ art 2.

⁴⁹ European Migration Network Netherlands, 'OPEN Summary of EMN Ad-Hoc Query No. [2024.18]' (19 March 2024) <https://www.emnnetherlands.nl/sites/default/files/2024-08/Summary%20Au%20Pair%20Regulations_def.pdf> accessed 2 December 2024.

⁵⁰ PICUM, 'PICUM's Input on the Application of EU Directive 2016/801 Concerning Au Pairs' (2023) <<https://picum.org/wp-content/uploads/2023/06/PICUMs-input-on-the-application-of-EU-Directive-2016-801-concerning-au-pairs.pdf>> accessed 2 December 2024.

broadly to 'light housekeeping and childcare tasks' to be outlined in agreements with host families. All four member states examined have adopted differing interpretations of this definition, leading to inconsistencies in the scope and nature of au pairs' duties. Secondly, while the Directive limits working hours to 25 hours per week, member states have implemented this provision differently. For example, Luxembourg adheres to the 25-hour limit, while Belgium reduced it to 20 hours. Conversely, Germany and the Netherlands allow up to 30 hours per week, exceeding the EU's recommended threshold. Thirdly, the Directive permits member states to establish minimum pocket money amounts to be paid to au pairs, but the amounts vary significantly. For instance, Luxembourg sets this at €463 per month, Germany at €280, Belgium at €450, and the Netherlands at €340. This lack of harmonization, together with insufficient data on actual payments, leaves au pairs' financial conditions subject to wide variability across the EU. Lastly, the Directive does not contain any specific provisions on monitoring of the au pairs' conditions in the host family, or on support and complaint mechanisms that should be made available within member states.

To conclude, Directive 2016/801 aimed to create a more unified framework for au pair placements but remains limited by its optional nature, with many member states choosing not to implement its provisions. Moreover, the vague nature of the existing provisions has led to significant disparities in working conditions, pay, and protection for au pairs across the member states that decided to implement the Directive for au pairs. Without mandatory rules or proper monitoring, the Directive falls short of addressing the vulnerabilities of au pairs.

3.4. Summary

The international and European legal framework for au pair placements remains fragmented and inadequate. The ILO's Domestic Workers Convention excludes au pairs due to their classification as participants in cultural exchange rather than employees, leaving them unprotected under this treaty. The CoE's Agreement on 'Au Pair' Placement has limited ratifications, vague standards, and diminished relevance today. Similarly, the EU's Directive 2016/801 offers an optional framework for member states and, accordingly, suffers from inconsistent implementation across the EU, leading to disparities in working conditions, financial compensation, and protections afforded to au pairs. Overall, the lack of harmonized, enforceable (international) standards leaves au pairs vulnerable to exploitation.

4. Au Pairs in the Netherlands

Building on the broader legal context surrounding international au pair placements, this chapter will focus on the Dutch au pair system. This chapter is organized around the following sections. It begins by outlining general information about the Dutch au pair programme and describes the legal rights and responsibilities that au pairs have during their stay. Next, it looks at the remedies available under Dutch labour law, liability law and criminal law and highlights the measures necessary to safeguard au pairs' rights.

4.1. The Dutch Au Pair Programme

Numbers au pairs (from outside the EU/EEA) per year⁵¹

Number of residence permits

	2023	2022	2021	2020	2019	2018
Total	1,980	1,630	1,380	1,200	1,470	1,400

Top three nationalities

	2023	2022	2021	2020	2019	2018
Philippine	710	580	500	440	470	440
South African	470	390	340	310	360	360
Brazilian	130	150	110	110	160	180

Note: The numbers are rounded to the nearest ten.

Every year, approximately 1,200 individuals, mainly from outside the European Economic Area (EEA), come to the Netherlands as au pairs. The Dutch au pair programme allows young people, generally aged 18–25, to live with a host family in the Netherlands and enjoy board and lodging there. The purpose is cultural exchange – i.e. getting to know the Netherlands and its culture.⁵² The au pair and host family both benefit from sharing and learning about each other's cultures.

4.1.1. Requirements for Au Pairs and Host Families

Requirements

Au pairs are allowed to perform light domestic work and their stay with the host family must meet certain conditions. These conditions are laid down in the Foreign Nationals Employment Act Implementation Decree (*Besluit uitvoering Wet arbeid vreemdelingen*):

- Au pairs are allowed to do light household tasks for the host family with a maximum of 8 hours per day, with a maximum of 30 hours per week.
- The daily work schedule of the au pair must be laid down in writing in a language they can understand.

⁵¹ *Immigratie- en Naturalisatiedienst* (Immigration and Naturalisation Service), 'Au Pairs' (n.d.) <<https://ind.nl/en/about-us/background-articles/au-pairs>> accessed 4 December 2024.

⁵² *Nederlandse Arbeidsinspectie* (National Labour Authority), 'Au Pairs' (n.d.) <<https://www.nlarbeidsinspectie.nl/onderwerpen/au-pairs>> accessed 4 December 2024.

- An au pair must have at least 2 days off per week, days on which no work is done at all.⁵³
- Cultural exchange: the purpose of being an au pair in the Netherlands is to learn more about Dutch society and culture.⁵⁴ The host family is responsible to facilitate the cultural exchange.⁵⁵

Research by the Scientific Research and Documentation Centre, commissioned by the Ministry of Security and Justice, found that 55% of au pairs in the Netherlands meet the au pair programme's requirements, showing that most families and au pairs do follow the guidelines. However, a significant portion does not (fully) adhere to these conditions.⁵⁶

Programme Duration

The au pair stay is typically for 12 months, though shorter stays are possible in some cases. Extensions beyond one year are generally not allowed, in line with the programme's cultural exchange objectives.

Tightened au-pair scheme

To safeguard the cultural nature of the au-pair scheme, then-secretary of state Broekers-Knol announced new rules in November 2021. The aim hereof was to limit the financial dependence of the au-pair scheme and prevent abuse.

Under these rules, au pairs may not be married or have (foster) children. Au pairs must submit an unmarried declaration and a self-assessment of non-parenthood. The au pair agency will be responsible for checking these declarations. The Dutch Immigration and Naturalisation Service (INS) will take additional steps to ensure that au pair agencies are well-informed about these requirements.

Additionally, individuals over 25 are now ineligible for the au pair programme, as older au pairs are more likely to have children or a partner who depends on their income, increasing the risk of misuse. Between 2011 and 2020, around 25% of au pair applications were submitted by individuals over age 25.⁵⁷

4.1.2. Procedural Aspects

Residence permit

Every host family must coordinate with the INS when hosting an au pair. Regardless of whether the au pair is from within or outside the EU, they must be registered with the INS as an au pair and, therefore, must enter the Netherlands through a recognized sponsor, such as an approved au pair agency. The INS then assesses whether the au pair qualifies for a residence permit, which is valid for up to one year. If the au pair is from a country outside the EU and requires a Regular

⁵³ *Nederlandse Arbeidsinspectie* (National Labour Authority), 'Au Pairs' (n.d.) <<https://www.nlarbeidsinspectie.nl/onderwerpen/au-pairs>> accessed 4 December 2024.

⁵⁴ Immigration and Naturalisation Service, 'Au Pairs' (*IND*, n.d.) <<https://ind.nl/en/about-us/background-articles/au-pairs>> accessed 4 December 2024.

⁵⁵ Complete Au Pair, 'What is an au pair and the cultural exchange program' (n.d.) <<https://www.completeaupair.nl/en/what-is-and-why-an-au-pair/>> accessed 2 December 2024.

⁵⁶ JMD Schans, M Galloway and L Lansang, 'Au Pairs in Nederland: Culturele uitwisseling of arbeidsmigratie?' (Au pairs in the Netherlands: Cultural exchange or labour migration?, 2014) <<https://berthub.eu/tkconv/document.html?nummer=2014D11604>> accessed 29 November 2024

⁵⁷ Immigration and Naturalisation Service, 'Au Pairs' (*IND*, n.d.) <<https://ind.nl/en/about-us/background-articles/au-pairs>> accessed 4 December 2024.

Provisional Residence Permit (*mvv*) to enter the Netherlands, the au pair agency will handle the *mvv* application. However, an *mvv* is not required if the au pair is from a country exempt from this requirement or already holds a residence document from a Schengen country. In these cases, an application for a regular residence permit is sufficient.⁵⁸ Failure to follow this policy may lead to violations of the Immigration Law (*Vreemdelingenwet*), exposing the host family to potentially significant fines.

Financial Allowance

Au pairs should receive a monthly stipend from the host family, typically around €300–€340. The host family is required to provide health and liability insurance for the au pair. Host families are responsible for organizing cultural activities, to ensure the au pair can learn about the Dutch culture.

4.1.3. Role of Agencies

Au pair agencies facilitate the matching of the au pair with the host family, take care of a contract between the au pair and the host family, act as intermediaries with the INS and aim to provide guidance and support. A few examples of au pair agencies are: Au Pair Holland, World Wide Au Pair B.V., Au Pair International, House-o-Orange Au Pairs, Au Pair Agency Mondial and AuPairWorld.⁵⁹

4.1.4. Alternative Programmes for Working as a Nanny

Apart from the au pair programme, there are no alternative schemes for third-country nationals to come to the Netherlands to work as nannies. Currently, the au pair scheme is the only available option to meet this need—both for families seeking such support and for individuals from non-EU countries who wish to work as nannies.

A work permit or residence permit is necessary for third-country nationals. In the case of au pairs, the employer must prove to the Dutch Employee Insurance Agency (UWV) that no suitable candidates from the Netherlands or EU/EEA are available for the job. This can be difficult because childcare positions are typically filled by local or EU candidates.

4.2. Remedies regarding the Exploitation of Au Pairs

This chapter discusses the remedies that exist in Dutch law against the exploitation of au pairs. In section 4.2.1, the remedies available under labour law, focusing on when an au pair contract qualifies as an employment contract and the safeguards that exist to prevent exploitation, will be analysed. After that, section 4.2.2 examines the application of liability law, particularly whether host families can be held liable for failing to provide a safe environment and whether au pairs are entitled to compensation in cases of harm or negligence. Next, in section 4.2.3, the role of criminal law in protecting au pairs from severe exploitation, abuse, or forced labour will be explored. The focus lies on these three areas of law - labour law, liability law, and criminal law - as they are the most critical for ensuring the legal protection of au pairs in the Netherlands. Finally, section 4.2.4 discusses the various supervisory authorities and bodies in the Netherlands that au pairs can turn to if they encounter problems or experience exploitation.

⁵⁸ *ibid.*

⁵⁹ Au Pair Holland <<https://aupairholland.org/>>; WORLD WIDE AU PAIR B.V. <<https://aupair-nanny.nl/>>; Au Pair International <<https://aupairinternational.nl/>>; House-o-Orange Au Pairs <<https://house-o-orange.nl/nl/welkom/>>; Au Pair Agency Mondial <<https://www.aupair-agency.nl/>>; AuPairWorld <<https://www.aupairworld.com/en>> accessed 10 January 2024.

4.2.1. Labour Law

In order for au pairs to invoke the protection of Dutch labour law, it must first be established that they have an employment agreement. This requires meeting three criteria: the au pair must perform work, receive remuneration, and there has to be a relationship of authority between the host family and the au pair. In this section, these criteria will be explained in more detail.

a) When does a contract for work qualify as an employment contract under Dutch law?

Article 7:610(1) of the Dutch Civil Code (hereafter: DCC) states that *'the employment contract is the contract whereby one party, the employee, undertakes to perform work in the service of the other party, the employer, for pay for a certain period of time.'* Article 7:610(1) DCC stipulates four requirements for an employment contract. However, the element 'for a certain period of time' is not relevant in practice. The three criteria are generally considered decisive, with the 'for a certain period of time' criterion adding little significance. Nevertheless, courts sometimes take it into account. Therefore, the focus will be on the other three requirements.

Work/labour

The concept of labour should be interpreted broadly. It can involve almost any type of work, whether mental or physical. Labour is deemed to exist once the worker is available to carry out tasks for the other party.⁶⁰

Remuneration/wage

Wages are the compensation an employer is obligated to pay to an employee in return for the work performed.⁶¹ For an employment contract to exist, there must be a right to compensation. If work is performed by volunteers who waive any claim to wages, an employment contract cannot exist. However, the wage element is satisfied if the parties agree on a very low payment. In such cases, an employment contract can still exist. The decisive factor is whether the employee has the right to receive compensation for their work (or actually receives it). Room and board can also be considered wages if this directly arises from the agreement.⁶²

Relationship of authority

It is generally accepted that this is the most distinguishing criterion for determining whether an employment contract exists. However, it is not always easy to decide whether a relationship of authority exists. Most relevant is whether the employer can give instructions to the employee how to carry out the work. Important aspects in this respect are: the nature and duration of the work, the way in which the work and the working hours are determined, the embedding of the work and of the person who carries out the work in the organization and business operations of the person for whom the work is carried out, whether or not there is an obligation to carry out the work in person, the manner in which the contractual arrangement of the relationship between the parties has been concluded, the manner in which the remuneration is determined and in which it is paid, the amount of the remuneration, and whether the person who carries out the work is exposed to a commercial risk.⁶³

⁶⁰ De Valk, in *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 3.2.1 (online, updated 12 March 2024).

⁶¹ Verhulp, in T&C BW, art. 7:610 BW, aant. *Definitie/gemengde contracten* (Definition/mixed contracts) (online, updated 1 July 2024).

⁶² De Valk, in *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 3.3.1 (online, updated 12 March 2024).

⁶³ Verhulp, in T&C BW, art. 7:610 BW, aant. *Definitie/gemengde contracten* (Definition/mixed contracts) (online, updated 1 July 2024).

So, according to Dutch law an agreement with a worker qualifies as an employment agreement when the employee works for a certain time for the employer, receives a remuneration and when there is a relationship of authority between the parties.

Training-employment contract

Before looking at the application of these criteria to au pairs, it is crucial to look at the training-employment agreement. The assessment of the criteria ‘work, authority, and remuneration’ is not completely decisive in determining the existence of an employment agreement. There is also a general assessment (holistic perspective) of whether the purpose or nature of the agreement primarily relates to work or to cultural exchange. This is not an additional requirement but rather a separate evaluation. Here the fundamental principle is that if the educational component outweighs the work component, the agreement does not qualify as an employment contract.

In case law, the focus is often on determining the primary purpose of the work – whether it is aimed at expanding personal knowledge and experience (not considered labour) or contributing to the company’s objectives (considered labour).⁶⁴ This also follows from the Supreme Court's reasoning. The Supreme Court ruled that if the primary purpose of the work is to make an (active) contribution to the company (and therefore not mainly aimed at achieving learning objectives), it then falls under ‘work’ as referred to in Article 7:610 of the DCC.⁶⁵

All of the above could be particularly relevant for au pair contracts, where the key question is whether the cultural and language exchange takes precedence over the work aspect. Therefore, this memorandum now explores the application to au pairs.

Application to au pairs

b) When does an au pair contract qualify as an employment contract under Dutch law?

Work

Au pairs are allowed to do light household tasks with the host family for a maximum of 8 hours a day, with a maximum of 30 hours per week. The focus should be on cultural exchange and not work.

The Court of Leeuwarden ruled on February 11, 2004, that in an agreement with an au pair, it is crucial to determine the primary focus of the arrangement.⁶⁶

The case concerned an au pair from Poland who, in 1999, responded to an advertisement placed by a Dutch family seeking domestic assistance for their children. She held a childcare diploma but was unemployed at the time. The au pair agreement was intended to last for one year. An agreement was reached stating that the au pair would assist for a maximum of 30 hours per week with the care of the two children and related light household tasks, in exchange for board, lodging, a weekly allowance, and the opportunity to learn about Dutch language and culture. The costs associated with obtaining au pair status and a residence permit were to be covered by the host family. Additionally, she was required to arrange health insurance, which was also reimbursed by the host family. Travel expenses would also be borne by the host family. The au pair was given the opportunity to attend a Dutch language course, which was likewise paid for

⁶⁴ De Valk, in *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 3.2.2.2 (online, updated 12 March 2024).

⁶⁵ *Hoge Raad* (The Supreme Court) 14 April 2006, ECLI:NL:HR:2006:AU9722, NJ 2007/447 m.nt. E. Verhulp (*Beurspromovendi*); *Gerechtshof Den Haag* (The Court of Appeal) 12 September 2023, ECLI:NL:GHDHA:2023:1813, RAR 2024/4.

⁶⁶ De Valk, in *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 3.2.2.1 (online, updated 12 March 2024); *Gerechtshof Leeuwarden* (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (*Boschieter/Dembinska*).

by the host family. She worked as an au pair for the family from October 10, 1999, to August 11, 2000, with some breaks for vacation and family visits to Poland. The stated purpose of the au pair's stay was to gain exposure to Dutch language and culture during her time in the Netherlands as an au pair. The au pair claimed, however, that her situation amounted to an employment relationship. She argued that she had performed work for the family for 30 or more hours per week and sought payment of wages and vacation allowance under the Minimum Wage and Minimum Holiday Allowance Act.⁶⁷

The subdistrict court granted her claim based on an employment contract for 40 hours per week. The court of appeal considered whether the elements of 'work', 'remuneration', 'relationship of authority (employment)' indicated the existence of an employment contract. Regarding the element of 'work', the court noted that the au pair, who held a childcare diploma but was unemployed at the time, responded to an advertisement placed by the host family in a Polish newspaper seeking domestic help for their children. The au pair subsequently performed these tasks. Therefore, the agreement was primarily focused on the performance of work. See the assessment of the other elements (remuneration and relationship of authority) under the relevant headings below. The court found insufficient evidence to conclude that cultural exchange was the primary purpose of the agreement.⁶⁸

What can be concluded from this case is that if the focus is on performing work in exchange for room and board, it qualifies as an employment contract.⁶⁹ If the purpose is to learn the language and culture, it does not qualify as an employment contract. There are a few important elements for deciding where the focus of the agreement lies:

- The purpose of the agreement: Is the agreement primarily aimed at performing work for the benefit of the employer? Or is the main purpose cultural exchange and/or broadening the au pair's knowledge and experience?
- The work element: Are tasks being performed on a regular basis, such as childcare or household duties? How many hours per week are the tasks performed, and what is the nature of the work (light, intensive, or regular duties)?
- Duration of the agreement: Has a fixed period been agreed upon for performing the work?
- Status as a household member: Are the au pair's tasks performed in the role of a 'family member' or 'household member'? Or is the relationship clearly focused on work and obligations?

The other two elements, remuneration and relationship of authority will be discussed now.

Remuneration/wage

Au pairs receive a monthly stipend. This amount is between 300-340 euros per month.

The same case from the Court of Leeuwarden that was discussed in the previous paragraph also mentioned the element '*remuneration*'. The Supreme Court determined that the provision of board and lodging, combined with a weekly payment of *f* 125, constituted the employer's compensation for the work performed. As such, the element of '*remuneration*' was deemed to

⁶⁷ *Gerechtshof Leeuwarden* (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (*Bosschieter/Dembinska*).

⁶⁸ *Gerechtshof Leeuwarden* (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (*Bosschieter/Dembinska*).

⁶⁹ De Valk, in *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 3.2.2.1 (online, updated 12 March 2024); *Gerechtshof Leeuwarden* (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (*Bosschieter/Dembinska*).

be present.⁷⁰ Here, it may be asked whether there is a form of compensation for the work performed, such as wages, board and lodging, or other benefits? The compensation must be clearly tied to the work performed to qualify as remuneration. This does not seem to be a decisive element, as the payment of *f* 125 could also indicate the existence of an au pair agreement. Therefore, it is not determinative in establishing whether an employment agreement exists.

The District Court of Midden-Nederland ruled on January 21, 2015, that a payment labelled as pocket money and clothing allowance did not prevent it from being considered wages and part of an employment contract with the au pair.⁷¹ The name given by the parties to the compensation is not relevant.⁷² However, this does not seem to be a decisive element, as the pocket money and clothing allowance could also indicate the existence of an au pair agreement. As such, it is not decisive in determining whether an employment agreement exists.

Relationship of authority

A relationship of authority will often be present, as the family will give instructions on how to perform the tasks in the household or how to take care of the children. So, this is not a decisive element either.

In the case of the District Court of Midden-Nederland of 2 October 2013 the District Court refers to a judgment of 11 February 2004 of the Leeuwarden Court of Appeal which has been mentioned before in this paragraph.⁷³ In that case it has been considered that the element of a '*relationship of authority*' was evident, as the care of the children and the performance of household tasks were so undefined that it is difficult to carry them out without some form of instruction.⁷⁴ This was also the case in the judgment of the District Court of Midden-Nederland on 2 October 2013. The fact that the au pair had to coordinate her absence with the host family indicates that a relationship of authority is present. Questions that are relevant to determine whether there is a relationship of authority are: does the host family or employer have the right to give instructions and exercise control over the au pair? Can the au pair independently decide how and when to carry out tasks, or is she bound by the host family's instructions? The nature of an au pair's activities—assisting with childcare and performing light household tasks—makes it difficult to imagine these duties being carried out without instructions from the employer/host family. Also, if an au pair has to coordinate her absence with the host family this indicates that a relationship of authority is present.

On 15 February 2018, the Central Netherlands District Court ruled that the relationship between the employee and a home care organization constituted an employment contract from the beginning rather than a learning/training agreement. This decision was based on the fact that the employee performed a substantial number of tasks independently from the outset, no learning objectives were ever established, and the home care organization provided no supervision.⁷⁵ So,

⁷⁰ *Gerechtshof Leeuwarden* (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (*Boschieter/Dembinska*).

⁷¹ De Valk, in *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 3.3.2 (online, updated 12 March 2024); *Rechtbank Midden-Nederland* (The District Court of Midden-Nederland) 21 January 2015, ECLI:NL:RBMNE:2015:1996.

⁷² De Valk, in *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 3.3.2 (online, updated 12 March 2024); *Rechtbank Midden-Nederland* (The District Court of Midden-Nederland) 21 January 2015, ECLI:NL:RBMNE:2015:1996.

⁷³ *Gerechtshof Leeuwarden* (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (*Boschieter/Dembinska*).

⁷⁴ *Gerechtshof Leeuwarden* (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (*Boschieter/Dembinska*).

⁷⁵ *Rechtbank Midden-Nederland* (The District Court of Midden-Nederland) 15 February 2018, ECLI:NL:RBMNE:2018:553; De Valk, in: *Arbeidsovereenkomst* (Employment agreement), art. 7:610 BW, aant. 7.2.2 (online, updated 12 March 2024).

important factors to take into consideration are: if a fair number of tasks were performed independently by the employee from the beginning, whether learning objectives have ever been formulated and whether there was any guidance or supervision of the employee by the employer.

Conclusion

The au pair stay is typically for 12 months, though shorter stays are possible in some cases. Extensions beyond one year are generally not allowed, in line with the programme's cultural exchange objectives. However, what if an au pair stays longer than one year and continues working after the expiry of the contract? Can you then argue that there is an employment contract? This question was central to the decision of the District Court of Midden-Nederland on 2 October 2013.

In this case a woman started working as an au pair for a host family in the Netherlands through an au pair agency. This agreement lasted for one year. After the au-pair period ended, she continued to perform work with the family, for which the family also continued to pay the monthly allowance. After a few years she called in sick and claimed the statutory minimum wage and overdue holiday pay starting from the date of the expiry of the au-pair contract, as well as continued pay during illness.⁷⁶ The District Court ruled that the woman continued to perform the same work after the end of the au-pair agreement as during the au-pair agreement, with the host family providing the monthly allowance and that the au pair received instructions. There was, therefore, the performance of work for pay for a certain period of time and a relationship of authority.⁷⁷ The concept of an au pair agreement is that it should not exceed one year. If it does, the focus shifts from the cultural exchange aspect to the employment aspect, which then becomes the dominant element. As a result, the agreement is considered an employment contract. Therefore, this (duration) is a decisive element.

The District Court in Sneek also ruled in two other cases that an au pair agreement should be regarded as an employment contract if the criteria of work, remuneration, a certain time and relationship of authority are met.⁷⁸

So, in the case of au pairs it can be said that, as long as the requirements of the au pair programme are followed, the cultural aspect is dominant over the work aspect, the remuneration that is paid is qualified as a stipend or expense allowance and not so much as payment for work (but once the criteria of the au pair programme are no longer met, the remuneration is seen as compensation for the work done) and the tasks done do not so much qualify as 'work', but rather as service provided as part of the cultural exchange, then an au pair agreement is in place. An au pair agreement is usually limited to one year or less. Therefore, if an au pair continues working beyond this period, this strongly indicates that the focus has shifted away from cultural exchange and language learning and is now primarily on performing work. The agreement then *may* be reclassified as an employment contract. The au pair can then claim wages and other employment rights.

4.2.2. Liability Law

In this paragraph, the following question will be answered: Which remedies does Dutch liability law offer in case of exploitation of au pairs in the Netherlands? First, the framework of Dutch

⁷⁶ *Rechtbank Midden-Nederland* (The District Court of Midden-Nederland) 2 October 2013, ECLI:NL:RBMNE:2013:4707, RAR 2014/8.

⁷⁷ *ibid.*

⁷⁸ *Rechtbank Leeuwarden* (The District Court of Leeuwarden) 31 July 2002, ECLI:NL:RBL EE:2002:AE9609, *JAR* 2002/237; *Kantonrechter Sneek* (The Subdistrict Court Judge of Sneek) 6 February 2002, 95683/CV EXPL 01-931 (m.nt. from Prof. mr. E. Verhulp), *JAR* 2002/58.

liability law will be explained shortly. After this, Dutch liability law will be applied to the case of exploitation of au pairs, this will be done by dissecting it into two parts: liability of the host family and liability of the au pair agency. Following, relevant case law consisting of grounds which can be used by au pairs when proceeding will be explained. This paragraph will end with a conclusion.

Dutch Liability Law

Liability law (*aansprakelijkheidsrecht*) is one of the key areas of civil law.⁷⁹ Liability concerns the distribution of damages. The basic principle in Dutch law is that everyone must bear their own damages unless someone else is required to pay for them, this can be found in article 6:162 (1) of the Dutch Civil Code:

‘He who commits an unlawful act against another, which can be attributed to him, is obliged to compensate for the damage that the other consequently suffers.’⁸⁰

Thus, liability law provides rules under which a person does not have to bear their own damages but instead shifts them to another party, this party is then liable for the damages.⁸¹ So, it serves as a fundamental pillar of the legal system, ensuring that individuals and organizations can be held accountable for wrongful acts, such as contractual breaches that cause harm.

Dutch liability law can be divided into two, on the one hand risk liability (*risicoaansprakelijkheid*) and on the other hand fault-based liability (*schuldaansprakelijkheid*). Risk liability is a form of liability in which a person can be held responsible due to a certain status, for example; parents of children under the age of 14 years according to article 6:164 of the Dutch Civil Code.⁸² Fault-based liability means that a person is liable for damages caused by their own actions or wrongful acts. For example, when someone has acted culpably (e.g. breaching of a contract) or failed to act when they should have. The difference is that with fault-based liability someone acts culpably and is, therefore, liable; for risk liability you are liable for an act you did not commit yourself. In this paragraph the focus will be on fault-based liability because this is relevant regarding the exploitation of au pairs. For example, a host family breaches a contract in case the contract states that the au pair will work no more than 30 hours a week, but in fact the au pair has to more than 30 hours a week.

Specifically, fault-based liability can be found in article 6:162 of the Dutch Civil Code. This article states that a person is liable for the damage(s) when these five cumulative criteria are met:

(1) Wrongful act

The law distinguishes three types of wrongful acts:

- Infringement of a right; the violation of subjective rights, such as right to privacy.

⁷⁹ Snijders advocaten, ‘Aansprakelijkheidsrecht’ (Liability Law) <<https://www.snijders-advocaten.nl/actueel/alles-over-aansprakelijkheid-en-het-aansprakelijkheidsrecht/>> accessed 1 October 2024.

⁸⁰ Translation: ‘Hij die jegens een ander een onrechtmatige daad pleegt, welke hem kan worden toegerekend, is verplicht de schade die de ander dientengevolge lijdt, te vergoeden.’

⁸¹ *ibid.*

⁸² Rijksoverheid (Central government), ‘Ben ik aansprakelijk voor de schulden van mijn minderjarige kinderen?’ (Am I liable for my minor children's debts?) <www.rijksoverheid.nl/onderwerpen/schulden/vraag-en-antwoord/schulden-van-kinderen> accessed 10 January 2025.

- Violation of a statutory duty; breaching any legally binding rules established by Dutch law, EU law, or human rights treaties.
- Conduct contrary to unwritten societal norms; broad unwritten category, breaching an unwritten societal norm.

(2) *Attributability of the act to the perpetrator*

The act must be attributable to the perpetrator, this is possible when the perpetrator has caused damage either intentionally or through negligence (culpability) or as discussed previously on the basis of risk liability.

(3) *Damage*

There must be damage. Material damage entails medical expenses or repair costs. Immaterial damage entails pain or emotional distress.

(4) *Causal link*

There must be a causal connection between the wrongful act and the damage. Thus, the damage would not have occurred without the action, this is called a *condicio sine qua non relationship*.

(5) *Requirement of relativity* (art. 6:163 Dutch Civil Code)

The violated norm must be specifically intended to prevent the damage suffered.

If all criteria are met, the person responsible for the act can be held liable for the damage caused. This means that the injured party can seek compensation for the damages (material or immaterial) suffered.⁵

Liability of the host family

If an au pair experiences exploitation or harm, they may seek remedies under Dutch tort law (Article 6:162 of the Dutch Civil Code). Tort law allows an au pair to claim damages if they have suffered damages due to wrongful acts by the host family. In this case, the au pair must be able to prove that there is damage due to the actions of his or her host family.

Liability of the agency

Also, the agency can be held liable if it acts unlawfully towards the au pair. Under Dutch tort law (article 6:162 of the Dutch Civil Code), if the agency commits an unlawful act, it could be liable for any resulting harm or damages.

Duty of care (*Zorgplicht*): Dutch case law establishes that persons (also host families in the case of au pairs) have a duty of care toward individuals working or living under their supervision. Breach of this duty, such as by exposing an au pair to unsafe or exploitative conditions, may lead to liability for damages.⁸³

If an agency violates its contractual obligations with an au pair, it may be held liable under Dutch law. Article 6:74 BW (Dutch Civil Code, Book 6, Title 4) states that a party failing to fulfil its contractual obligations, or doing so incorrectly, is responsible for any resulting damages. If the agency breaches its contract, such as by failing to provide the agreed-upon accommodation or stipend, it could be held liable. However, Article 6:75 BW provides an exception, stipulating that liability does not apply if the non-performance results from an external factor beyond the party's control (*force majeure*).

Relevant jurisprudence

There is hardly any case law about liability of host family or au pair agency for breaching their duty which caused damages to an au pair. One case which might be relevant, is discussed below. This case concerns administrative law, but is relevant nevertheless, because the court

⁸³ Immigration and Naturalisation Service, '*Plichten referent en erkende referent*' (Duties of sponsor and authorised sponsor) <<https://ind.nl/nl/plichten-referent-en-erkende-referent>> accessed 4 December 2024.

explains the duty of care of an au pair agency and the withdrawal of the recognition of an agency as a reference⁸⁴. This can be useful in cases where the au pair wants to hold his or her host family or the agency liable. Thus, au pairs cannot directly derive rights from this judgment, but they may use its content in other proceedings.

In this case, the Dutch Immigration and Naturalization Service (IND) revoked the recognition of an au pair agency as a 'sponsor' due to repeated violations of its legal obligations. A sponsor in Dutch immigration law is an organization or individual officially recognized by the IND to act as an intermediary for migrants, such as au pairs, students, or workers. Sponsors are responsible for ensuring that migrants comply with the conditions of their residence permit, reporting relevant changes to the IND, and upholding specific obligations such as monitoring the well-being of the individuals they sponsor. Sponsors are seen as trusted partners of the IND and must demonstrate reliability and accountability.

The au pair agency in question had been recognized as a sponsor in the 'exchange' category since 2013. However, the IND argued that the agency failed to fulfil its duties, particularly the duty of care, the obligation to provide timely information, and the proper implementation of its cultural exchange program. Examples of these failures included not reporting changes in the residence status of au pairs within the required four-week period, insufficient monitoring of host families and au pairs, and the lack of verifiable efforts to implement cultural exchange activities.

The agency had previously received a warning in 2014 and a fine in 2015 for similar breaches. Despite these measures, the IND concluded that the agency's repeated violations undermined confidence in its reliability, prompting the decision to revoke its sponsor status in 2018.

The au pair agency argued that it had made efforts to fulfil its obligations, including maintaining contact with au pairs and host families and improving its program. It also pointed to an independent report criticizing the administrative burden placed on sponsors. Nevertheless, the court ruled in favour of the IND, stating that the agency had failed to actively verify and enforce compliance, particularly regarding the well-being of au pairs and the execution of the cultural exchange programme.

The court emphasized that a sponsor's responsibilities go beyond administrative tasks; sponsors must ensure that their actions protect the interests of vulnerable groups, such as au pairs. The IND's decision to revoke the agency's sponsor status was deemed lawful and proportionate given the significant breaches and the importance of maintaining trust in the sponsor system.

The Court referred to a November 26, 2018, ruling by the Administrative Jurisdiction Division (Raad van State) that clarified the duty of care and duty to inform under Dutch immigration law. The duty of care, outlined in Article 2a(2)(b) of the Aliens Act 2000, requires sponsors to supervise host families based on specific signs, such as complaints or inspections. Sponsors must carefully select host families and ensure au pairs participate in cultural exchange, not undeclared domestic work.

The duty to inform, defined in Article 4.19(1) of the Aliens Regulations 2000, obligates sponsors to report changes, such as the departure of a host family member. In this case, the sponsor failed to report the host mother's departure, despite being informed by email, violating this duty. The ruling emphasized that sponsors must take proactive steps to monitor au pairs' well-being and prevent exploitation.

⁸⁴ *Rechtbank Den Haag* (The District Court of The Hague) 18 November 2020, ECLI:NL:RBDHA:2020:12792.

To conclude, this case explained the content of the duty of care of the agency and the possibility that if a sponsor does not comply with its duties it may result in liability in tort law towards an au pair. However, this remains unsure because of the lack of case law.

Conclusion

This paragraph provided a foundation for the understanding of Dutch liability law and demonstrated how this can be useful for an au pair in the context of holding the au pair agency or host family liable. The most relevant article for liability is article 6:162 of the Dutch Civil Code. The five cumulative criteria to hold someone liable are: wrongful act, attributability, damage, causal link, and relativity. The case explains the duty of care and duty to inform and what consequences this can have regarding liability of an au pair agency.

4.2.3. Criminal Law

This section aims to answer the following question: Which remedies does Dutch criminal law offer in case of exploitation of au pairs in the Netherlands? First, protection under the Dutch Criminal Code on the basis of human trafficking and labour exploitation will be explained. After this, the possibility of a compensation on the basis of the Dutch Code of Criminal Procedure is highlighted. Lastly, an example of a case which concerns human trafficking is provided.

Protection under the Dutch Criminal Code

Article 273f of the Dutch Criminal Code (*Wetboek van Strafrecht*) criminalizes human trafficking, including labour exploitation, and applies to situations where individuals, including au pairs, are coerced, deceived, or otherwise manipulated into exploitative labour conditions. The Dutch law recognizes forms of exploitation such as forced labour, withholding of wages, excessively long working hours, and restrictions on freedom (e.g., taking passports or imposing strict control over the individual's movements). These are relevant to au pairs, who may be vulnerable due to language barriers, unfamiliarity with Dutch law, and dependency on their host families.

Au pairs (who do not have a Dutch nationality) can press charges against their host family if they experience a form of exploitation, harassment or abuse. Because they are seen as residents of the Netherlands for one year, they have the same legal protection under Dutch law as Dutch citizens, regardless of their nationality. Convictions for human trafficking carry severe penalties. For instance, basic offenses under Article 273f are punishable by up to 12 years in prison, with harsher penalties if aggravating factors (e.g., violence or multiple victims) are present. Courts have applied these penalties in cases where host families exploited au pairs by forcing them to work beyond reasonable hours or restricting their freedom.

Article 51a of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*) states that a person is considered a victim when they have suffered direct damage as a result of a criminal offense. The victim can submit a compensation request on the ground of Article 51f of the Dutch Code of Criminal Procedure. This request is called a claim of the injured party (*vordering benadeelde partij*). There are different types of damages: shock damage, affection damage and material or immaterial damage.⁸⁵ If an au pair can, for example, prove that she or he has suffered material damage because of the host family not paying, or immaterial damages such as physical damage a claim of the injured party can be made. However, it might be difficult to prove that the host family caused this damage.

⁸⁵ Van Breukelen Advocatuur, 'De vordering benadeelde partij' (The Claim of the Injured Party), <<https://www.kantoorvanbreukelen.nl/nieuws/de-vordering-benadeelde-partij-alles-wat-u-moet-weten>> accessed 12 January 2025.

Relevant jurisprudence

This case is an example of human trafficking in the form of labour exploitation. This case is relevant because it is an example of ‘claims of the injured parties’ and immaterial damages.⁸⁶

This judgment by the Amsterdam District Court concerns a criminal case against a 43-year-old woman accused of exploiting au pairs between 2011 and 2014. The woman faced charges for three criminal offenses: human trafficking (labour exploitation) by exploiting five au pairs as nannies and domestic helpers under poor conditions, human smuggling by assisting the women in illegally entering or traveling through the Netherlands, France, or Belgium, and illegal labour by employing the women while knowing they did not have valid residence permits.

The defence argued that the public prosecutor should not be admissible in prosecuting the third offense, as it might fall under administrative law rather than criminal law. They also claimed the victims were influenced in their statements and denied any exploitation occurred. However, the court rejected these arguments and found all charges proven. The defendants had exploited the women by forcing them to work long hours under poor conditions without health insurance, withholding their passports, and pressuring them to repay debts before they could leave.

Eventually, the 43-year-old woman was sentenced to six months in prison, three of which were suspended, and ordered to pay over €26,000 in compensation to the five victims. The court emphasized the significant role played by the co-defendant (the husband of the woman) in the exploitation. As a result, the court imposed a six-month prison sentence, with three months suspended, and required the defendant to pay over €26,000 in damages to the victims.

To conclude, this case highlights labour exploitation and human trafficking in the context of au pairs, demonstrating how the defendants placed foreign women in vulnerable and illegal working conditions for financial gain.

Conclusion

To conclude, there is no explicit article in Dutch Criminal Law which aims to –specifically– protect au pairs against exploitation. However, article 273f of the Dutch Criminal Code protects individuals against labour exploitation and human trafficking. Thus, this article can be relevant for au pairs experiencing either of these. The case shows how labour exploitation can be seen in relation to human trafficking and how au pairs received compensation through a claim of the injured party (Article 51a of the Dutch Code of Criminal Procedure).

4.2.4. Supervisory Authorities and Bodies to Protect Au Pairs from Exploitation

When au pairs face problems or suspect they are being exploited, there are several supervisory authorities and bodies in the Netherlands that they can contact for assistance. These include the Netherlands Labour Authority (NLA), the INS, and the Police. Each of these organizations plays a distinct role in addressing issues related to exploitation, ensuring the rights and safety of au pairs, and enforcing legal standards. Below, the specific roles and responsibilities of these authorities in cases of au pair exploitation will be outlined.

⁸⁶ *Rechtbank Amsterdam* (The District Court of Amsterdam) 29 June 2017, ECLI:NL:RBAMS:2017:4595.

a) Netherlands Labour Authority

The NLA plays a key role in ensuring that au pairs in the Netherlands are treated fairly and protected from exploitation. This paragraph outlines the NLA's responsibilities, the reporting process for au pairs, and how the authority enforces compliance with labour laws to safeguard their rights.

The NLA works to ensure fair, healthy, and safe working conditions and socio-economic security for everyone.⁸⁷ The NLA is responsible for supervising and has various tasks. These tasks include:

- Ensuring that employers comply with regulations related to working conditions and the prevention of major hazards involving dangerous substances.
- Overseeing adherence to laws regarding illegal employment and minimum wages.
- Assessing the effectiveness of the work and income system by evaluating the implementation of social security acts by the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB), and municipalities.
- Detecting fraud, exploitation, and organized crime within the work and income system, including labour exploitation, human trafficking, and large-scale fraud in the area of social security. This is done in collaboration with the Public Prosecution Service.
- Monitoring risks and relevant developments in the policy areas of the Ministry of Social Affairs and Employment, and reporting these to ministers, state secretaries, and policymakers.⁸⁸

The NLA uses a strategic combination of:

- Preventive measures (such as providing information on rights and obligations)
- Inspections
- Investigations
- Repressive actions (including fines and the enforcement of criminal law).⁸⁹

Additionally, the NLA collaborates with other EU Member States and the European Labour Authority (ELA), as international cooperation and cross-border inspections within the EU become increasingly significant. Established in 2019, the ELA provides new opportunities for EU-wide cooperation on fair work. The ELA supports fair labour mobility and social security coordination across the EU. It helps Member States monitor and enforce EU rules regarding labour mobility, while also improving access to information on workers' and employers' rights and obligations. The ELA facilitates joint inspections, provides logistical support, and fosters cooperation between Member States. It also leads EU-wide working groups, offers professional training, and provides mediation and dispute resolution services in cross-border cases.⁹⁰

Reports can be made by employees, occupational health and safety professionals, members of a works council or employee representative body, as well as trade unions or other third parties.⁹¹ So, an au pair can only make a complaint to the NLA if he or she is an employee. If an au pair is

⁸⁷ Netherlands Labour Authority, 'About the Netherlands Labour Authority' (NLA, n.d.) <<https://www.nllabourauthority.nl/about-netherlands-labour-authority>> accessed 8 January 2025.

⁸⁸ Netherlands Labour Authority, 'Smarter, more effective and more efficient supervision' (NLA, n.d.) <<https://www.nllabourauthority.nl/about-netherlands-labour-authority/smarter-more-effective-and-more-efficient-supervision>> accessed 8 January 2025.

⁸⁹ *ibid.*

⁹⁰ Netherlands Labour Authority, 'European Labour Authority' (NLA, n.d.) <<https://www.nllabourauthority.nl/about-netherlands-labour-authority/european-labour-authority>> accessed 8 January 2025.

⁹¹ Netherlands Labour Authority 'FAQ on reporting' (NLA, n.d.) <<https://www.nllabourauthority.nl/topics/report/faq-on-reporting>> accessed 8 January 2025.

not classified as an employee, alternative options are available, which will be outlined in the subsequent paragraphs. The focus here is on the NLA and the circumstances under which an au pair qualifies as an employee.

If an au pair wishes to report underpayment, excessive working hours, poor working conditions, or illegal employment, they can do so with the NLA. There is a reporting form for unfair, unhealthy or unsafe working conditions.⁹² This reporting form has been included in the appendix (section 9.4). The complaint form is also available in Dutch, Bulgarian, Romanian, Polish, Portuguese, Czech and Spanish. Reporting by telephone is also an option.

The report will be logged and evaluated by staff members of the Reporting Unit, who will determine if there is a potential violation of labour law. If necessary, the report may be further investigated by an inspector, who may reach out to the employee for additional information.⁹³

If an au pair believes they are experiencing labour exploitation, there is an alternative option available. Labour exploitation is a form of human trafficking that often involves force, violence, threats, extortion, and/or deception. For instance, individuals may be coerced or threatened into surrendering their wages. Cases of labour exploitation can be reported (anonymously) to the NLA by phone.⁹⁴ The NLA combats these malpractices by identifying and exposing them. Indicators of labour exploitation can be reported to the Expertise Centre for Human Trafficking and Human Smuggling (*Expertisecentrum Mensenhandel en Mensensmokkel*, EMM).⁹⁵

When an au pair has questions rather than a complaint for the NLA, they can complete a digital contact form.⁹⁶ This contact form has been included in the appendix (section 9.4).

The NLA takes a selective approach to its supervision, setting priorities based on risk analyses that cover the entire scope of the Ministry of Social Affairs and Employment's policies. This enables the Inspectorate to deploy its resources efficiently and effectively where they are most needed. As a result of the risk analysis, the Inspectorate has identified the following priority areas: persistent offenders, illegal employment, labour exploitation, pretence constructions, companies with consistently poor safety records, companies handling hazardous substances and benefit fraud.⁹⁷ For an au pair this means that, if their complaint concerns labour exploitation or illegal employment, it will be given priority by the NLA. In less serious cases, however, there is a possibility that it may receive lower priority. All of this will depend on the specific facts and circumstances.

Lastly, the NLA is also relevant in the case an au pair wants to claim wages. The NLA ensures that employers comply with the Minimum Wage and Minimum Holiday Allowance Act (*Wet minimumloon en minimumvakantiebijslag*, WML). The legal minimum wage and the legal minimum holiday allowance represent the minimum compensation for work performed in employment within the Netherlands. Both Dutch and foreign employers and employees must

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ Netherlands Labour Authority, 'Reporting unfair, unsafe, unhealthy working conditions or labour exploitation' (NLA, n.d.) <<https://www.nllabourauthority.nl/topics/report/reporting-unfair-unsafe-unhealthy-working-conditions-or-labour-exploitation>> accessed 8 January 2025.

⁹⁵ Netherlands Labour Authority, 'Human Trafficking / Labour Exploitation' (NLA, n.d.) <<https://www.nllabourauthority.nl/topics/human-trafficking---labour-exploitation>> accessed 9 January 2025.

⁹⁶ Netherlands Labour Authority, 'Priorities Netherlands Labour Authorities' (NLA, n.d.) <<https://www.nllabourauthority.nl/about-netherlands-labour-authority/priorities-netherlands-labour-authority>> accessed 9 January 2025.

⁹⁷ *ibid.*

adhere to the rights and obligations set forth by this legislation.⁹⁸ The NLA calculates underpayment based on the standard working week, which may be defined by the relevant Collective Labour Agreement. The NLA has the authority to impose fines on employers who underpay their employees. The amount of the fine is determined by the extent to which the wages fall short of the statutory minimum wage and minimum holiday allowance. Employers are required to pay the overdue wages to the affected employees within four weeks of the inspector discovering the underpayment. Failure to do so will result in a penalty being imposed on the employer.⁹⁹

Conclusion NLA

The NLA plays a crucial role in protecting au pairs by ensuring fair working conditions, preventing exploitation, and enforcing labour laws. The NLA supervises compliance with regulations related to minimum wages, working conditions, and illegal employment. Through a strategic approach that includes inspections, investigations, and international cooperation, the NLA aims to detect and address labour violations. Au pairs can report concerns about underpayment, poor working conditions, or labour exploitation, with the NLA offering resources such as reporting forms and telephone services. While the NLA prioritizes serious cases like labour exploitation, all reports are handled based on the specific circumstances. Furthermore, the NLA enforces wage claims, ensuring employers meet legal wage and holiday allowance standards.

b) The Immigration and Naturalization Service (INS)

When an au pair has a problem with his or her host family the first thing an au pair can do is contact its agency. The most common solution is being placed at a new host family. If this does not help or does not help enough, they can report to the Reporting Point for Au Pair Abuse (*Meldpunt Misbruik Au Pair*). The INS established this on June 1, 2004. Through this, au pairs, host families, or third parties can report cases of misuse or improper use of the au pair scheme. The INS's au pair mailbox receives reports of violations related to the au pair scheme. These reports range from anonymous tips about the practices of au pair agencies to complaints from au pairs about not enjoying their stay or being required to work excessive hours. Other reports include grievances from one host family about another, as well as notifications that au pairs are not (or are no longer) meeting the conditions required for their stay as an au pair. The INS reviews all incoming reports and, if necessary, forwards them to the Immigration police and/or the NLA for further investigation.¹⁰⁰

Au pair agencies, acting as recognized sponsors, have legal obligations under the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen*). These obligations include the duty of care, the duty to provide information, and the duty to maintain records. Under the Modern Migration Policy Act (*Wet modern migratiebeleid*), the INS has greater authority to take action against recognized sponsors who fail to meet their obligations. In such cases, the INS may impose administrative fines on sponsors who violate their legal responsibilities.¹⁰¹

⁹⁸ Netherlands Labour Authority, 'Minimum wage and holiday allowance' (NLA, n.d.) <<https://www.nllabourauthority.nl/topics/minimum-wage-and-holiday-allowance>> accessed 9 January 2025.

⁹⁹ *ibid.*

¹⁰⁰ JMD Schans, M Galloway and L Lansang, *Au pairs in Nederland. Culturele uitwisseling of arbeidsmigratie?* (Au Pairs in the Netherlands. Cultural exchange or labour migration?), WODC Cahier 2014-2, 75-76.

¹⁰¹ *ibid.*

Conclusion INS

The INS' Reporting Point for Au Pair Abuse can be contacted by an au pair when there is a case of misuse or improper use of the au pair scheme. A third party can also report this case for example anonymously. The INS first reviews the incoming report and if it deems it necessary it forwards them to the NLA or the Immigration police for further investigation. The INS can also impose administrative fines on sponsors when they violate their legal responsibilities.

c) Police

In the Netherlands, the police can also play a role in the protection of au pairs against exploitation. For example, on January 26, 2023, the police and the NLA carried out a joint operation to combat the exploitation of au pairs. They visited 28 addresses and spoke with 17 au pairs. In a few cases, certain irregularities were discovered, which are now being further investigated by the police.¹⁰² So, not only when they receive complaints they will take action, but they are also monitoring the situation on its own initiative around au pairs in the Netherlands. The question of course remains how much they can see and know about the situation, since most of it happens behind closed doors at home at the host family. Therefore, a complaint by an au pair will often be necessary.

Conclusion Police

The police play a role in investigating irregularities, for example visiting addresses where au pairs live. However, this is not a standard procedure. Additionally, as explained in the section on criminal law, au pairs can also report incidents to the police.

¹⁰² Politie, 'Gezamenlijke controle tegen uitbuiting au pairs' (Joint control against exploitation au pairs) <<https://www.politie.nl/nieuws/2023/januari/27/03-gezamenlijke-controle-tegen-uitbuiting-au-pairs.html>> accessed 24 December 2024.

5. Comparative Analysis

In this chapter, a comprehensive comparative analysis of the legal frameworks and policies governing the au pair systems in Austria, France, and Germany will be conducted. These three countries have been selected for several reasons. Firstly, all three countries are member states of the EU, which means that they operate within a shared legal and regulatory framework which ensures that, while there may be national differences, comparisons can be drawn based on similar underlying goals as well as obligations. Secondly, two of the four authors of this memorandum come from Germany and Austria, which facilitates a deeper understanding of the domestic legal systems and policies in these two countries. Given the authors' familiarity with the German language and the specifics of these systems, the analysis can be more nuanced. Lastly, France has been explicitly chosen due to its distinctive approach to the au pair system. Unlike most other countries, which have one au pair system in place, France has a system with several classifications of au pairs. This divergence provides an opportunity to explore how varying classifications can impact the protection of au pairs, particularly in terms of their rights, obligations, and potential for exploitation.

For each jurisdiction, a similar structure will be followed. First the application process – including the eligibility requirements for au pairs, procedural steps, and the role of agencies – will be outlined. Following this, the focus will shift to the rights and obligations of au pairs in the respective jurisdiction. The third section will examine the labour law considerations, addressing how national employment regulations intersect with au pair work and discussing debates surrounding their legal classification. Hereafter, compliance mechanisms - including state monitoring efforts and available remedies for au pairs facing labour exploitation or other issues with their host families - will be assessed. Moreover, it will also be examined whether there are alternative programmes that enable legal work as a nanny. Finally, a summary that compares all systems, also including the Dutch system, will be provided.

5.1. Austria

Au pairing in Austria forms a key component of cultural exchange initiatives, with many au pairs combining childcare responsibilities with educational goals such as learning German and deepening their knowledge of Austrian culture and society. Despite the prevalence of au pairs in Austria, precise data are very limited. The only available estimate, published by the Austrian Ministry of the Interior (*Bundesministerium für Inneres*), notes that around 7.600 individuals - including students, university students, and au pairs - received a first-time residence permit for temporary stays in 2023. With this number, however, the exact proportion of au pairs in Austria remains unclear.¹⁰³

The legal framework for au pairing in Austria, which will be discussed in detail in this chapter, is relatively favourable compared to other countries. For instance, Au pairs are classified as regular employees (and accordingly enjoy labour rights) and benefit from low working hours as well as paid holidays. Yet, as highlighted by the NGO Hope for the Future, which offers support

¹⁰³ Statistik Austria, 'Statistisches Jahrbuch Migration & Integration' (Statistical Yearbook Migration & Integration, 1 July 2024)
<https://www.statistik.at/fileadmin/user_upload/Migration_und_Integration_2024.pdf> accessed 23 November 2024.

to people in prostitution and other persons who have been affected by human trafficking, significant challenges and legal loopholes persist in the Austrian au pair system.¹⁰⁴ In that regard, it is worth noting that most of these challenges reflect broader issues within au pair systems across countries and are not exclusive to the Austrian context. One of the primary concerns in Austria is the isolation experienced by many au pairs, particularly those placed in rural areas without access to transportation. The lack of mobility limits their ability to socialize or establish relationships with people of their own age, often leading to loneliness and homesickness. Additionally, many au pairs are unaware of their rights and obligations, often due to insufficient information available to them. Language barriers, especially since official governmental information is primarily provided in German, make it difficult for au pairs to fully understand their rights or seek help when needed.¹⁰⁵

Moreover, despite the relatively favourable legal framework, there are still significant gaps in the regulatory landscape that can negatively impact au pairs in Austria. For example, an au pair should only provide 'light help' in the household, but this term is vague and open to interpretation. As labour law expert Selma Gonzales from the Austrian Public Employment Service (*Arbeitsmarktservice*) points out in an interview, this ambiguity leaves the interpretation of duties up to the host family and gives them considerable discretion.¹⁰⁶ This, in turn, creates a situation where au pairs may be asked to perform more demanding tasks than what they are legally allowed to, which is a widespread issue in au pairing across countries. Another challenge arises from the fact that the name of the host family is recorded on an au pair's residence permit. This ties the au pair's legal status directly to the family, creating a power imbalance. Knowing that their residence permit is linked to their host family, many au pairs feel pressured to accept any task assigned to them, even if it exceeds the limits of the obligations set out in the contract with their host family. As a result, they often avoid negotiating or raising concerns with their host families, fearing that their residence permit could be jeopardized.¹⁰⁷

To provide an understanding of the au pair system in Austria, the following sections explore its specific components. First, the application process - including the personal requirements for au pairs, procedural aspects, and the role of agencies - will be examined (5.1.1. Application). Next, au pairs' rights and obligations will be highlighted (5.1.2. Rights and Obligations). This is followed by a discussion of the broader labour law considerations and the regulations governing the employment relationship between au pairs and host families (5.1.3. Labour Law Consideration). Thereafter, the topic of compliance mechanisms, monitoring, and available remedies for au pairs, will be addressed (5.1.4. Compliance). Lastly, it will also be examined whether there is an alternative programme that enables legal work as a nanny in Austria (5.1.5. Alternative Programmes for Working as a Nanny).

¹⁰⁴ Sarah Csacsinovits, 'Nannies, or Just There to do Anything? The Real Au Pair Experience in Austria' (10 April 2024) <<https://www.hopeforthefuture.at/en/nannies-or-just-there-to-do-anything-the-real-au-pair-experience-in-austria/>> accessed 21 November 2024.

¹⁰⁵ *ibid.*

¹⁰⁶ Ricarda Opis and Clara Wutti, 'Au-pairs in Österreich: Ausbeutung statt Augenhöhe' (Au pairs in Austria: Exploitation instead of mutual respect, 18 December 2023) <<https://www.derstandard.at/story/3000000199057/au-pairs-in-oesterreich-ausbeutung-statt-augenhoehe>> accessed 26 November 2024.

¹⁰⁷ *ibid.*

5.1.1. Application

a) Requirements for Au Pairs

While there is no legal definition that defines what constitutes an au pair under Austrian law, the Austrian Ministry of Foreign Affairs (*Bundesministerium für europäische und internationale Angelegenheiten*) describes au pairs as ‘foreign nationals (most of them school pupils or students) between the ages of 18 and 28 who want to use their time in Austria to improve German skills they have acquired in their home countries and deepen their knowledge of Austrian culture and society.’¹⁰⁸ The personal criteria that au pairs must fulfil in order to be eligible to apply as an au pair are derived from regulations set by Austrian authorities rather than being explicitly codified in Austrian legislation.

To be eligible to work as an au pair in Austria, the following conditions must be met.

- The applicant must be between 18 and 28 years old.
- The applicant must be unmarried and without children (yet, it is contested whether this is a strict legal requirement or more of a common practice within agencies).
- The applicant must be able to cover their travel expenses to Austria and back to their home country after their au pair placement has ended.
- The applicant must have basic knowledge of the German language (at least level A1) and possess the willingness to improve their skills during their stay.
- If the applicant is not from an EU/EFTA country, they must not have worked as an au pair in Austria for more than one year in the last five years.¹⁰⁹

b) Requirements for Host Families

Next to the requirements that au pairs must meet, host families in Austria are also required to meet specific conditions in order to participate in the au pair programme. These criteria ensure that both the au pair and the family benefit from the arrangement.

- The host family must have at least one child under the age of 18 living in the household.
- The host family must be able to provide the au pair with their own private (and lockable) room.
- The host family must speak German in their day-to-day life, facilitating the au pair’s language learning.

¹⁰⁸ *Bundesministerium für europäische und internationale Angelegenheiten* (Austrian Ministry of Foreign Affairs), ‘*Informationen für Au-Pair Kräfte in Österreich*’ (Information for Au Pairs in Austria, 1 June 2021)

<https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Au_Pairs_Broschuere_-_Deutsch_-_final_2021.pdf> accessed 23 November 2024.

¹⁰⁹ *Arbeitsmarktservice* (Austrian Public Employment Service), ‘*Anzeige eines Au-pair-Verhältnisses*’ (Registration of an Au Pair Relationship, n.d.)

<https://www.formularservice.gv.at/site/fsrv/Resources/AMS/ABV/FAUP_Anzeige_Au_Pair.pdf> accessed 25 November 2024; *Bundesministerium für Arbeit und Wirtschaft* (Federal Ministry of Labour and Economy), ‘*Informationen zur Beschäftigung einer Au-pair-Kraft aus einem Drittstaat (Nicht-EU-Staat)*’ (Information on the Employment of an Au Pair from a Third Country (Non-EU Country), 1 January 2024) <<https://www.bmaw.gv.at/dam/jcr:6928857c-4f05-47e9-8459-df2ec991f70a/2024%20-%20Info%20-%20Au-pair-Besch%C3%A4ftigung.pdf>> accessed 25 November 2024.

- The host family must support the au pair's attendance in a German language course.¹¹⁰

c) Procedural Aspects

The entry and residence requirements for au pairs in Austria vary depending on their citizenship status.

For citizens of EU/EFTA countries, there is no need for a visa to enter Austria. A valid identity card or passport is sufficient for entry. However, if the stay exceeds three months, the au pair must register with the local authorities in Austria.¹¹¹ In line with the Austrian General Social Security Act (*Allgemeines Sozialversicherungsgesetz*), the au pair must also be registered in the social insurance system.¹¹²

For au pairs from non-EU countries, a visa is required to enter Austria. For that, the applicant must possess a valid passport. Before the au pair's arrival, the host family must contact the Austrian Employment Service to complete the registration of the au pair. The host family must provide proof of the au pair's German language skills (at least A1 level) and a signed copy of the au pair placement contract (agreed upon with the au pair), which outlines the essential terms of the au pair placement. Here, the Austrian Employment Service provides a sample contract (see appendix, section 9.5.1) which can be used by the au pair and the host family. The sample contract includes the main rights au pairs enjoy under Austrian law and the obligations of host families – such as requirements for room and board, working hours, pay, time off, holidays, health and accident insurance, and terms on contract termination. It is not mandatory for the host family and the au pair to use this model contract. However, since the employer (i.e. the host family) must send the contract they concluded with the au pair to the Austrian Employment Service for approval, it is also recommended that this model contract is used as the Austrian Employment Service can deny the registration if certain elements are not settled within the contract.¹¹³

Upon successful registration, the Austrian Employment Service will issue an application confirmation. Once the application confirmation is issued, the au pair can apply for a visa at the Austrian embassy or consulate in their respective home country (a positive application confirmation is required, otherwise no visa will be issued). After the visa is approved, the au

¹¹⁰ *Bundesministerium für europäische und internationale Angelegenheiten* (Austrian Ministry of Foreign Affairs), 'Informationen für Au-Pair Kräfte in Österreich' (Information for Au Pairs in Austria, 1 June 2021)

<https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Au_Pairs_Broschu_re_-_Deutsch_-_final_2021.pdf> accessed 23 November 2024.

¹¹¹ This is in line with Article 6 to 8 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

¹¹² § 4 *Allgemeines Sozialversicherungsgesetz* (Austrian General Social Security Act)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008147>> accessed 8 January 2025.

¹¹³ *Bundesministerium für europäische und internationale Angelegenheiten* (Austrian Ministry of Foreign Affairs), 'Informationen für Au-Pair Kräfte in Österreich' (Information for Au Pairs in Austria, 1 June 2021)

<https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Au_Pairs_Broschu_re_-_Deutsch_-_final_2021.pdf> accessed 24 November 2024.

pair may then apply for a special employment residence permit, which covers the entire duration of their stay in Austria.¹¹⁴

d) Role of Agencies

The involvement of an agency in the au pair arrangement is not mandatory in Austria. Accordingly, both the au pair and the host family can directly engage with each other without the need for consulting an agency. However, should they choose to work with an agency, the agency must be licensed according to Austrian regulations.¹¹⁵

5.1.2. Rights and Obligations

a) Rights of Au Pairs

Au pairs are only permitted to work up to 17 hours per week, which includes any on-call duties. The monthly gross minimum wage for au pairs is set at €551.10 (this minimum wage is set specifically for au pairs by the Federal Ministry of Labour and Economy (*Bundesministerium für Arbeit und Wirtschaft*), as no collective agreement applies to au pairing). Additionally, au pairs are entitled to 15 monthly salary payments (holiday special payment: two monthly salaries; Christmas special payment: one monthly salary) per year. If the au pair's stay is shorter than a full year, these special payments must be paid on an aliquot basis.¹¹⁶

Au pairs are guaranteed at least one full day off each week, providing necessary time for rest and personal activities. They are also entitled to annual leave in line with Austrian employment law, which grants 30 working days of paid vacation per year. For shorter stays, holiday entitlements are calculated on an aliquot basis.¹¹⁷ In the event of illness or an accident that prevents the au pair from working, Austrian law guarantees the right to continued payment of wages during their recovery. Host families, as the employers, must also ensure the au pair is covered under the national accident insurance system. While the host family is responsible for covering the cost of statutory accident insurance, the au pair must cover the expenses for their own health insurance.¹¹⁸

¹¹⁴ § 62 *Niederlassungs- und Aufenthaltsgesetz* (Settlement and Residence Act)
<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004242>> accessed 8 January 2025.

¹¹⁵ *Bundesministerium für Arbeit und Wirtschaft* (Federal Ministry of Labour and Economy), 'Au pairs' (12 April 2024) <<https://www.usp.gv.at/en/mitarbeiter-und-gesundheit/einstellung-mitarbeiter-und-arten-der-beschaeftigung/weitere-informationen-auslaendische-beschaeftigte/au-pair.html>> accessed 24 November 2024.

¹¹⁶ Bundesgesetzblatt (BGBl) II Nr 361/2024, 'Verordnung des Bundeseinigungsamtes beim Bundesministerium für Arbeit und Wirtschaft zur Festsetzung des Mindestlohntarifs für Au-Pair-Kräfte' (Regulation of the Conciliation Board at the Federal Ministry for Labour and Economy on the Setting of the Minimum Wage Tariff for Au-Pair Workers, 10 December 2024)
<https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_II_361/BGBLA_2024_II_361.pdf#sig> accessed 23 January 2025.

¹¹⁷ § 2 *Urlaubsgesetz* (Paid Annual Leave Act)
<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008376>> accessed 10 January 2025.

¹¹⁸ *Bundesministerium für Arbeit und Wirtschaft* (Federal Ministry of Labour and Economy), 'Au pairs' (12 April 2024) <<https://www.usp.gv.at/en/mitarbeiter-und-gesundheit/einstellung-mitarbeiter-und-arten-der-beschaeftigung/weitere-informationen-auslaendische-beschaeftigte/au-pair.html>> accessed 1

The host family must provide the au pair with a private, lockable, and furnished room. The au pair is also entitled to full board, ensuring access to adequate meals throughout their stay. To promote language acquisition and cultural integration, host families are obligated to enable the au pair to attend a German language course. The family must cover at least half of the course fees, and in cases where the au pair requires childcare or pedagogical courses, the host family is responsible for covering the full cost of those programmes.¹¹⁹

b) Obligations of Au Pairs

The primary role of an au pair is to assist the host family with childcare and provide a moderate amount of help with household tasks. This includes light domestic chores, such as tidying or meal preparation, but excludes heavy cleaning or any tasks typically associated with a professional caregiver or cleaner. The au pair's role is designed to facilitate cultural exchange and mutual support, rather than replacing hired domestic staff.¹²⁰

For au pairs from non-EU/EEA countries, working hours must precisely total 17 hours per week. This requirement is tied directly to their eligibility for a residence permit. Working fewer than 17 hours per week would disqualify them from meeting the residence permit conditions, while exceeding this limit is strictly prohibited.¹²¹

5.1.3. Labour Law Consideration

a) National Employment Law

According to a ruling by the Austrian Administrative Court (*Verwaltungsgericht*) in 2005, au pairs are to be classified as regular employees under Austrian law. The decision was based on the consideration that au pairs work in a personally and economically dependent relationship and fulfil tasks in return for payment and under the direction of their host family (i.e. their employer).¹²² This means that au pairs fall under Austrian labour law and enjoy the same legal

December 2024; *Allgemeines Sozialversicherungsgesetz* (Austrian General Social Security Act) <<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008147>> accessed 8 January 2025.

¹¹⁹ *Bundesministerium für Arbeit und Wirtschaft* (Federal Ministry of Labour and Economy), 'Informationen zur Beschäftigung einer Au-pair-Kraft aus einem Drittstaat (Nicht-EU-Staat)' (Information on the Employment of an Au Pair from a Third Country (Non-EU Country), 1 January 2024) <<https://www.bmaw.gv.at/dam/jcr:6928857c-4f05-47e9-8459-df2ec991f70a/2024%20-%20Info%20-%20Au-pair-Besch%C3%A4ftigung.pdf>> accessed 28 November 2024.

¹²⁰ *Bundesministerium für Arbeit und Wirtschaft* (Federal Ministry of Labour and Economy), 'Au pairs' (12 April 2024) <<https://www.usp.gv.at/en/mitarbeiter-und-gesundheit/einstellung-mitarbeiter-und-arten-der-beschaeftigung/weitere-informationen-auslaendische-beschaeftigte/au-pair.html>> accessed 29 November 2024.

¹²¹ *Bundesministerium für europäische und internationale Angelegenheiten* (Austrian Ministry of Foreign Affairs), 'Informationen für Au-Pair Kräfte in Österreich' (Information for Au Pairs in Austria, 1 June 2021) <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Au_Pairs_Broschu_re_-_Deutsch_-_final_2021.pdf> accessed 29 November 2024.

¹²² *Verwaltungsgerichtshof* (Administrative Court) 6 November 2005, VwGH 2003/08/0173.

rights as all other employees, significantly affecting their legal treatment and the labour rights they enjoy.¹²³

The employment status of au pairs in Austria is governed by the Domestic Workers and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz*), establishing important entitlements for individuals working in private households, such as paid leave and continued remuneration if the au pair is unfit for work.¹²⁴ Another key piece of legislation applicable to au pair employment in Austria is the Industrial Employee and Self-Employed Workers Pension Provision Act (*Betriebliche Mitarbeiter- und Selbständigenvorsorgegesetz*), which mandates that the employer (i.e. the host family) must contribute 1.53% of the au pair's total remuneration to a so-called occupational provision fund (*Betriebliche Vorsorgekasse*).¹²⁵ These contributions are intended to build financial security for employees and serve as a severance fund or savings mechanism. Upon the termination of the employment relationship (i.e. when the au pair completes their placement and leaves Austria), the accumulated funds remain in the employee's individual account within the occupational provision fund. The employee has the option to withdraw the funds under certain conditions, such as permanently leaving the country, or to leave the money in the account, where it will continue to accrue interest.¹²⁶ However, no reliable source can be found that explains how this system is implemented in practice, whether au pairs are informed of their entitlement to these contributions, and whether they actually proceed to withdraw the accumulated funds after their placement.

5.1.4. Compliance

a) Monitoring

While the general labour law protections for au pairs in Austria are favourable, particularly with regard to their automatic classification as employees and the entitlements they receive as a consequence, there is a significant gap when it comes to monitoring the implementation of appropriate labour standards in private households. Unlike in 'traditional workplaces', where labour inspections are regularly carried out to ensure compliance with employment laws, there are generally no specific labour inspections conducted at private homes.¹²⁷ Therefore, au pairs

¹²³ *Task Force Menschenhandel* (Human Trafficking Task Force), 'Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung' (Working Group against Human Trafficking for the Purpose of Labour Exploitation, 2020)

<https://www.parlament.gv.at/dokument/XXVII/III/415/imfname_995432.pdf> accessed 23 January 2025; *Österreichische Gesundheitskasse* (Austrian Health Insurance Fund), 'Au-pair Kräfte' (Au Pairs, 1 January 2025) <<https://www.gesundheitskasse.at/cdscontent/?contentid=10007.821006>> accessed 23 January 2025.

¹²⁴ *Hausgehilfen- und Hausangestelltengesetz* (Act Governing Domestic Help and Domestic Employees) <<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008191>> accessed 8 January 2025.

¹²⁵ § 6 *Betriebliche Mitarbeiter- und Selbständigenvorsorgegesetz* (Industrial Employee and Self-Employed Workers Pension Provision Act) <<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002088>> accessed 20 January 2025.

¹²⁶ *Wirtschaftskammer Österreich* (Austrian Economic Chambers), 'Vorsorgekassen in Österreich' (Pension Funds in Austria, 11 March 2023) <<https://www.wko.at/sbg/bank-versicherung/vorsorgeverband/vorsorgekassen/betriebliche/vorsorgekassen-in-oesterreich>> accessed 22 January 2025.

¹²⁷ *Arbeitsinspektion* (Labour Inspectorate), 'Die Tätigkeit der Arbeitsinspektion im Jahr 2023' (The activities of the labour inspectorate in 2023, 2024)

may be left without a clear mechanism for ensuring that their rights are being respected unless they proactively seek legal action or report violations to authorities. This creates a potential risk for exploitation or non-compliance with contract terms and labour standards.

While there is no automatic and regular labour inspection for private households employing au pairs in Austria, the Austrian government published an information brochure¹²⁸ in 2023 that aims to serve as a resource to ensure that au pairs are informed about their rights, obligations, and available support. It provides guidelines on tasks, working hours, salary, insurance, and leave entitlements. Moreover, it contains a comprehensive list of emergency contacts and organizations, such as the Austrian Chamber of Labour, Trade Unions, and specialized helplines, to assist au pairs in resolving disputes or addressing concerns regarding labour standards or safety. Emergency services and human trafficking hotlines are also included to ensure immediate support in critical situations. The brochure is available in eight languages, and it has been distributed via a circular decree of the Austrian Foreign Ministry to the relevant Austrian diplomatic representations and is provided to visa applicants intending to come to Austria as au pairs.¹²⁹

b) Remedies for Au Pairs

In cases of labour exploitation or when the terms of the contract are not being followed, an au pair in Austria has several remedies available to them based on national labour law. These remedies are grounded in the provisions of the Domestic Workers and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz*) and general labour law protections.

If an au pair's rights, such as remuneration or working hours, are violated, they can seek legal action through the Austrian labour and social court (*Arbeits- und Sozialgericht*). Moreover, they can file complaints regarding wage violations or unfair treatment with the Public Employment Service Austria or the Austrian Labour Inspectorate. The Chamber of Labour (*Arbeiterkammer*) provides free legal advice and support to workers, including au pairs, in disputes related to labour rights.

As can be seen from the preceding sections, au pairs in Austria enjoy relatively favourable protection. They are classified as employees under Austrian law, which grants them robust statutory labour rights. Furthermore, mechanisms such as the requirement for written contracts, access to labour courts, and support from the Chamber of Labour strengthen their ability to enforce their rights. However, challenges such as vague definitions of au pair tasks (i.e. light household work), the absence of labour inspections in private households, and the dependency

<https://www.arbeitsinspektion.gv.at/Service/Taetigkeitsberichte-_Unfallberichte/Taetigkeitsbericht_2023.pdf> accessed 23 January 2025.

¹²⁸ Bundesministerium für europäische und internationale Angelegenheiten (Austrian Ministry of Foreign Affairs), 'Information Brochure for Au Pairs in Austria' (2023) <https://www.bmeia.gv.at/fileadmin/user_upload/Vertretungen/Tokio/Dokumente/Au-Pairs_Brochure_-_Englisch_2023.pdf> accessed 24 January 2025.

¹²⁹ Task Force Menschenhandel (Human Trafficking Task Force), 'Umsetzung des Nationalen Aktionsplans zur Bekämpfung des Menschenhandels 2021-2023' (Implementation of the National Action Plan to Combat Human Trafficking 2021-2023, 2025) <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/NAP_Endbericht.pdf> accessed 21 January 2025.

created by tying residence permits to host families highlight areas where improvements are still needed.

5.1.5. Alternative Programmes for Working as a Nanny

While Austria's au pair system is the primary pathway for non-EU nationals to work legally in childcare, there are limited but noteworthy alternatives available for temporary work as nannies.

First, the so-called 'Red-White-Red Card for Skilled Workers in Shortage Occupations' allows non-EU nationals with a job offer in high-demand fields to work in Austria. It operates on a points-based system, factoring in qualifications, work experience, language skills, and age. Moreover, the applicant must have received a job offer with terms aligned with Austrian labour laws (e.g., minimum wage in line with the collective agreement of the respective sector). Childcare professionals are listed as a shortage occupation, but it appears as if this primarily applies to positions within public institutions, such as day-care centres, rather than nanny positions within private family households.¹³⁰ Thus, it is unclear whether the Red-White-Card would be applicable to nanny roles in private households.

Second, a potential option for third-country nationals is working as Private Domestic Staff in diplomatic households. This arrangement is typically available to individuals employed by diplomats, career consuls, or international organization employees. Non-EU nationals in this role may apply for a type D visa and, upon arrival in Austria, are issued an ID card that grants them residency and work rights, without needing a separate work permit.¹³¹ This category of employment falls under the same regulations as au pairs, governed by the Domestic Workers and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz*). However, next to the fact that this type of work usually covers domestic work rather than childcare, it is important to note that while this pathway can be a viable option, there have been numerous reported cases of severe labour exploitation within diplomatic households. Diplomatic immunity complicates the enforcement of labour rights, making it difficult for domestic workers to seek legal recourse in situations of abuse or mistreatment.¹³²

¹³⁰ Work in Austria, 'The Red-White-Red Card' (n.d.) <<https://www.workinaustria.com/en/residence-employment/red-white-red-card/>> accessed 26 January 2025.

¹³¹ Bundesministerium für europäische und internationale Angelegenheiten (Austrian Ministry of Foreign Affairs), 'Information Brochure: Private Domestic Staff' (2016) <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Ministerium/Folder_Private_Domestic_Staff.pdf> accessed 26 January 2025.

¹³² Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers' (2014) <<https://www.osce.org/files/f/documents/2/c/126303.pdf>> accessed 26 January 2025.

5.2. France

In France, there are two distinct programmes for au pairs:¹³³

- Young au pairs (*Jeune au pair*) are non-EU citizens who aim to learn the French culture and language during their stay. The programme has age restrictions and limits on working hours. The au pairs have to sign a sample agreement (*convention*) with their host family.
- Employed au pairs (*Salarié au pair*) are individuals of any age and any nationality; this includes citizens of France, other European countries, and third countries. They perform domestic tasks in exchange for remuneration in kind, which consists of accommodation and food instead of money. They conclude a labour contract (*contrat de travail*) with their host family.

Another third programme, called ‘Family help interns’ (Stagiaire aide familial) is open for young EU citizens who come to France to study and work part-time with a host family based on a placement arrangement (*accord de placement*). This programme will not be discussed here, as the focus is on au pairs from non-EU countries,

In terms of sources, most relevant laws for au pairs are compiled under the ‘Code governing the entry and stay of foreign nationals and the right to asylum’ (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), commonly referred to as the Code of Foreigners (*Code des étrangers*).

Additionally, France is one of the few countries that ratified the Council of Europe’s European Agreement on ‘Au Pair’ Placement in 1971. However, as previously noted, this international treaty is somewhat vague, which limits its effectiveness (see section 3.2.3).

This chapter is organized into five sections: It begins with an overview of the application process for working as an au pair (5.2.1. Application), followed by an outline of the legal rights and responsibilities of au pairs during their stay (5.2.2. Rights and Obligations). Next, it examines the classification of au pairs under employment laws (5.2.3. Labour Law Consideration) and highlights necessary measures to safeguard their rights (5.2.4. Compliance). It ends with comparing au pair work with another category of domestic work (5.2.5. Alternative Programmes for Working as a Nanny).

5.2.1. Application

a) Requirements for Au Pairs and Host Families

Young au pairs (*Jeune au pair*) must be between 18 and 30 years old and must be non-EU citizens. In addition, they must have basic knowledge of French or secondary education.¹³⁴ Also,

¹³³ *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), ‘*Salarié au pair, jeune au pair et stagiaire aide familial étranger*’ (Employed au pair, young au pair and family help intern) <www.service-public.fr/particuliers/vosdroits/N499> accessed 11 January 2025.

¹³⁴ *Code des étrangers* (Code of Foreigners), L426-22.

they can be married and can have their own children.¹³⁵ Their host family must speak French at home.¹³⁶

By contrast, for employed au pairs (*Salarié au pair*) there is no age limit, and no restriction as regards their nationality. What is required is to have a labour contract with a host family.¹³⁷

b) Procedural Aspects

The young au pair (*Jeune au pair*) and the host family must sign the sample agreement (*convention*) provided by the ministry of the interior (*ministère chargé de l'intérieur*).¹³⁸ Subsequently, the young au pair can apply for the long-stay visa (*visa de long séjour*) at a French diplomatic mission to enter the country.¹³⁹ This visa will require that, within two months after arriving in France, the au pair applies for the temporary residence card 'young au pair' (*Carte de séjour temporaire 'jeune au pair'*) at the local authority.¹⁴⁰

For the employed au pair (*Salarié au pair*), the requirements are to sign a labour contract and to obtain any residence permit with an authorization to work. This can be, for instance, a residence permit with the purpose to work (*carte de séjour - salarié/travailleur temporaire*).¹⁴¹ Authorities maintain lists of professions that are currently in demand, which they use to decide on applications for residence permits.¹⁴² If it is not already included in the permit, the employer needs to request work authorization before the employment starts.¹⁴³

¹³⁵ European Migration Network Netherlands, 'OPEN Summary of EMN Ad-Hoc Query No. [2024.18]' (19 March 2024) <www.emnnetherlands.nl/sites/default/files/2024-08/Summary%20Au%20Pair%20Regulations_def.pdf> accessed 2 December 2024.

¹³⁶ *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), '*Stagiaire aide familial étranger et jeune au pair*' (Family help intern and young au pair) <www.service-public.fr/particuliers/vosdroits/F13348> accessed 11 January 2025.

¹³⁷ *Code des étrangers* (Code of Foreigners), art L421-1, L421-3.

¹³⁸ *Arrêté du 4 mars 2019* (Ministerial Order of 4 March 2019); *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), '*Convention conclue entre le jeune au pair et la famille d'accueil: Formulaire 15973*01*' (Agreement between the young au pair and the host family: Form 15973*01) <www.service-public.fr/particuliers/vosdroits/R18919> accessed 11 January 2025.

¹³⁹ *Code des étrangers* (Code of Foreigners), R426-13 to R426-15; *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), '*Visa de long séjour: séjour de plus de 3 mois à 1 an*' (Long-stay visa: stay of more than 3 months to 1 year) <www.service-public.fr/particuliers/vosdroits/F16162> accessed 11 January 2025.

¹⁴⁰ *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), '*Carte de séjour temporaire - Jeune au pair*' (Temporary residence card - Young au pair) <www.service-public.fr/particuliers/vosdroits/F15813> accessed 11 January 2025.

¹⁴¹ *Code des étrangers* (Code of Foreigners), R426-13 to R426-15; *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), '*Travail d'un étranger en France : carte de séjour - salarié/travailleur temporaire*' (Work of a foreigner in France: residence card - employee/temporary worker) <www.service-public.fr/particuliers/vosdroits/F15898> accessed 11 January 2025.

¹⁴² *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), '*Autorisation de travail d'un étranger salarié en France*' (Work authorization of an employed foreigner in France) <www.service-public.fr/particuliers/vosdroits/F2728> accessed 25 January 2025.

¹⁴³ *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), '*Un particulier employeur peut-il embaucher un salarié étranger?*' (Can an individual employer hire a foreigner employee?) <www.service-public.fr/particuliers/vosdroits/F1849> accessed 11 January 2025.

Both with regard to employed au pairs, the host family must report the family employment within eight days (*Déclaration d'embauche d'un emploi familial*).¹⁴⁴ The report is sent to the Organizations for the Collection of Social Security and Family Benefit Contributions (*Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales*).¹⁴⁵ Subsequently, the host family will be registered as a private employer and the au pair will receive a social security registration number.

c) Role of Agencies

There are agencies licensed under the French Union of Au Pair Agencies (*Union française des agences au pair*).¹⁴⁶ They provide optional services; it is not required to use them.

5.2.2. Rights and Obligations

The rights and obligations depend on whether they are young au pairs or employed au pairs.

a) Rights of Au Pairs

Young au pairs (*Jeune au pair*) can stay from three months to one year. The permit can be extended once for another year, so the maximum duration is two years. They are entitled to a minimum of 320 euros as pocket money, to be paid by their host family. Besides, the host family provides housing and meals. In addition, the host family pays the full contribution for the au pair's membership of the social security scheme and the supplementary pension fund.¹⁴⁷ This means that French retirement points are added, and non-European citizens must contact the appropriate reception centre to request supplementary pension benefits.¹⁴⁸

Employed au pairs (*Salarié au pair*) only receive accommodation and meals; the payment of additional money is not allowed. This agreement nonetheless qualifies as a labour contract. If the value is not set in the contract, then it is calculated as 71 euros per month for housing and 4.70 euros per meal. The value must not be less than the minimum wage.¹⁴⁹

¹⁴⁴ *ibid*, '*Déclaration d'embauche d'un emploi familial: Formulaire 11469*03*' (Declaration of family employment: Form 11469*03) <www.service-public.fr/particuliers/vosdroits/R1354> accessed 11 January 2025.

¹⁴⁵ *Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales* (Organizations for the Collection of Social Security and Family Benefit Contributions), '*Employé au pair, stagiaire aide-familial étranger, jeune au pair et travailleur occasionnel du bâtiment*' (Employed au pair, family help intern, young au pair and occasional construction worker) <www.urssaf.fr/accueil/particulier/particulier-employeur/embaucher-un-salarie/emploi-pair-stagiaire-aidant-fam.html> accessed 11 January 2025.

¹⁴⁶ *Union française des agences au pair* (French Union of Au Pair Agencies) <www.ufaap.org> accessed 11 January 2025.

¹⁴⁷ *Code des étrangers* (Code of Foreigners), *Arrêté du 4 mars 2019 relatif aux modalités de séjour des jeunes au pair* (Journal officiel n°0054 du 5 mars 2019 texte n° 22) <<https://www.legifrance.gouv.fr/eli/arrete/2019/3/4/INTV1905909A/jo/texte>> accessed 13 January 2025 (Ministerial Order of 4 March 2019 on the conditions of residence of young au pairs).

¹⁴⁸ *Agirc-Arrco*, '*Travailler à l'étranger*' (Working abroad) <www.agirc-arrco.fr/particuliers/ma-retraite/comprendre-ma-retraite/travailler-a-letranger/> accessed 25 January 2025.

¹⁴⁹ *Arrêté du 15 avril 2024 portant extension d'avenants à la convention collective de la branche du secteur des particuliers employeurs et de l'emploi à domicile* (Journal officiel n°0098 du 26 avril 2024 texte n° 84) <www.legifrance.gouv.fr/jorf/id/JORFTEXT000049475045> accessed 13 January 2025 (Decree extending amendments to the collective agreement for the sector of private employers and home employment); *Convention collective nationale des particuliers employeurs et de l'emploi à domicile* (National Collective Agreement for Private Employers and Home Employment)).

b) Obligations of Au Pairs

Young au pairs (*Jeune au pair*) work up to 25 hours a week, with at least one day off. They perform light household tasks and childcare.¹⁵⁰

Employed au pairs (*Salarié au pair*) also perform domestic tasks such as housekeeping and childcare. The details are provided in the labour contract. The issue of working hours is more complicated because the hours are not fixed and depend on the minimum wage. Therefore, a calculation is necessary. The first step is to determine the value of the food and housing that the host family provides to the au pair. As mentioned above, this involves estimating the worth of each meal and the quality of the accommodation. This monetary value is then used to figure out the maximum number of hours the employed au pair is allowed to work. This ensures that the employed au pair only works up to the number of hours that corresponds to the value of the food and housing they receive.

5.2.3. Labour Law Consideration

a) National Employment Law

In France, labour laws apply to private employers and employees, as outlined in the labour code (*code du travail*).¹⁵¹ There is no legal definition of the notion of ‘work’. However, three criteria can be derived from case law: first, there must be actual activity performed; second, this work must be compensated by a salary; and third, there must exist a relationship of authority between the parties involved.¹⁵²

b) Discussion on Au Pair Work

Young and employed au pairs are employees as meant in social security laws. Their host families are regarded as private employers since they contribute to the social security scheme and the supplementary pension fund. Once a host family registers the au pair's employment, the au pair is issued a social security number. For young au pairs (*jeune au pair*), host families are further responsible for covering all contributions. Therefore,

This is different from employment in labour law, where employed au pairs are seen as fully employees.¹⁵³ For young au pairs it is argued that they do not yet fulfil the requirements because the relationship with the host is less authoritative and because only a sample agreement was signed and no labour contract.¹⁵⁴

¹⁵⁰ Décret n° 2020-1734 du 16 décembre 2020 portant partie réglementaire du code de l'entrée et du séjour des étrangers et du droit d'asile (Journal officiel n°0315 du 30 décembre 2020 texte n° 42) <www.legifrance.gouv.fr/eli/decret/2020/12/16/INTV2029045D/jo/texte> accessed 13 January 2025 (Decree on the regulatory part of the Code on the Entry and Residence of Foreigners and the Right of Asylum).

¹⁵¹ Code du travail (labour code) art L1211-1.

¹⁵² Cour de cassation (Court of cassation), chambre sociale, 29 January 2002, n° 99-42.697; 25 June 2013 n° 12-17.660; Christine Noël-Lemaitre, *L'essentiel du droit du travail* (The essentials of labour law) (3rd edn, Ellipses 2016) 6.

¹⁵³ Christine Noël-Lemaitre, *L'essentiel du droit du travail* (The essentials of labour law) (3rd edn, Ellipses 2016) 6.

¹⁵⁴ Le Sénat (The Senat), ‘Situation des familles employant des étrangers au pair’ (Situation of families employing foreign au pairs) 18.05.2006 Journal Officiel 1376 <www.senat.fr/questions/base/2006/qSEQ060121105.html> accessed 15 January 2025.

Additionally, referencing the definition provided by the European Agreement on Au Pair Placement of 24 November 1969, France emphasizes that young au pairs primarily come to the country to enhance their language skills and gain insights into French culture, rather than to focus on work.¹⁵⁵ As a result, only employed au pairs usually fall under the Labour Code, while host families pay for social security in both cases.

5.2.4. Compliance

a) Monitoring

The host family must, as the private employer, fill out a declaration every quarter, which serves as the basis to set the social security contributions and payment deadlines. Failing to do this leads to a fine. This means that all sorts of family employment are documented and checked for social security. In addition, the police are responsible to monitor and detect violations of the regulations regarding au pairs.¹⁵⁶

The au pair can also call the hotline for victims set up by the Ministry of Justice (*Numéro VICTIMES du Ministère de la Justice*) and reach out to local victims' support organizations (*l'annuaire des associations d'aides aux victimes*). Their contact information is mentioned in the sample agreement that the au pair signs with the host family.¹⁵⁷ These organizations provide anonymous and confidential support to victims, helping them share their experiences and guiding them on how to learn more about their rights.

b) Remedies for Au Pairs

In case of a dispute with the host family, young au pairs (*Jeune au pair*) are advised to go to the civil court (*tribunal judiciaire*),¹⁵⁸ whereas employed au pairs (*Salarié au pair*) can go to the labour court (*conseil de prud'hommes*).¹⁵⁹ One reason for this difference in French law is that young au pairs work under the sample agreement (*convention*), while employed au pairs conclude an individual labour contract (*contrat de travail*) and qualify as employees.

5.2.5. Alternative Programmes for Working as a Nanny

French citizens can hire a foreign nanny, which falls under a private employment arrangement aimed at providing personal care (*services à la personne*). This labour category includes a variety of domestic tasks such as childcare, assistance for elderly or disabled individuals, and support with household chores.¹⁶⁰

¹⁵⁵ *ibid.*

¹⁵⁶ European Migration Network Netherlands, 'OPEN Summary of EMN Ad-Hoc Query No. [2024.18]' (19 March 2024) <www.emnnetherlands.nl/sites/default/files/2024-08/Summary%20Au%20Pair%20Regulations_def.pdf> accessed 2 December 2024.

¹⁵⁷ *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), 'Convention conclue entre le jeune au pair et la famille d'accueil: Formulaire 15973*01' (Agreement between the young au pair and the host family: Form 15973*01) <www.service-public.fr/particuliers/vosdroits/R18919> accessed 11 January 2025.

¹⁵⁸ *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), 'Salarié au pair, jeune au pair et stagiaire aide familial étranger' (Employed au pair, young au pair and family help intern) <www.service-public.fr/particuliers/vosdroits/N499> accessed 11 January 2025.

¹⁵⁹ *Code du travail* (labour code), R1412-1; *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), 'Salarié au pair' (Employed au pair) <www.service-public.fr/particuliers/vosdroits/F473> accessed 11 January 2025.

¹⁶⁰ *Code du travail* (labour code), art L7231-1.

One way is to recruit and employ the nanny directly, which entails all labour law obligations as an employer (*emploi direct*). Another way is to hire an organization. Some organizations provide support in recruiting only (*organisme mandataire*), while others also offer to take over the obligations as an employer (*organisme prestataire*).¹⁶¹

If the nanny is not already in France, the first step is to get a visa to enter the country. This is done through an online application for work authorization that the French citizen files on the nanny's behalf.¹⁶² Upon approval, the authorities will issue a long-stay visa equivalent to a residence permit (*visa de long séjour valant titre de séjour*), allowing the nanny to enter France and remain for up to one year.¹⁶³

For most domestic tasks, a simple declaration to the state suffices for employment (*déclaration*); only in cases involving vulnerable groups, such as when the nanny cares for children under three years of age, state approval is required (*agrément*).¹⁶⁴

To make it easier to hire a nanny directly without an organization, private employers use an online service called *Pajemploi* provided by the Organizations for the Collection of Social Security and Family Benefit Contributions (*Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales*). This service streamlines the necessary registrations, social security contributions, payroll, and tax processes. Moreover, directly hiring a domestic worker allows for tax benefits for the French citizen; expenses reported through *Pajemploi* are automatically factored into the income tax calculations.¹⁶⁵

This domestic work programme therefore offers an alternative to the au pair programme. Instead of cultural or language aspects, it is fully considered private employment and offers the nanny all rights and obligations as an employee under labour law.

¹⁶¹ *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), 'Aide à domicile (services à la personne): recrutement d'un salarié' (Home care (personal services): recruitment of an employee) <www.service-public.fr/particuliers/vosdroits/F1692> accessed 25 January 2025.

¹⁶² *Direction de l'information légale et administrative* (Directorate of Legal and Administrative Information), 'Un particulier employeur peut-il embaucher un salarié étranger?' (Can an individual employer hire a foreigner employee?) <www.service-public.fr/particuliers/vosdroits/F1849> accessed 11 January 2025.

¹⁶³ *ibid*, 'Visa de long séjour: séjour de plus de 3 mois à 1 an' (Long-stay visa: stay of more than 3 months to 1 year) <www.service-public.fr/particuliers/vosdroits/F16162> accessed 11 January 2025.

¹⁶⁴ *Code du travail* (labour code), art D7231-1.

¹⁶⁵ *Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales* (Organizations for the Collection of Social Security and Family Benefit Contributions), 'Le service Pajemploi' (The service Pajemploi) <www.urssaf.fr/accueil/services/services-particuliers/service-pajemploi.html> accessed 25 January 2025.

5.3. Germany

This final country report examines the situation in Germany, where 6,913 au pairs have worked in 2023. This figure is comparable to the 6,900 recorded in 2021 but represents a slight decrease from 2022 when there was a peak of 7,500 au pairs.¹⁶⁶

To introduce the legal sources, they are organized into three distinct levels: laws by parliament, regulations by the government, and guidelines by authorities. At the top of this hierarchy are parliamentary laws, which, while holding the highest authority, tend to be broad in nature. They often require the specification of details in governmental regulations and authoritative guidelines. This is particularly apparent regarding au pair work:

- First, at a general level, the immigration of foreigners is governed by the Residence Act (*Aufenthaltsgesetz*), a law passed by the parliament (*Deutscher Bundestag*).
- Second, more concrete, the admission of foreign workers into the labour market is addressed in the Employment Ordinance (*Beschäftigungsverordnung*), which is a regulation from the Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*).
- Third, specific details are outlined in the ‘Factsheet: Au pair in German families’ (*Merkblatt: Au-pair in deutschen Familien*), a guideline from the responsible authority, the German Federal Employment Agency (*Bundesagentur für Arbeit*).

In short, the Residence Act establishes basic immigration rules and empowers the government to regulate foreign workers. The Employment Ordinance defines the concept of au pair employment and sets eligibility criteria. Since parliament and the government do not provide additional information, most details are found in the factsheet ‘Au pair in German families. This factsheet also reflects the authority’s internal practices.¹⁶⁷

Germany - unlike the Netherlands, Austria and France - has ratified the ILO Domestic Workers Convention of 2011 (No. 189). This creates additional state obligations with regard to domestic workers. However, as was previously explained, au pairs are generally excluded from its scope of application (see section 3.1.2).

This chapter maintains the same five-part structure used in the previous reports on Austria and France. To begin, it outlines the process for obtaining permission to work as an au pair (5.3.1. Application) and the legal status of au pairs during their stay (5.3.2. Rights and Obligations). Next, it situates au pairs within the context of material employment law (5.3.3. Labour Law Consideration) and aspects necessary to enforce the rights of au pairs (5.3.4. Compliance). At the end, it elaborates on another domestic work permit (5.3.5. Alternative Programmes for Working as a Nanny).

¹⁶⁶ Cordula Walter-Bolhöfer, ‘Konjunkturumfrage 2024: Entwicklungen und Trends im deutschen Au-pair-Wesen. Eine Studie von DR-WALTER’ (Calypso Verlag 2024) <<https://www.au-pair-agenturen.de/link-tipps/konjunkturumfrage-2024.html>> accessed 12 January 2025 (Economic survey 2024: Developments and trends in the German au pair sector. A study by DR-WALTER’).

¹⁶⁷ Bundesagentur für Arbeit (German Federal Employment Agency), ‘Fachliche Weisungen: Aufenthaltsgesetz und Beschäftigungsverordnung’ (Specialised Instructions: Residence Act and Employment Ordinance) <www.arbeitsagentur.de/ueber-uns/veroeffentlichungen/gesetze-und-weisungen/sonstige-rechtsnormen> accessed 12 January 2025, 94ff.

5.3.1. Application

The application criteria and its process outline who can become an au pair and how to do so.

a) Requirements for Au Pairs and Host Families

When applying to become an au pair, candidates must be under 27 years old, meaning that 26 is the maximum age.¹⁶⁸ Additionally, they must be at least 18 years old when they begin their work with the host family.¹⁶⁹ Au pairs are also required to have basic knowledge of the German language,¹⁷⁰ equivalent to level A1 according to the Common European Framework of Reference for Languages.¹⁷¹ They are permitted to be married¹⁷², and they can have their own (foster) children.¹⁷³

Host families must be native German speakers or use German as their family language.¹⁷⁴ Furthermore, host parents must have at least one child under the age of 18,¹⁷⁵ regardless of whether they are a married couple, an unmarried couple, or a single parent.¹⁷⁶

b) Procedural Aspects

Those who meet the eligibility criteria can apply for a residence permit (*Aufenthaltserlaubnis*) to work as an au pair in Germany.¹⁷⁷ This includes the approval (*Zustimmung*) from the German Federal Employment Agency (*Bundesagentur für Arbeit*).¹⁷⁸ Once an au pair has found a host family, they must submit their application for the residence permit abroad at the German diplomatic mission.¹⁷⁹ The mission will consult directly with the German Federal Employment Agency regarding the approval. Although German missions may follow different procedures in detail, they will most likely require the au pair to submit three forms prepared by the German Federal Employment Agency.¹⁸⁰

¹⁶⁸ *Beschäftigungsverordnung* (Employment Ordinance), § 12 sentence 1.

¹⁶⁹ 'Merkblatt: Au-pair in deutschen Familien' (Factsheet: Au pair in German families), section 2.1.

¹⁷⁰ *Beschäftigungsverordnung* (Employment Ordinance), § 12 sentence 1.

¹⁷¹ 'Merkblatt: Au-pair in deutschen Familien' (Factsheet: Au pair in German families), section 2.2.

¹⁷² *ibid*, section 2.1.

¹⁷³ European Migration Network Netherlands, 'OPEN Summary of EMN Ad-Hoc Query No. [2024.18]' (19 March 2024) <www.emnnetherlands.nl/sites/default/files/2024-08/Summary%20Au%20Pair%20Regulations_def.pdf> accessed 2 December 2024.

¹⁷⁴ *Beschäftigungsverordnung* (Employment Ordinance), § 12 sentences 1, 2.

¹⁷⁵ 'Merkblatt: Au-pair in deutschen Familien' (Factsheet: Au pair in German families), section 2.4.

¹⁷⁶ *Beschäftigungsverordnung* (Employment Ordinance), § 12 sentences 1, 2.

¹⁷⁷ *Aufenthaltsgesetz* (Residence Act), § 19c subpara 1.

¹⁷⁸ *ibid*, § 39 subpara 1, 3.

¹⁷⁹ Citizens from certain privileged countries can enter Germany without a visa or residence permit. In case of this exception, au pairs can apply at the local foreigner's authority after entering Germany. See also *Auswärtiges Amt* (Federal Foreign Office), 'Übersicht zur Visumpflicht bzw. -freiheit bei Einreise in die Bundesrepublik Deutschland' (Overview of visa requirements/exemptions for entry into the Federal Republic of Germany) <www.auswaertiges-amt.de/de/service/visa-und-aufenthalt/staatenliste-zur-visumpflicht-207820> accessed 12 January 2025.

¹⁸⁰ Information can be found on the website of the German Federal Employment Agency (*Bundesagentur für Arbeit*), 'Au-pair' (Au pair) <www.arbeitsagentur.de/unternehmen/arbeitskraefte/au-pair> accessed 12 January 2025.

- *Confirmation¹⁸¹ to have read the factsheet: Au pairs in German families¹⁸²*
The factsheet establishes detailed information on the rights and obligations of the au pair but also the host family. It concludes by providing emergency hotline numbers.
- *Host family's questionnaire¹⁸³*
The host family confirms receipt of the factsheet and makes several declarations, including whether they can provide the au pair with the necessary living. Additionally, the host is asked whether the au pair will need to work more than 30 hours a week or need to care for individuals with special medical needs.
- *Contract between au pair and host family¹⁸⁴*
The au pair and the host family agree on the contract, which reflects most of the information provided in the factsheet. The Federal Employment Agency assesses whether the contract meets all necessary provisions and has, therefore, provided a sample contract. However, the au pair and host family are not obligated to use this specific form.¹⁸⁵

c) Role of Agencies

It is not required to use an au pair agency; nonetheless, many are available in the market. This may be due to the fact that it is legally easy to establish an agency, as you only need to register the business, so no license is required. Since authorities do not regulate agencies, there are a few private umbrella organizations to which agencies can become members.¹⁸⁶ It is claimed that these member agencies operate more professionally, but the criteria for membership are not fully transparent. Au pair agencies currently criticize the lengthy process, which may take up to two years to get an appointment to apply for the permit, as well as the frequent rejections of applications by the German diplomatic missions.¹⁸⁷

¹⁸¹ Bundesagentur für Arbeit (German Federal Employment Agency), 'Erklärung des Au-pair zum Empfang der Au-pair-Informationen' (Declaration by the au pair of having received the au pair information) <www.arbeitsagentur.de/datei/erklaerung-au-pair-info_ba036235.pdf> accessed 12 January 2025.

¹⁸² Bundesagentur für Arbeit (German Federal Employment Agency), 'Au-pair in deutschen Familien' (Au pair in German families) <www.arbeitsagentur.de/datei/au-pair-merkblatt_ba031460.pdf>; see also the translation 'Au pairs in German families' <www.arbeitsagentur.de/datei/au-pair-in-germany-en_ba030535.pdf> accessed 12 January 2025.

¹⁸³ Bundesagentur für Arbeit (German Federal Employment Agency), 'Fragebogen für die Gastfamilie' (Host family's questionnaire) <www.arbeitsagentur.de/datei/aupair-fragebogen_ba036245.pdf> accessed 12 January 2025.

¹⁸⁴ Bundesagentur für Arbeit (German Federal Employment Agency), 'Mustertext: Vertrag über eine Au-pair-Beschäftigung gemäß dem Europäischen Abkommen über die Au-pair-Beschäftigung' (Sample: Contract on au pair employment in accordance with the European Agreement on Au Pair Placement) <www.arbeitsagentur.de/datei/aupair-vertrag_ba030510.pdf> accessed 12 January 2025.

¹⁸⁵ Freedom of contract results from the constitutional principle of private autonomy, which is enshrined in art 2 para 1 of the Basic Law (*Grundgesetz*).

¹⁸⁶ There are the following four umbrella organisations in particular: Gütegemeinschaft Au Pair (www.guetegemeinschaft-aupair.de); AuPair Society (www.aupair-society.de); IAPA International Au Pair Association (www.iapa.org); WeAupair (www.weaupair.com).

¹⁸⁷ Gütegemeinschaft Au Pair, 'Au-pair-Programm in Deutschland in Gefahr: Visa-Chaos bedroht kulturellen Austausch' <www.guetegemeinschaft-aupair.de/de/presse/berichte/visa-chaos-bedroht-kulturellen-austausch.html> accessed 12 January 2025 (Au pair programme in Germany at risk: Visa chaos threatens cultural exchange).

5.3.2. Rights and Obligations

The au pair has both obligations and rights. Some of them follow from the residence permit. Most relevant, however, are the rights and duties that arise out of the contract between the au pair and the host family.

a) Rights of Au Pairs

The residence permit and the approval allow the au pair to stay in Germany and to work with the host family. The maximum duration for this is one year¹⁸⁸ and the minimum is six months, without the possibility of prolongation.¹⁸⁹ Moreover, the au pair has several rights vis-à-vis the host family. They are legally based on the mutual contract, which however is guided by the corresponding sample contract provided by the German Federal Employment Agency.

Host families must provide au pairs with 280 euros per month. This is a fixed minimum amount which the Federal Ministry of Labour and Social Affairs last increased in 2020. Additionally, host families contribute a minimum of 70 euros each month toward language classes, along with covering travel costs for attending these classes. They are also responsible for health and accident insurance for the au pair. Besides, host families are obliged to provide housing and meals. Au pairs are expected to be integrated into the host family and to get the opportunity to learn about the language and culture of Germany.

b) Obligations of Au Pairs

In return, au pairs assist with childcare and light housework. Their working hours are limited to a maximum of 30 hours per week. Au pairs are entitled to one and a half days off each week, as well as four weeks of vacation per year.

5.3.3. Labour Law Consideration

The contract creates mutual rights and obligations between the au pair and the host family. It is however questionable whether this agreement qualifies as an employment contract under German labour law. Considering that au pairs are generally in a weaker position than host families, labour law becomes even more important, as it can help compensate for this power imbalance.

a) National Employment Law

When a contract falls under labour law it generally strengthens the rights of the employee, and it allows German labour courts (*Arbeitsgericht*) to have jurisdiction. This means employees can seek remedies from these courts when they have legal disputes with their employer.¹⁹⁰ Additionally, this classification allows for more specific protection. For instance, employees who work for more than six months without interruption benefit from special protection against unjustified dismissal by the employer.¹⁹¹ That is why, it is relevant for the au pair to determine if their work qualifies as employment under labour law.

¹⁸⁸ *Beschäftigungsverordnung* (Employment Ordinance), § 12 sentence 1.

¹⁸⁹ 'Merkblatt: Au-pair in deutschen Familien' (Factsheet: Au pair in German families), section 1.2.

¹⁹⁰ *Arbeitsgerichtsgesetz* (Labour Courts Act), § 2 subpara 1 no 3.

¹⁹¹ *Kündigungsschutzgesetz* (Protection against Dismissal Act), § 1.

To qualify as an employee (*Arbeitnehmer*) or at least employee-like (*arbeitnehmerähnlich*), certain conditions must be met. One important requirement is that the work must be compensated with money. Employees must work under the direction of their employer, meaning they follow the employer's instructions and are often part of the employer's working structure. For those who are considered employee-like, the focus shifts to economic dependence rather than personal dependence.¹⁹²

Some norms, like the protection against unfair dismissal, are only available to employees, not those who are employee-like. However, there are other protections that apply to both groups. Notably, German labour courts have jurisdiction for both employees and employee-likes.¹⁹³

b) Discussion on Au Pair Work

The discussion regarding who falls under the definition of 'employee' or 'employee-like' requires the courts to assess each case individually. For au pairs, it can be, on the one hand, problematic that they do not receive a salary but only pocket money. On the other hand, they receive additional benefits such as housing, meals, insurance, and language classes, which suggests that their work is not purely voluntary. Furthermore, personal or at least economic dependence can be established.

In 1996, the Labour Court of Hanau decided that an au pair must be regarded at least as 'employee-like' when they are economically dependent on receiving money from the host family to secure their livelihood.¹⁹⁴ The motivation to get to know German culture or language does not preclude this classification. This view, that au pairs can be classified as employee-like, is supported by legal literature.¹⁹⁵

In 1999, the Higher Labour Court of Hesse and, later in 2003, the Labour Court of Bamberg went a step further and ruled that an au pair can be considered an employee under certain circumstances.¹⁹⁶ They argued that the type and amount of work, as well as specific agreements on working hours, days off, and vacation, are typical of employment and come close to a part-time job. Referring to it as 'pocket money' does not change the fact that work is performed in exchange for money. Moreover, when someone works 30 hours a week, the focus cannot solely be on learning the language and culture, as the courts have observed. There is however no literature explicitly supporting this interpretation.

Therefore, there are convincing arguments to classify au pairs as employees, and at least they qualify as employee-like in most cases. Nevertheless, the relevant court decisions on this matter are over 20 years old, potentially making them less relevant today. From a strategic point of

¹⁹² For the legal definition of an employee, see § 611a subpara 1 of the Civil Code (*Bürgerliches Gesetzbuch*).

¹⁹³ *Arbeitsgerichtsgesetz* (Labour Courts Act), § 5 subpara 1 sentences 1, 2.

¹⁹⁴ ArbG Hanau (*Labour Court of Hanau*), 08.02.1996 - 2 Ca 772/95 - Der Betrieb 1996, 2446.

¹⁹⁵ Ulrich Preis, '§ 611a BGB - Einzelfälle arbeitnehmerähnlicher Personen' in Rudi Müller-Glöße and others (eds), *Erfurter Kommentar zum Arbeitsrecht* (C.H.Beck 2025) (Erfurt Commentary on Labour Law: Individual Cases of Employee-like Persons) [92]; Aino Schleusener, '§ 5 ArbGG - Begriff des Arbeitnehmers' in Martina Ahrendt and others (eds), *Gemeinschaftskommentar zum Arbeitsgerichtsgesetz* (Luchterhand Verlag 2022) (Joint Commentary on the Labour Court Act: Definition of Employee) [136].

¹⁹⁶ ArbG Bamberg (Labour Court of Bamberg), 27.10.2003 - 1 Ca 1162/03 - BeckRS 2004, 40363; LAG Hessen (Higher Labour Court of Hesse), 11.11.1999 - 3 Ta 578/99 - NZA-RR 2000, 160.

view, new court rulings regarding the classification of au pairs as employees would benefit their legal status.

5.3.4. Compliance

The chapter ends with the monitoring and remedies available to enforce the rights of au pairs.

a) Monitoring

When applying for the residence permit and the approval to work as an au pair, the German Federal Employment Agency checks the contract between the au pair and the host family. After that, they do not monitor whether the agreement is upheld in practice. Upon the request of a journalist, the authority stated that they have no figures about the exploitation of au pairs.¹⁹⁷ Au pair agencies can provide support by asking whether the agreed contract obligations are followed. However, there is no legal obligation to do so. Even more, au pairs are not required to use an agency at all.

In emergency situations, there are two hotlines recommended for au pairs: The first is the general crisis hotline (*TelefonSeelsorge Deutschland*) and the second is run by the umbrella organization Aupair Society.¹⁹⁸ They run on a private or volunteer basis.

b) Remedies for Au Pairs

Considering the poor monitoring mechanisms, it is up to the au pair to take action when their rights are violated. The au pair can bring a claim against the host family, as the employer, before the labour court (*Arbeitsgericht*). The court is responsible for resolving disputes between employees and employers, such as issues arising from the employment relationship or disputes regarding the existence of an employment relationship itself.¹⁹⁹

If the court finds that the au pair does not qualify as such in this situation and the dispute remains unresolved, it can refer the case to the appropriate civil court to assess the agreement under contract law. Nevertheless, based on the presented case law, there is a good chance that the labour court will classify an au pair at least as employee-like.

5.3.5. Alternative Programmes for Working as a Nanny

The question is whether there are alternative programmes for foreigners to work as nannies in Germany. Similar as for au pairs, the primary requirement is obtaining approval from the Federal Employment Agency.²⁰⁰ There are two programmes under which nanny work could potentially be approved: domestic helpers and domestic workers. However, it will be shown that the first is practically irrelevant, while the latter applies only in specific situations.

The first programme is for domestic helpers (*Haushaltshilfe*).²⁰¹ The problem is that it requires an inter-state agreement between the Federal Employment Agency and the worker's country of

¹⁹⁷ Ekaterina Astafyeva, 'Au-Pair: So krass kann es in Gastfamilien sein' (reporter, 9 August 2023) <<https://play.funk.net/channel/reporter-11853/1924141>> accessed 12 January 2025 (Au pair: It can be so extreme in host families), minute 8.

¹⁹⁸ 'Merkblatt: Au-pair in deutschen Familien' (Factsheet: Au pair in German families), section 6.

¹⁹⁹ *Arbeitsgerichtsgesetz* (Labour Courts Act), § 2 subpara 1 no 3.

²⁰⁰ *Aufenthaltsgesetz* (Residence Act), § 19c subpara 1, § 39.

²⁰¹ *Beschäftigungsverordnung* (Employment Ordinance), § 15c.

origin. Currently, there is no such agreement with any non-EU country,²⁰² rendering this option void and making it impossible to work as a domestic helper in Germany now.

The second programme is for domestic workers (*Hausangestellte*).²⁰³ Different from au pairs, they are not allowed to work for German families. Instead, they only work for foreign diplomats or persons working in Germany on behalf of their employers abroad. Furthermore, the domestic worker must have already been employed for at least one year in the same household before arriving in Germany.²⁰⁴ In other words, this norm allows foreign professional people to bring their domestic workers with them to Germany, but it does not create opportunities for new domestic workers to find new employment in Germany. In this sense, it is no real alternative to the au pair programme.

²⁰² Bundesagentur für Arbeit (German Federal Employment Agency), ‘Fachliche Weisungen: Aufenthaltsgesetz und Beschäftigungsverordnung’ (Specialised Instructions: Residence Act and Employment Ordinance) <www.arbeitsagentur.de/ueber-uns/veroeffentlichungen/gesetze-und-weisungen/sonstige-rechtsnormen> accessed 12 January 2025, 105.

²⁰³ *Beschäftigungsverordnung* (Employment Ordinance), § 13.

²⁰⁴ *ibid.*

5.4. Comparison

The following table contrasts the key aspects of the previous country reports.

	Netherlands	Austria	France (<i>Jeune au pair</i>)	Germany
<i>Requirements of the au pair</i>				
Age limit	18-25	18-28	18-30	18-26
Language skills	English basics	German A1 level	French basics	German A1 level
Civil status	Must be unmarried	Unclear	Can be married	Can be married
Own children	Not allowed, also no foster children	Unclear	Allowed	Allowed
<i>Procedural aspects</i>				
Where to apply	National authority (Immigration and Naturalisation Service)	Host family must apply via Austrian Employment Service; then via diplomatic mission (for visa)	First diplomatic mission, then local authority	Diplomatic mission abroad (which contacts the employment agency directly)
Sample contract	No	Yes	Yes	Yes
Additional documents	None, contract via au pair agency and/or host family	Proof of health insurance and contract	Declaration of the host on family employment	Factsheet, with confirmation to have read it, and host family's questionnaire
<i>Role of agencies</i>				
Required to use	Yes	No	No	No
Licenced by state	Yes	Yes	Yes	No
<i>Rights of au pairs</i>				
Duration of stay	1 year	6 months - 1 year	3 months - 1 year	6 months - 1 year
Prolongation possible	Yes	No (exceptions in specific cases but not for third-country citizens)	Yes, for 1 year	No
Paid by host family/month	300-340 euros	551.10 euros (15 wage payments per year)	320 euros	280 euros
+ extra paid for language course	No	At least half of the costs	No	70 euros per month and coverage of the travel costs
+ extra paid for social security	Yes	Accident insurance + contributions to the pension fund (health insurance to be paid by the au pair)	Full scheme and supplementary pension fund	Accident and health insurance
<i>Obligations of au pairs</i>				
Type of tasks	Childcare and light housework	Childcare and light housework	Childcare and light housework	Childcare and light housework

Work time/week	Max. 30 hours	Max. 17 hours	Max. 25 hours	Max. 30 hours
Time off/week	2 days off	1 day off	1 day off	1.5 days off
Vacation	2 weeks/year	30 days/year	No reliable information available	4 weeks/year
<i>Labour law consideration</i>				
National employment law: Rules on application	Existence of employment contract if there is remunerated work and a relationship of authority.	Employee works for someone in economic and personal dependence (under direction of employer)	Work is remunerated activity with subordination, according to case law	Employee works for someone based on a contract, subject to instructions and in personal dependence.
Discussion on au pair work: Qualification as employment	Depends on case (yes if there is remunerated work and a relationship of authority).	Au pair automatically qualifies as employee (enjoys full labour rights)	Not qualified as employment (different from <i>salarié au pair</i>), but host still pays for social security	At least qualify as employee-like (when the au pair is economically dependent, and the contract has specific tasks)
<i>Compliance</i>				
Monitoring	No	No labour inspections	Regular checks to register family employment for social security	No
Emergency Hotline	Yes, 'Meldpunt Misbruik Au Pair' of the INS	Yes, by Federal Criminal Police Office + Central Office against Human Trafficking (anonymously and 24/7)	Yes, by Ministry of Justice	Yes, on private or volunteer basis
Remedies	Civil court	Labour court, Public Employment Service	Civil court (different from <i>salarié au pair</i>)	Labour court
<i>Alternative programmes</i>				
Domestic work as a nanny	No, the au pair programme is currently the only available mechanism.	Potentially 'Red-White-Red Card for Skilled Workers in Shortage Occupations' or work as Private Domestic Staff	Yes, there is a category of domestic work related to personal care, and it qualifies as employment under labour law	Only if the person works for people being posted in Germany by their employer abroad or if working for foreign diplomats

This information, both from the table and the previous country reports, will now be compared to identify both similarities and differences. Emphasis will be placed on the Netherlands.

Requirements for the au pair

When examining the eligibility to work as an au pair, there are slightly different approaches across the countries. All four establish that the au pair programme is intended for young individuals: The Netherlands, however, has the most restrictive age limit of 25 years, while France allows au pairs to be up to 30 years old. Another comparable requirement is that au pairs must possess basic knowledge of a certain language. Unlike the other three countries, the Netherlands does not require proficiency in the official language, Dutch; instead, it requires au pairs to have knowledge of English. Regarding marital status and whether au pairs can have children, the countries differ, with some, like France, leaving this aspect open to decide for the authorities.

Procedural aspects

In terms of procedural aspects, one major difference is that the Netherlands is the only country that does not provide a sample contract or any official documents outlining the relationship between the au pair and the host family. In contrast, the other three countries include sample contracts, which are provided in the annex. At the same time, the Netherlands is the only country that mandates the use of an agency. In Austria and France, agencies must be licensed by the state, but their use is optional. This suggests that the Dutch approach places the responsibility on agencies, which may provide their own sample contracts. However, these contracts are not publicly accessible and may vary between agencies.

Rights of au pairs

The rights of au pairs generally include the right to stay for a maximum of one year, with some countries offering the possibility of extension. A significant difference lies in the financial compensation provided by the host family. Germany has the lowest payment at 280 euros, while Austria has the highest at 518.44 euros paid 15 times a year. However, it is also essential to consider expenses for language classes and social security. For instance, Germany is unique in requiring the host family to pay at least 70 euros for language courses and cover all travel costs on top.

France, on the other hand, is a positive example as it obliges the host family to pay the full social security contributions for the au pair. In France and in Austria, the host family even contributes to the au pair's pension fund. Considering all these different contributions like pocket money, language classes and social security, au pairs in the Dutch programme receive the least financial support overall.

Obligations of au pairs

The types of tasks required of au pairs are generally similar across all four countries, focusing on childcare and light housework. Working hours range from 18 hours in Austria to 30 hours in both Germany and the Netherlands. However, the regulations regarding days off and vacation time vary among the countries.

Labour law consideration

Regarding labour considerations, a common challenge faced by all four countries is providing a straightforward answer to whether au pair work qualifies as employment. In most cases, this determination depends on specific circumstances and cannot be answered without knowledge of national labour laws.

Compliance

In terms of monitoring, none of the countries provide robust mechanisms to ensure that rights and obligations are upheld. While some countries have hotlines, they are often general or operated on a private basis. The jurisdiction for resolving disputes also varies, with labour or civil courts being responsible in different cases. Nevertheless, in all instances, there is a court available for au pairs to approach in the event of a dispute with their host family.

Alternative Programmes

France is the only country that supports private employment for domestic work, allowing its citizens to hire nannies with all the rights and obligations outlined under labour law. In the other three countries, there is no real alternative to the respective au pair programmes, except for special situations like working for foreign diplomats. Therefore, obtaining a visa and work permit for domestic employment as a nanny is most feasible in France.

Conclusion

Overall, the core concept is the same: Au pairs are young people who earn small money for providing childcare and performing light housework for their host families. However, upon closer examination of the programmes, the Netherlands stands out in several key areas. It is the only country that does not provide sample contracts or other legal documents outlining the rights and responsibilities of au pairs. Instead, it requires the use of au pair agencies, which is optional in the other states. Moreover, the Netherlands has the most restrictive age limit for au pairs and requires knowledge of English rather than Dutch, the country's official language. These aspects set the Dutch au pair programme apart from those of its European neighbours.

6. Policy Suggestions

In light of the findings presented, there are compelling arguments that the Dutch au pair programme has room for improvement, both in terms of legal rules and practical implementation. The aim of this chapter is to provide a number of suggestions on how to potentially improve the current shortcomings of the Dutch au pair programme, based on both insights from the conducted interviews as well as the comparative analysis. These recommendations aim to create a more transparent, equitable, and supportive framework for au pairs in the Netherlands, prioritizing their rights and well-being while maintaining the programme's cultural exchange goals.

6.1. Provide Coherent Documents and Sample Contracts

To Enhance Transparency and Consistency

The Netherlands could adopt the documentation practices of Austria, Germany and France as models. Providing standardized sample contracts would clarify the legal standing of au pairs while ensuring consistency. Currently, each agency likely has its own set of documents that are sent to host families and au pairs for signature. However, these sample documents are often drafted with the interests of the host families in mind, as they are the paying clients. By offering state-approved sample contracts, the important rights of au pairs can be explicitly included, ensuring that the legal framework remains consistent regardless of the agency chosen.

6.2. Introduce Mandatory Training for Host Families

To Ensure Cultural Sensitivity and Uphold Obligations

Mandatory training or orientation for host families should be introduced to ensure they understand cultural sensitivity and their contractual obligations. This measure would help mitigate misunderstandings and promote positive relationships between au pairs and host families. This recommendation was highlighted by interviewee Teresa, who stressed the importance of cultural awareness, and aligns with interviewee Dewi's concerns about potential cultural clashes between au pairs and their host families. Currently, none of the four countries reviewed have such training in place, giving the Netherlands a unique opportunity to lead by example. By equipping host families with this knowledge, the programme can better achieve its goals of fostering cultural exchange and mutual respect between the host family and the au pair.

6.3. Check Host Families

To Ensure a Safe Working Environment

Living in the same household as one's employer can easily create a precarious situation. Since au pairs are young and often female, it is the state's responsibility to protect them not only from exploitation but also from potential violence in their living and working environments. Therefore, there should be stringent criteria for au pair agencies regarding host family evaluations. Agencies should have an obligation to monitor families on a regular basis, reporting their findings to the Labour Inspection in specific cases or through sample-based submissions to avoid excessive bureaucracy. This aligns with suggestions from interviewees like Jeffrey, Joyce, Ayu and Maria, who all called for greater oversight, regular inspections, and stricter penalties in cases of precarious living and working conditions for the au pair. It is unreasonable that typical workplaces, like in offices, have high safety standards while the conditions for host families are largely unregulated. A safe working environment must be recognized and realised as a right for au pairs. For instance, in Germany, host families are required to complete a questionnaire that gathers information about the living and working conditions they provide.

6.4. Qualify Au Pair Work as Employment

To Strengthen the Rights of Au Pairs and Acknowledge their Work

The primary legal challenge lies in categorizing au pair work within the legal framework, particularly in determining whether it falls under employment law. This memorandum demonstrates that, in certain cases, it does. This conclusion is supported by Dutch case law, especially in those cases where the criteria for the au pair programme no longer apply (see the labour law discussion in section 4.2.1). It is also endorsed by interviewee Joyce, who emphasizes that the legal requirements for a labour agreement are often met in au pair work. The counterargument that au pair work is primarily a cultural exchange falls short in practice. This becomes particularly evident when au pairs are already working up to 30 hours per week on detailed tasks with a high level of responsibility, and even more pronounced when they continue working after the au pair arrangement has expired.

However, navigating this question can be challenging, particularly for individuals without legal knowledge. Furthermore, there is limited case law on au pairs, possibly due to the barriers foreign au pairs face in accessing the courts - including language difficulties, financial constraints, and the short duration of their stay. This issue is prominent across Dutch, Austrian, French, and German legal systems. In all four countries, there has been little case law in which courts have ruled that au pair work falls within the scope of employment. While the existing case law often dates back several years, it still indicates a positive trend. For instance, the Court of Leeuwarden decided in 2004 that au pair work can be recognized as qualifying for employment when the focus is on the work performed (see the case law in section 4.2.1). This suggests potential for further development and clarification.

One challenge is that courts will need to assess each case individually, considering not only the contract but also the working practices between the au pair and the host family. In other words, multiple procedures may be required for au pairs. Proving certain working conditions can also be difficult. One potential approach is to start with a case where an au pair has already worked for more than a year. The court could then decide that once the one-year period has ended, it is no longer possible to maintain an au pair agreement, and any agreement that continues beyond one year should qualify as an employment agreement. Therefore, strategic litigation is crucial. Clearly establishing the conditions under which au pair work qualifies as employment would strengthen the rights of au pairs and resolve ongoing discussions and legal uncertainties.

6.4. Implement a Hotline and a Complaint Mechanism

To Help in Emergencies and To Monitor Au Pair Agencies

The state must ensure the safety of au pairs, particularly in critical situations. An emergency hotline should be established to provide quick and straightforward assistance to au pairs during emergencies. Since court proceedings may not be suitable for au pairs requiring immediate help, a hotline can fill this gap. In Germany, for instance, there is a hotline specifically for au pairs.

What is more, providing temporary accommodation for au pairs who feel unsafe with their host families is essential. One approach could be allowing au pairs to book a hotel at the agency's expense after consulting the emergency hotline and notifying the agency, while they wait for another host family. Additionally, the complaint mechanism for addressing unlawful behaviour by au pair agencies should be improved. Often, au pair agencies are seen as the first point of contact for disputes with host families. However, not all agencies are equipped or willing to resolve such disputes. As interviewee Luiza has suggested, there should be consequences for

agencies that offer poor services. In such cases, authorities should be instructed to withdraw licenses from the agencies. Moreover, authorities should publish the number and types of complaints for each agency. They should also consider implementing incognito audit procedures to monitor how the agencies comply with legal standards, ensuring that they not only hold licenses but also adhere to high-quality standards. The need for stronger monitoring of au pair agencies was also highlighted by interviewee Ayu.

The complaint mechanism should also be capable of detecting cases of exploitation, particularly human trafficking. Interviewee Joyce suggests that labour inspections should be more proactive in checking the working conditions of au pairs. In situations where criminal prosecution occurs, authorities should be instructed to offer the au pair an extended residence permit.

6.5. Find European Approaches

To Make Au Pair Work More Attractive Across Borders

Maintaining an overview of the au pair landscape is challenging, as there are no relevant binding rules in either public international or European law. As a result, au pairs may choose the country with the most attractive conditions for their stay and could move from one European country to another, effectively working as an au pair for more than a year. For instance, Dewi worked first in Turkey, then in the Netherlands, and is currently in France as an au pair.

As discussed in the chapter on the international and European framework (see the summary in section 3.4), the ILO, CoE, and EU provide initial approaches. However, these still need to be more specific regarding au pairs and require ratification to become legally binding. The EU Directive 2016/801, for example, is limited by its optional nature for member states regarding the provisions concerning au pairs. A more specific EU Directive that targets the rights of au pairs and is legally binding for member states is needed to create harmonized standards across the EU.

6.6. Conclusion

The five proposed policy suggestions aim to enhance the Dutch au pair programme by addressing critical legal and practical shortcomings. By implementing standardized documentation, clarifying the employment status of au pair work, ensuring the safety of working environments, establishing robust complaint mechanisms, and pursuing coordinated European approaches, the Netherlands can create a more transparent, equitable, and supportive framework for au pairs. These measures not only protect the rights and well-being of au pairs but also recognize their contributions to host families and the broader community. By prioritizing the legal position of au pairs, the Netherlands can build a system that honours their role in cultural exchange while safeguarding their rights in practice.

7. Conclusion

The concept of au pairing appears ambiguous. For some, it is primarily about cultural exchange and language learning, providing a valuable opportunity to gain international experience at a young age. For others, however, the reality is different; they find themselves working for their host families under significant responsibilities and obligations that remind of those of domestic workers. This discrepancy creates a gap between the legal framework and the practice, highlighting a misalignment between the ideal of au pairing and its reality.

This memorandum began by examining the current state of the Dutch au pair programme. Through interviews with four au pairs, several individual challenges were identified. The au pairs reported working more than the permitted 30 hours per week and performing demanding tasks that go beyond light housework. Some experienced mistreatments from their host families, including having unsecure living arrangements and receiving inadequate food. These working conditions can be particularly harmful to vulnerable young people, primarily women, many of whom are in the Netherlands for the first time.

Further interviews were conducted with staff members from FairWork, who shared common issues about the Dutch au pair programme. In many cases, au pairs are used as inexpensive labour which leads to exploitation. The role of au pair agencies in the Netherlands is crucial in this context. While some agencies advocate for au pairs' rights, others prioritise financial interests, often siding with host families over the needs of au pairs. Despite limited research on au pair conditions, available studies confirm this systemic exploitation of au pairs. Poor working conditions also impact their physical and mental well-being.

Turning to the legal aspects of au pairing, this memorandum outlined the relevant international and European frameworks, including the ILO, the CoE, and the EU. The ILO's Domestic Workers Convention (No. 189) from 2011 generally excludes au pairs from its scope, and the Netherlands is not a party to this convention. In contrast, the CoE's European Agreement on 'Au Pair' Placement from 1969 explicitly addresses au pairs' rights but it has not been widely ratified by states. Whereas the EU Directive 2016/801 defines au pairs and emphasizes the goal of cultural and language learning, its provisions on au pairs are optional, meaning member states are not required to incorporate them into national law. As such, the available international and European legal frameworks regarding au pair work are very weak in nature.

Therefore, it is up to the national legal systems to design the au pair programme. In the Netherlands, au pairs must be between 18 and 25 years old, possess basic English skills, and be unmarried without children. They must go through licensed au pair agencies to obtain a residence permit for up to one year. Contracts must specify a maximum of 30 hours of work per week in childcare and light housework, with au pairs receiving between 300 and 340 euros from their host families.

A comparison of the Dutch programme with those in Austria, France, and Germany reveals distinct features. Austria allows au pairs to work for less hours per week while having them receive significantly more money from their host families. France has separate programmes for young au pairs and employed au pairs, while requiring host families to cover full social security costs for both. Germany provides comprehensive documentation of rights through a factsheet in German and English that both au pairs and host families must sign beforehand. Notably, all three countries provide sample contracts for au pairs and host families. The Netherlands has no sample documents but instead requires au pairs to use one of the licences agencies. This led the

authors to five policy suggestions. They include creating standardized documents and sample contracts for au pairs, implementing mandatory orientation sessions for host families, and establishing a complaint mechanism. Additionally, classifying au pair work as employment could strengthen their legal standing.

In short, this memorandum attempted to provide an answer to the following research question:

To what extent does the current Dutch au pair system prevent labour exploitation, and how can it be reformed to better protect au pairs while preserving its role as a cultural exchange programme?

Overall, the poor working conditions that often characterize the au pair experience in the Netherlands were highlighted. The international and European frameworks established by the ILO, CoE and EU lack binding regulations for au pairs. This may explain why there are different approaches among states. The Netherlands – compared to Austria, France and Germany – is distinct in its requirement for agency involvement and is the only state that does not provide any sample contracts. In the light of these findings, the authors encourage decisionmakers to improve the Dutch au pair programme. By filling existing gaps and drawing on best practice in neighbouring countries, the Netherlands can strengthen the rights and safety of young au pairs, while promoting European labour standards and respect for fair work.

8. Sources

This memorandum cites legal documents, documents from authorities, cases, and secondary sources. In each of these sections, sources from different legal systems are listed separately.

8.1. Legislative Documents

International Labour Organization

Convention concerning decent work for domestic workers (adopted 16 June 2011, entered into force 5 September 2013) ILO C189 (Domestic Workers Convention).

Council of Europe

European Agreement on 'Au Pair' Placement (adopted 24 November 1969, entered into force 30 May 1971) ETS No 068.

European Union

DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004) OJ L 158.

DIRECTIVE (EU) 2016/801 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) (2016) OJ L 132.

Dutch Law

Besluit uitvoering Wet arbeid vreemdelingen (Foreign Nationals Employment Act Implementation Decree) <<https://wetten.overheid.nl/BWBR0007523/2021-06-01>> accessed 1 December 2024.

Burgerlijk Wetboek (Dutch Civil Code) <<https://wetten.overheid.nl/BWBR0005290/2025-01-01>> accessed 28 November 2024.

Vreemdelingenwet (Immigration Law) <<https://wetten.overheid.nl/BWBR0011823/2024-07-25>> accessed 11 December 2024.

Wet arbeid vreemdelingen (Foreign Nationals Employment Act) <<https://wetten.overheid.nl/BWBR0007149/2024-01-01>> accessed 29 November 2025.

Wet minimumloon en minimumvakantiebijslag (Minimum Wage and Minimum Holiday Allowance Act) <<https://wetten.overheid.nl/BWBR0002638/2025-01-01>> accessed 2 December 2024.

Wet modern migratiebeleid (Modern Migration Policy Act) <<https://wetten.overheid.nl/BWBR0027930/2013-09-21>> accessed 28 November 2024.

Wetboek van Strafrecht (Dutch Criminal Code)

<<https://wetten.overheid.nl/BWBR0001854/2025-01-01>> accessed 26 November 2024.

Wetboek van Strafvordering (Dutch Code of Criminal Procedure)

<<https://wetten.overheid.nl/BWBR0001903/2025-01-01>> accessed 28 November 2024.

Austrian Law

Allgemeines Sozialversicherungsgesetz (Austrian General Social Security Act)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008147>> accessed 8 January 2025.

Betriebliche Mitarbeiter- und Selbstständigenvorsorgegesetz (Industrial Employee and Self-Employed Workers Pension Provision Act)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002088>> accessed 20 January 2025.

Hausgehilfen- und Hausangestelltengesetz (Act Governing Domestic Help and Domestic Employees)

<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008191>> accessed 8 January 2025.

Niederlassungs- und Aufenthaltsgesetz (Settlement and Residence Act)

<www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004242> accessed 17 November 2024.

Urlaubsgesetz (Paid Annual Leave Act)

<www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008376> accessed 29 November 2024.

French Law

Arrêté du 15 avril 2024 portant extension d'avenants à la convention collective de la branche du secteur des particuliers employeurs et de l'emploi à domicile (Journal officiel n°0098 du 26 avril 2024 texte n° 84) <www.legifrance.gouv.fr/jorf/id/JORFTEXT000049475045> accessed 13 January 2025 (Decree extending amendments to the collective agreement for the sector of private employers and home employment).

Arrêté du 4 mars 2019 relatif aux modalités de séjour des jeunes au pair (Journal officiel n°0054 du 5 mars 2019 texte n° 22)

<www.legifrance.gouv.fr/eli/arrete/2019/3/4/INTV1905909A/jo/texte> accessed 13 January 2025 (Ministerial Order of 4 March 2019 on the conditions of residence of young au pairs).

Code de l'entrée et du séjour des étrangers et du droit d'asile (Code of Entry and Residence of Foreigners and of the Right to Asylum)

<www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070158> accessed 13 January 2025 (*Code des étrangers* (Code of Foreigners)).

Code du travail (Labour code)

<https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050> accessed 13 January 2025.

Ordonnance n° 2020-1733 du 16 décembre 2020 portant partie législative du code de l'entrée et du séjour des étrangers et du droit d'asile (Journal officiel n°0315 du 30 décembre 2020 texte

n° 41) (Order on the legislative part of the Code on the Entry and Residence of Foreigners and the Right of Asylum)
<www.legifrance.gouv.fr/eli/ordonnance/2020/12/16/INTV2029043R/jo/texte> accessed 13 January 2025.

German Law

Arbeitsgerichtsgesetz (Labour Courts Act) <www.gesetze-im-internet.de/arbogg/> accessed 12 January 2025.

Bürgerliches Gesetzbuch (Civil Code) <www.gesetze-im-internet.de/bgb/> accessed 12 January 2025.

Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory) <www.gesetze-im-internet.de/aufenthg_2004/> accessed 12 January 2025 (*Aufenthaltsgesetz* (Residence Act)).

Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany) <www.gesetze-im-internet.de/gg/> accessed 12 January 2025 (*Grundgesetz* (Basic Law)).

Kündigungsschutzgesetz (Protection against Dismissal Act) <www.gesetze-im-internet.de/kschg/> accessed 12 January 2025.

Verordnung über die Beschäftigung von Ausländerinnen und Ausländern (Ordinance on the Employment of Foreigners) <www.gesetze-im-internet.de/beschv_2013/> accessed 12 January 2025 (*Beschäftigungsverordnung* (Employment Ordinance)).

8.2. Documents by Authorities

International Labour Organization

ILO (99th Session 2010) Report IV(1): Decent work for domestic workers (2 April 2009).

—— (99th Session 2010) Report IV(2): Decent work for domestic workers (3 March 2009).

—— Recommendation R020: Labour Inspection Recommendation (Recommendation Concerning the General Principles for the Organization of Systems of Inspection to Secure the Enforcement of the Laws and Regulations for the Protection of the Workers) (5th Conference Session Geneva 29 November 1923).

—— Recommendation R201: Recommendation concerning Domestic Workers Recommendation (Decent Work for Domestic Workers) (100th Conference Session 16 June 2011). ILO, ‘Ratifications of C189’ (Normlex, Ratification by conventions) <<https://normlex.ilo.org>> accessed 12 January 2025.

Council of Europe

Council of Europe, ‘Explanatory Report to the European Agreement on Au Pair Placement’ (Council of Europe, 1969) <<https://rm.coe.int/16800c92f7>> accessed 21 November 2024.

European Union

European Commission, 'COMMISSION RECOMMENDATION of 20 December 1984 concerning a European Agreement on au pair placement sponsored by the Council of Europe' 85/64/EEC.

General Secretariat of the Council, 'Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing' COM/2013/0151 final.

Dutch Authorities

Immigratie- en Naturalisatiedienst (Immigration and Naturalisation Service), 'Au Pairs' (n.d.) <<https://ind.nl/en/about-us/background-articles/au-pairs>> accessed 4 December 2024.

—— 'Plichten referent en erkende referent' (Duties of sponsor and authorised sponsor) <<https://ind.nl/nl/plichten-referent-en-erkende-referent>> accessed 4 December 2024.

Ministerie van Sociale Zaken en Werkgelegenheid (Ministry of Social Affairs and Employment), 'Exploratory study of labour exploitation and serious disadvantage in domestic work in the Netherlands' (16 September 2021) <<https://www.nllabourauthority.nl/publications/reports/2021/09/16/exploratory-study-of-labour-exploitation-and-serious-disadvantage-in-domestic-work-in-the-netherlands---summary>> accessed 22 January 2025.

Nederlandse Arbeidsinspectie (Netherlands Labour Authority), 'About the Netherlands Labour Authority' <www.nllabourauthority.nl/about-netherlands-labour-authority> accessed 8 January 2025.

—— 'Au Pairs' <www.nlarbeidsinspectie.nl/onderwerpen/au-pairs> accessed 4 December 2024.

—— 'European Labour Authority' <www.nllabourauthority.nl/about-netherlands-labour-authority/european-labour-authority> accessed 8 January 2025.

—— 'Exploiting people in employment or services is a serious crime' <www.nllabourauthority.nl/topics/human-trafficking---labour-exploitation> accessed 9 January 2025.

—— 'FAQ on reporting' <www.nllabourauthority.nl/topics/report/faq-on-reporting> accessed 8 January 2025.

—— 'Minimum wage and holiday allowance' <www.nllabourauthority.nl/topics/minimum-wage-and-holiday-allowance> accessed 9 January 2025.

—— 'Priorities Netherlands Labour Authority' <www.nllabourauthority.nl/about-netherlands-labour-authority/priorities-netherlands-labour-authority> accessed 9 January 2025.

—— 'Reporting unfair, unsafe, unhealthy working conditions or labour exploitation' <www.nllabourauthority.nl/topics/report/reporting-unfair-unsafe-unhealthy-working-conditions-or-labour-exploitation> accessed 8 January 2025.

—— ‘Smarter, more effective and more efficient supervision’
<www.nllabourauthority.nl/about-netherlands-labour-authority/smarter-more-effective-and-more-efficient-supervision> accessed 8 January 2025.

—— ‘Supervision and investigation tasks’ <www.nllabourauthority.nl/about-netherlands-labour-authority/supervision-and-investigation-tasks> accessed 8 January 2025.

Rijksoverheid (Central government), ‘*Ben ik aansprakelijk voor de schulden van mijn minderjarige kinderen?*’ (Am I liable for my minor children's debts?)
<www.rijksoverheid.nl/onderwerpen/schulden/vraag-en-antwoord/schulden-van-kinderen> accessed 10 January 2025.

Austrian Authorities

Arbeitsinspektion (Labour Inspectorate), ‘*Die Tätigkeit der Arbeitsinspektion im Jahr 2023*’ (The activities of the labour inspectorate in 2023, 2024)
<https://www.arbeitsinspektion.gv.at/Service/Taetigkeitsberichte-_Unfallberichte/Taetigkeitsbericht_2023.pdf> accessed 23 January 2025.

Arbeitsmarktservice (Austrian Public Employment Service), ‘*Anzeige eines Au-pair-Verhältnisses*’ (Registration of an Au Pair Relationship, n.d.)
<https://www.formularservice.gv.at/site/fsrv/Resources/AMS/ABV/FAUP_Anzeige_Au_Pair.pdf> accessed 25 November 2024.

Bundesgesetzblatt (BGBl) II Nr 361/2024, ‘*Verordnung des Bundeseinigungsamtes beim Bundesministerium für Arbeit und Wirtschaft zur Festsetzung des Mindestlohntarifs für Au-Pair-Kräfte*’ (Regulation of the Conciliation Board at the Federal Ministry for Labour and Economy on the Setting of the Minimum Wage Tariff for Au-Pair Workers, 10 December 2024)
<https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2024_II_361/BGBLA_2024_II_361.pdfsig> accessed 23 January 2025.

Bundesministerium für europäische und internationale Angelegenheiten (Austrian Ministry of Foreign Affairs), ‘*Informationen für Au-Pair Kräfte in Österreich*’ (Information for Au Pairs in Austria, 1 June 2021)
<https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Au_Pairs_Broschu_re_-_Deutsch_-_final_2021.pdf> accessed 23 November 2024.

Bundesministerium für europäische und internationale Angelegenheiten (Austrian Ministry of Foreign Affairs), ‘*Information Brochure for Au Pairs in Austria*’ (2023)
<https://www.bmeia.gv.at/fileadmin/user_upload/Vertretungen/Tokio/Dokumente/Au-Pairs_Broschure_-_Englisch_2023.pdf> accessed 24 January 2025.

Bundesministerium für europäische und internationale Angelegenheiten (Austrian Ministry of Foreign Affairs), ‘*Information Brochure: Private Domestic Staff*’ (2016)
<https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Ministerium/Folder_Private_Domestic_Staff.pdf> accessed 26 January 2025.

Bundesministerium für Arbeit und Wirtschaft (Federal Ministry of Labour and Economy), ‘*Au pairs*’ (12 April 2024) <<https://www.usp.gv.at/en/mitarbeiter-und-gesundheit/einstellung-mitarbeiter-und-arten-der-beschaeftigung/weitere-informationen-auslaendische-beschaeftigte/au-pair.html>> accessed 24 November 2024.

Bundesministerium für Arbeit und Wirtschaft (Federal Ministry of Labour and Economy), ‘*Informationen zur Beschäftigung einer Au-pair-Kraft aus einem Drittstaat (Nicht-EU-Staat)*’

(Information on the Employment of an Au Pair from a Third Country (Non-EU Country), 1 January 2024) <<https://www.bmaw.gv.at/dam/jcr:6928857c-4f05-47e9-8459-df2ec991f70a/2024%20-%20Info%20-%20Au-pair-Besch%C3%A4ftigung.pdf>> accessed 25 November 2024.

—— ‘Informationen zur Beschäftigung einer Au-pair-Kraft aus einem Drittstaat (Nicht-EU-Staat)’ (1 January 2024) <<https://www.bmaw.gv.at/dam/jcr:6928857c-4f05-47e9-8459-df2ec991f70a/2024%20-%20Info%20-%20Au-pair-Besch%C3%A4ftigung.pdf>> accessed 25 November 2024.

Wirtschaftskammer Österreich (Austrian Economic Chambers), ‘*Vorsorgekassen in Österreich*’ (Pension Funds in Austria, 11 March 2023) <<https://www.wko.at/sbg/bank-versicherung/vorsorgeverband/vorsorgekassen/betriebliche/vorsorgekassen-in-oesterreich>> accessed 22 January 2025.

Österreichische Gesundheitskasse (Austrian Health Insurance Fund), ‘*Au-pair Kräfte*’ (Au Pairs, 1 January 2025) <<https://www.gesundheitskasse.at/cdscontent/?contentid=10007.821006>> accessed 23 January 2025.

French Authorities

Direction de l'information légale et administrative (Directorate of Legal and Administrative Information), ‘*Aide à domicile (services à la personne): recrutement d'un salarié*’ (Home care (personal services): recruitment of an employee) <www.service-public.fr/particuliers/vosdroits/F1692> accessed 25 January 2025.

—— ‘*Autorisation de travail d'un étranger salarié en France*’ (Work authorization of an employed foreigner in France) <www.service-public.fr/particuliers/vosdroits/F2728> accessed 25 January 2025.

—— ‘*Carte de séjour temporaire - Jeune au pair*’ (Temporary residence card - Young au pair) <www.service-public.fr/particuliers/vosdroits/F15813> accessed 11 January 2025.

—— ‘*Convention conclue entre le jeune au pair et la famille d'accueil: Formulaire 15973*01*’ (Agreement between the young au pair and the host family: Form 15973*01) <www.service-public.fr/particuliers/vosdroits/R18919> accessed 11 January 2025.

—— ‘*Déclaration d'embauche d'un emploi familial: Formulaire 11469*03*’ (Declaration of family employment: Form 11469*03) <www.service-public.fr/particuliers/vosdroits/R1354> accessed 11 January 2025.

—— ‘*Salarié au pair, jeune au pair et stagiaire aide familial étranger*’ (Employed au pair, young au pair and family help intern) <www.service-public.fr/particuliers/vosdroits/N499> accessed 11 January 2025.

—— ‘*Salarié au pair*’ (Employed au pair) <www.service-public.fr/particuliers/vosdroits/F473> accessed 11 January 2025.

—— ‘*Stagiaire aide familial étranger et jeune au pair*’ (Family help intern and young au pair) <<https://www.service-public.fr/particuliers/vosdroits/F13348>> accessed 11 January 2025.

—— ‘*Travail d'un étranger en France: carte de séjour - salarié/travailleur temporaire*’ (Work of a foreigner in France: residence card - employee/temporary worker) <www.service-public.fr/particuliers/vosdroits/F15898> accessed 11 January 2025.

—— ‘*Un particulier employeur peut-il embaucher un salarié étranger?*’ (Can an individual employer hire a foreigner employee?) <www.service-public.fr/particuliers/vosdroits/F1849> accessed 11 January 2025.

—— ‘*Visa de long séjour: séjour de plus de 3 mois à 1 an*’ (Long-stay visa: stay of more than 3 months to 1 year) <www.service-public.fr/particuliers/vosdroits/F16162> accessed 11 January 2025.

Le Sénat (The Senat), ‘*Situation des familles employant des étrangers au pair*’ (Situation of families employing foreign au pairs) 18.05.2006 Journal Officiel 1376 <www.senat.fr/questions/base/2006/qSEQ060121105.html> accessed 15 January 2025.

German Authorities

Auswärtiges Amt (Federal Foreign Office), ‘*Übersicht zur Visumpflicht bzw. -freiheit bei Einreise in die Bundesrepublik Deutschland*’ (Overview of visa requirements/exemptions for entry into the Federal Republic of Germany) <www.auswaertiges-amt.de/de/service/visa-und-aufenthalt/staatenliste-zur-visumpflicht-207820> accessed 12 January 2025.

Bundesagentur für Arbeit (German Federal Employment Agency), ‘Au pairs in German families’ <www.arbeitsagentur.de/datei/au-pair-in-germany-en_ba030535.pdf> accessed 12 January 2025 (Factsheet).

—— ‘*Au-pair in deutschen Familien*’ (Au pair in German families) <www.arbeitsagentur.de/datei/au-pair-merkblatt_ba031460.pdf> accessed 12 January 2025 (*Merkblatt* (Factsheet)).

—— ‘*Au-pair*’ (Au pair) <<https://www.arbeitsagentur.de/unternehmen/arbeitskraefte/au-pair>> accessed 12 January 2025.

—— ‘*Erklärung des Au-pair zum Empfang der Au-pair-Informationen*’ (Declaration by the au pair of having received the au pair information) <www.arbeitsagentur.de/datei/erklaerung-au-pair-info_ba036235.pdf> accessed 12 January 2025.

—— ‘*Fachliche Weisungen: Aufenthaltsgesetz und Beschäftigungsverordnung*’ (Specialised Instructions: Residence Act and Employment Ordinance) <www.arbeitsagentur.de/ueber-uns/veroeffentlichungen/gesetze-und-weisungen/sonstige-rechtsnormen> accessed 12 January 2025.

—— ‘*Fragebogen für die Gastfamilie*’ (Host family’s questionnaire) <www.arbeitsagentur.de/datei/aupair-fragebogen_ba036245.pdf> accessed 12 January 2025.

—— ‘*Mustertext: Vertrag über eine Au-pair-Beschäftigung gemäß dem Europäischen Abkommen über die Au-pair-Beschäftigung*’ (Sample: Contract on au pair employment in accordance with the European Agreement on Au Pair Placement) <www.arbeitsagentur.de/datei/aupair-vertrag_ba030510.pdf> accessed 12 January 2025.

8.3. Cases

Dutch cases

Kantonrechter Sneek (The Subdistrict Court Judge of Sneek) 6 February 2002, 95683/CV EXPL 01-931 (m.nt. from Prof. mr. E. Verhulp), JAR 2002/58.

Rechtbank Leeuwarden (The District Court of Leeuwarden) 31 July 2002, ECLI:NL:RBL EE:2002:AE9609, JAR 2002/237.

Gerechtshof Leeuwarden (The Court of Appeal) 11 February 2004, ECLI:NL:GHLEE:2004:AO3778, JAR 2004/65 (Bosschieter/Dembinska).

Hoge Raad (The Supreme Court) 14 April 2006, ECLI:NL:HR:2006:AU9722, NJ 2007/447 m.nt. E. Verhulp (Beurspromovendi).

Hoge Raad (The Supreme Court) 14 April 2006, ECLI:NL:HR:2006:AU9722, JAR 2006/119 (Beurspromovendi).

Rechtbank Midden-Nederland (The District Court of Midden-Nederland) 2 October 2013, ECLI:NL:RBMNE:2013:4707, RAR 2014/8.

Rechtbank Midden-Nederland (The District Court of Midden-Nederland) 21 January 2015, ECLI:NL:RBMNE:2015:1996.

Rechtbank Amsterdam (The District Court of Amsterdam) 29 June 2017, ECLI:NL:RBAMS:2017:4595.

Rechtbank Midden-Nederland (The District Court of Midden-Nederland) 15 February 2018, ECLI:NL:RBMNE:2018:553.

Rechtbank Den Haag (The District Court of The Hague) 18 November 2020, ECLI:NL:RBDHA:2020:12792.

Gerechtshof Den Haag (The Court of Appeal) 12 September 2023, ECLI:NL:GHDHA:2023:1813, RAR 2024/4.

Austrian Cases

Verwaltungsgerichtshof (Administrative Court) 6 November 2005, VwGH 2003/08/0173.

French Cases

Cour de cassation (Court of cassation), chambre sociale, 29 January 2002, n° 99-42.697.

—— 25 June 2013, n° 12-17.660.

German Cases

ArbG Hanau (Labour Court of Hanau), 08.02.1996 - 2 Ca 772/95 - Der Betrieb 1996, 2446.

LAG Hessen (Higher Labour Court of Hesse), 11.11.1999 - 3 Ta 578/99 - NZA-RR 2000, 160.

ArbG Bamberg (Labour Court of Bamberg), 27.10.2003 - 1 Ca 1162/03 - BeckRS 2004, 40363.

8.4. Bibliography

Chapter 1: Introduction (Secondary Sources)

Calleman C, 'Cultural exchange or cheap domestic labour: constructions of "au pair" in four Nordic countries' in Widding Isaksen L (ed), *Global Care Work: Gender and Migration in Nordic Societies* (Nordic Academic Press 2010).

Cox R, 'Gender, work, non-work and the invisible migrant: au pairs in contemporary Britain' (2018) 4 Palgrave Communications 121.

La Strada International, 'Netherlands proposes new Au Pair regulations to combat exploitation' (2021) <<https://www.lastradainternational.org/news/au-pair-regulations-to-be-changed-in-the-netherlands-to-combat-exploitation/>> accessed 22 January 2025.

Platform for International Cooperation on Undocumented Migrants, 'Joint Recommendations for the European Care Strategy Regarding Migrant Care Providers and Service Users' (2022) <<https://picum.org/wp-content/uploads/2022/03/Joint-recommendations-EU-Care-Strategy-migrant-care-providers-and-service-users-17-March.pdf>> accessed 21 November 2024.

Schans JMD, Galloway M and Lansang L, 'Au Pairs in Nederland: Culturele uitwisseling of arbeidsmigratie?' (Au pairs in the Netherlands: Cultural exchange or labour migration?, 2014) <<https://berthub.eu/tkconv/document.html?nummer=2014D11604>> accessed 29 November 2024.

Chapter 2: The Dutch Au Pair Programme in Practice (Secondary Sources)

FairWork, 'Who Cares about Au Pairs? A Study on the Work and Social Protection Experiences of Filipina Au Pairs in the Netherlands' (2 April 2023) <www.fairwork.nu/wp-content/uploads/2021/05/Research-Summary-Filipino-Au-Pairs-1.pdf> accessed 3 January 2025.

Journalismfund Europe, 'The Pains of Au Pairs Living with Foreign Families' (16 February 2024) <www.journalismfund.eu/the-pains-of-au-pairs> accessed 3 January 2025.

La Strada International, 'Netherlands proposes new Au Pair regulations to combat exploitation' (10 November 2021) <www.lastradainternational.org/news/au-pair-regulations-to-be-changed-in-the-netherlands-to-combat-exploitation/> accessed 4 January 2025.

Oosterbeek-Latoza D, 'The Filipina Au Pairs in The Netherlands' in Hoegsholm FM (ed), *In the Olde Worlde: Views of Filipino Migrants in Europe* (Philippine Social Science Council 2007).

Chapter 3: International and European Legal Framework (Secondary Sources)

Bundesagentur für Arbeit (German Federal Employment Agency), 'Au pairs in German families' <www.arbeitsagentur.de/datei/au-pair-in-germany-en_ba030535.pdf> accessed 12 January 2025.

Council of Europe, 'Chart of signatures and ratifications of Treaty 068' (28 November 2024) <<https://www.coe.int/en/web/conventions/full-List?module=signatures-by-treaty&treatynum=068>> accessed 28 November 2024.

European Migration Network Netherlands, 'OPEN Summary of EMN Ad-Hoc Query No. [2024.18]' (19 March 2024) <https://www.emnnetherlands.nl/sites/default/files/2024-08/Summary%20Au%20Pair%20Regulations_def.pdf> accessed 2 December 2024.

European Parliament, 'Abused Domestic Workers in Europe: The case of au pairs' (2011) <<https://www.europarl.europa.eu/document/activities/cont/201110/20111020ATT29946/20111020ATT29946EN.pdf>> accessed 26 November 2024.

Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 'How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers' (2014) <<https://www.osce.org/files/f/documents/2/c/126303.pdf>> accessed 26 January 2025.

PICUM, 'PICUM's Input on the Application of EU Directive 2016/801 Concerning Au Pairs' (2023) <<https://picum.org/wp-content/uploads/2023/06/PICUMs-input-on-the-application-of-EU-Directive-2016-801-concerning-au-pairs.pdf>> accessed 2 December 2024.

Stenum H, 'Abused Domestic Workers in Europe: The Case of Au Pairs' (European Parliament Note, PE 453.209, 2011) <www.europarl.europa.eu/document/activities/cont/201110/20111020ATT29946/20111020ATT29946EN.pdf> accessed 12 January 2025.

Chapter 4: Au Pairs in the Netherlands (Secondary Sources)

Ersoy A, '*Schuldaansprakelijkheid en Risicoaansprakelijkheid*' (Fault-Based Liability and Risk Liability), <www.arslanersoy.nl/nieuws/schuldaansprakelijkheid-en-risicoaansprakelijkheid-wat-is-het-en-wat-is-het-verschil/> accessed 14 January 2025.

Snijders Advocaten Den Bosch, '*Aansprakelijkheidsrecht*' (Liability Law), <<https://www.snijders-advocaten.nl/actueel/alles-over-aansprakelijkheid-en-het-aansprakelijkheidsrecht/>> accessed 14 January 2025.

de Valk SN, '*Algemeen*' (General), in Peters SSM (ed), *Arbeidsovereenkomst* (Employment agreement), (art. 7:610 BW, aant. 3.2.2.1), Deventer: Wolters Kluwer (online, updated 12 March 2024).

—— '*Historische ontwikkeling en achtergrond*' (Historical development and background), in Peters SSM (ed), *Arbeidsovereenkomst* (Employment agreement), (art. 7:610 BW, aant. 3.4.1), Deventer: Wolters Kluwer (online, updated 12 March 2024).

—— '*Hoogte en benaming*' (Height and designation), in Peters SSM (ed), *Arbeidsovereenkomst* (Employment agreement), (art. 7:610 BW, aant. 3.3.2), Deventer: Wolters Kluwer (online, updated 12 March 2024).

—— '*Recht op tegenprestatie voor arbeid*' (Right to consideration for work), in Peters SSM (ed), *Arbeidsovereenkomst* (Employment agreement), (art. 7:610 BW, aant. 3.3.1), Deventer: Wolters Kluwer (online, updated 12 March 2024).

—— ‘*Ruime uitleg ‘arbeid’* (Broad explanation ‘labour’), in Peters SSM (ed), *Arbeidsovereenkomst* (Employment agreement), (art. 7:610 BW, aant. 3.2.1), Deventer: Wolters Kluwer (online, updated 12 March 2024).

—— ‘*Stage- en leerovereenkomsten*’ (Internship and learning agreements), in Peters SSM (ed), *Arbeidsovereenkomst* (Employment agreement), (art. 7:610 BW, aant. 3.2.2.2), Deventer: Wolters Kluwer (online, updated 12 March 2024).

—— ‘*Stagiaires*’ (Interns), in Peters SSM (ed), *Arbeidsovereenkomst* (Employment agreement), (art. 7:610 BW, aant. 7.2.2), Deventer: Wolters Kluwer (online, updated 12 March 2024).

Verhulp E, *Commentaar op* (Commentary on) *art. 7:610 BW*, in: H.B. Krans, C.J.J.M. Stolker en W.L. Valk (red.), *Tekst & Commentaar Burgerlijk Wetboek*, Deventer: Wolters Kluwer (online, updated 1 July 2024).

Chapter 5: Comparative Analysis (Secondary Sources)

Austria

Csacsinovits S, ‘Nannies, or Just There to do Anything? The Real Au Pair Experience in Austria’ (10 April 2024) <<https://www.hopeforthefuture.at/en/nannies-or-just-there-to-do-something-the-real-au-pair-experience-in-austria/>> accessed 21 November 2024.

Opis R and Wutti C, ‘*Au-pairs in Österreich: Ausbeutung statt Augenhöhe*’ (Au pairs in Austria: Exploitation instead of Mutual Respect, 18 December 2023) <<https://www.derstandard.at/story/3000000199057/au-pairs-in-oesterreich-ausbeutung-statt-augenhoehe>> accessed 26 November 2024.

Statistik Austria, ‘*Statistisches Jahrbuch Migration & Integration*’ (Statistical Yearbook Migration & Integration, 1 July 2024) <https://www.statistik.at/fileadmin/user_upload/Migration_und_Integration_2024.pdf> accessed 23 November 2024.

Task Force Menschenhandel (Human Trafficking Task Force), ‘*Arbeitsgruppe gegen Menschenhandel zum Zweck der Arbeitsausbeutung*’ (Working Group against Human Trafficking for the Purpose of Labour Exploitation, 2020) <https://www.parlament.gv.at/dokument/XXVII/III/415/imfname_995432.pdf> accessed 23 January 2025.

Task Force Menschenhandel (Human Trafficking Task Force), ‘*Umsetzung des Nationalen Aktionsplans zur Bekämpfung des Menschenhandels 2021-2023*’ (Implementation of the National Action Plan to Combat Human Trafficking 2021-2023, 2025) <https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/NAP_Endbericht.pdf> accessed 21 January 2025.

Work in Austria, ‘The Red-White-Red Card’ (n.d.) <<https://www.workinaustria.com/en/residence-employment/red-white-red-card/>> accessed 26 January 2025.

France

Agirc-Arrco, ‘*Travailler à l’étranger*’ (Working abroad) <www.agirc-arrco.fr/particuliers/ma-retraite/comprendre-ma-retraite/travailler-a-letranger/> accessed 25 January 2025.

Noël-Lemaitre C, *L'essentiel du droit du travail* (The essentials of labour law) (3rd edn, Ellipses 2016) 5-8.

Union française des agences au pair (French Union of Au Pair Agencies) <www.ufaap.org> accessed 11 January 2025.

Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales (Organizations for the Collection of Social Security and Family Benefit Contributions), 'Employé au pair, stagiaire aide-familial étranger, jeune au pair et travailleur occasionnel du bâtiment' (Employed au pair, family help intern, young au pair and occasional construction worker) <www.urssaf.fr/accueil/particulier/particulier-employeur/embaucher-un-salarie/emploi-pair-stagiaire-aidant-fam.html> accessed 11 January 2025.

— 'Le service Pajemploi' (The service Pajemploi) <www.urssaf.fr/accueil/services/services-particuliers/service-pajemploi.html> accessed 25 January 2025.

— 'Taux et barèmes - Employé au pair et stagiaire aide familial étranger' (Rates and tariffs – Employed au pairs and family help interns) <www.urssaf.fr/accueil/outils-documentation/taux-baremes/taux-cotisations-emploi-au-pair.html> accessed 11 January 2025.

Germany

Astafyeva E, 'Au-Pair: So krass kann es in Gastfamilien sein' (reporter, 9 August 2023) <<https://play.funk.net/channel/reporter-11853/1924141>> accessed 12 January 2025 (Au pair: It can be so extreme in host families).

Gütegemeinschaft Au Pair, 'Au-pair-Programm in Deutschland in Gefahr: Visa-Chaos bedroht kulturellen Austausch' <www.guetegemeinschaft-aupair.de/de/presse/berichte/visa-chaos-bedroht-kulturellen-austausch.html> accessed 12 January 2025 (Au pair programme in Germany at risk: Visa chaos threatens cultural exchange).

Preis U, '§ 611a BGB - Einzelfälle arbeitnehmerähnlicher Personen' in Müller-Glöße R and others (eds), 'Erfurter Kommentar zum Arbeitsrecht' (C.H.Beck 2025) (Erfurt Commentary on Labour Law: Individual Cases of Employee-like Persons).

Schleusener A, '§ 5 ArbGG - Begriff des Arbeitnehmers' in Ahrendt M and others (eds), 'Gemeinschaftskommentar zum Arbeitsgerichtsgesetz' (Luchterhand Verlag 2022) (Joint Commentary on the Labour Court Act: Definition of Employee).

Walter-Bolhöfer C, 'Konjunkturumfrage 2024: Entwicklungen und Trends im deutschen Au-pair-Wesen. Eine Studie von DR-WALTER' (Calypso Verlag 2024) <www.au-pair-agenturen.de/link-tipps/konjunkturumfrage-2024.html> accessed 12 January 2025 (Economic survey 2024: Developments and trends in the German au pair sector. A study by DR-WALTER).

9. Appendix

9.1. Semi-Structured Interviews with Au Pairs

Four au pairs have been interviewed, guided by 16 key questions.

9.1.1. Guiding Questions

- | | |
|-----------------|---|
| Introduction | 0. Can you share some details about your background and the time you worked as an au pair? |
| Before Arriving | 1. What motivated you to come to the Netherlands as an au pair? |
| | 2. What information did you get about the au pair programme prior to your arrival? |
| | 3. Can you describe the legal documents you signed? Was it all clear for you? Do you have a copy? |
| Host Family | 4. How did your host family make you feel welcomed upon your arrival? |
| | 5. Can you share specific experiences of cultural exchange with your host family? |
| | 6. Can you detail what a typical day of work looked like for you, including your hours and the type of work you did? |
| | 7. Was there a clear agreement on your tasks and working hours? If so, can you explain how this discussion took place? |
| | 8. Were any of your tasks particularly challenging or unexpected? How did you handle that? |
| Au Pair Agency | 9. Which agency did you use, and how did you choose them? |
| | 10. How would you describe the communication and support you received from the agency throughout your experience? |
| | 11. Can you provide an example where the agency's support significantly helped you? Or, on the contrary, where you felt let down? |
| | 12. Have you been able to exchange with other au pairs (e.g. through your agency) and what were their experiences? |
| Final Questions | 13. If given the chance, would you choose this au pair experience again? Why or why not? |
| | 14. What changes would you suggest to improve the au pair programme based on your personal experiences? |
| | 15. Is there anything else you would like to share that we haven't covered? |

9.1.2. Summary of Answers

a) Interview with Teresa on 10 October 2024

Teresa, from the Philippines, shared her experiences coming to the Netherlands, discussing her motivation, host family dynamics, agency support, and suggestions for improving the au pair programme.

She was initially driven by a desire to experience European culture and joined the programme for the cultural exchange, expecting light household duties and a modest allowance. Upon arrival, she signed her contract but had limited information beforehand about her rights. Her first impression of the host family was mixed: they were on holiday, so she initially stayed in temporary accommodation with scarce resources. When she finally joined her host family, they greeted her warmly with decorations. However, challenges quickly emerged, primarily due to a lack of guidance from her host family on navigating daily tasks and using tools like Google Maps. Her workdays began at 6 a.m., often extending to 7 p.m., with childcare, cooking, and cleaning duties that often exceeded agreed-upon hours. She described difficult interactions with her host mother, who sometimes became frustrated over minor issues, which added stress to her experience. These moments occasionally left her feeling isolated and underappreciated, despite her efforts.

Her experience with the Dutch agency she used was mixed. She initially found the agency through an annual presentation in Hong Kong, reinforced by a friend's recommendation. When she faced challenges, the support her agency provided was only limited. The agency suggested she remain with her host family despite her issues; only when she consulted a lawyer, they assisted her in securing a new placement. Interestingly, her new host family turned out to be the agency owners, who then helped her collect belongings from her first family. Discussions with other au pairs revealed that experiences among them greatly varied, depending on the host family and agency involved.

Reflecting on her journey, Teresa suggested that host families receive mandatory orientation or training to understand cultural sensitivity and uphold contractual obligations. She also supported recent programme adjustments, including the minimum age requirement of 18 years and the restriction on au pairs with children, to encourage a focus on cultural exchange. While acknowledging the difficulties, she would consider the experience again if host families received better guidance and agencies ensured more reliable support. Overall, her story highlighted the need for agencies to strictly adhere to programme guidelines, providing consistent support and ensuring the au pair programme remains a rewarding cultural exchange for all involved.

b) Interview with Dewi on 20 October 2024

Dewi, from Indonesia, initially spent time in Turkey before coming as an au pair to the Netherlands in 2022. She later moved to France where she now continues working as an au pair. For the Netherlands, she found her first host family through a website that connects families seeking au pairs with potential candidates. After connecting with a family, she got the name of the respective agency.

Upon her arrival in the Netherlands, Dewi felt overwhelmed by the tasks placed on her. She had many responsibilities, including daily cleaning, caring for the children, managing the laundry, and preparing breakfast. Although her contract specified she would work 30 hours a week, she often found herself working from 7 a.m. to 7 p.m. On weekends, she took care of the children while the parents were away, often getting only half a day off. The host family had promised to help her with language classes and provide a museum card, but this did not happen. Concerned about her situation, Dewi consulted her agency, which advised her to change the family. This turned out to be a good choice, as she eventually found another family in the Netherlands with whom she stayed for about nine months.

Dewi expressed a suggestion for better screening of host families, particularly highlighting the cultural clashes that can arise when the families are not Dutch. After her experience as an au pair, she hopes to study somewhere in Europe, with Belgium as a possible next destination.

c) Interview with Maria on 19 November 2024

Maria, from Brazil, decided to become an au pair to travel to Europe in an affordable way. She already had prior experience as an au pair in the United States. Before arriving, Maria was informed by her au pair agency (*Nina care*) about the programme requirements. She also signed a contract through her agency, the content of which was clear to her.

Regarding her experience with her host family, Maria highlighted the following. Overall, Maria was satisfied with the cultural exchange part. Her host mother took her to Zaanse Schans and other activities. Her host father picked her up from the airport and began talking about private information. He talked about his kids not being planned and having a girlfriend from Venezuela before his wife which made her uncomfortable. Also, according to Maria, when watching movies, the host family made weird comments during certain (sexual) scenes.

Maria typically worked three days a week and her host family generally respected the 30-hours a week workload. However, there were two instances where she had to work too much. When she told her host dad, he became angry and told her she did not need to work anymore. She also did not feel at home because her room did not have a lock and there was not enough food for her to eat. Her host parents would also disappear when she was almost finished with work, so she needed to stay longer with the kids. Maria told us that she does not like confrontation, so at first she did not talk to her host family about this. However, she did report this issue to her agency, which caused her a lot of discomfort and her host family accused her over text messages that she was being ungrateful. The agency, Nina Care, provided initial communication and acted as a mediator with the host family. However, their support felt inadequate at times.

When asked if she would ever want to be an au pair again, she immediately responded with ‘no’ due to her negative experiences. Stricter regulations and oversight by authorities, such as routine checks of living conditions and black-and-white rules for host families, were suggested by Maria.

d) Interview with Luiza on 19 November 2024

Luiza, from Brazil, decided to become an au pair in the Netherlands to enhance her English

skills, travel across Europe, and immerse herself in a new culture. Within the first month of her stay, she attended an agency event designed to explain the programme's rules. It was after this event that the reality of the programme began to take shape. What she had initially perceived as a cultural exchange programme started to feel more like a full-time job.

She recalled signing several documents, including an agreement with the host family, a schedule, and a document outlining the rules of the programme. The start of her au pair placement was marked by small gestures of hospitality. The host family presented her with a welcome gift, and she was introduced to traditional Dutch cuisine. Her schedule was not fixed but typically followed a pattern. On Tuesdays and Wednesdays, she often worked seven to eight hours a day. Her day began at 7:00 a.m. and ended around 6:30 p.m., with a break between 10:00 a.m. and 2:30 p.m. Her responsibilities spanned a wide range of tasks: cooking twice a day, vacuuming the entire house, walking the dog, raking leaves, folding laundry, picking up the children from school, and occasionally buying groceries. Every afternoon, she was also expected to prepare activities for the children. Section 9.3 provides a sample weekly schedule of Luiza to illustrate what a week as an au pair can look like.

During the initial interviews, the host family mentioned Luiza's tasks but omitted details about the working hours. When she received her schedule, she was surprised by the intensity and duration of the tasks. Expressing her concerns to the host family resulted in little sympathy; previous au pairs apparently completed all tasks within two hours. One of the most challenging tasks was vacuuming the balcony. The vacuum cleaner was heavy and carrying it from the garden to the upper floors and out onto the balcony became physically draining over time.

Although she was aware of her rights, she felt unsupported by her agency. Rather than feeling like a valued participant in a cultural exchange, she often felt neglected. At times, the conditions seemed so demanding that she contemplated reporting the situation or pursuing legal action for what felt like forced labour. However, as an immigrant without nearby family or support, the process felt too daunting to undertake. Her connection to HBN, the agency, came through the recommendation of another au pair. However, her experience with the agency left much to be desired. When she reported issues with the host family, the agency dismissed her concerns as simple cultural differences and encouraged her to focus on the positive aspects of the placement. Her request for a rematch was met with resistance, and she was manipulated into staying with the family. The agency even threatened to mark her profile with a 'red flag' should she persist. Eventually, when the host family asked her to leave, the agency's response was a cold message suggesting that this outcome was exactly what she had wanted.

Reflecting on her experience, she recognized that her story is not unique. Many au pairs faced similar struggles. Despite the hardships, she still valued the opportunity to immerse herself in a new culture and would consider becoming an au pair again. However, she would approach the selection process for both the agency and host family with far more caution. Her recommendations for improving the au pair programme were clear: stricter rules for host families, regular inspections of au pair conditions, and more severe penalties for agencies that allow mistreatment. The au pair programme should prioritize cultural exchange over providing families with inexpensive, always-available labour.

9.2. Semi-Structured Interviews with FairWork Staff

There were three interviews with FairWork staff, which were guided by 15 key questions.

9.2.1. Guiding Questions

Introduction	0. What is your role at FairWork?
Background of Au Pairs	1. Can you describe the common backgrounds of au pairs that approach FairWork? What are their primary motivations for coming to the Netherlands? 2. Are there au pairs from certain countries who are mostly coming to FairWork? If so, why do you think that is? 3. How many au pairs come through agencies and how many come independently?
Legal Aspects	4. Is it common for au pairs to sign a contract with their host family or agency? What key points does this agreement typically cover (e.g. work hours, cultural activities)? 5. To what extent are au pairs aware of their legal status? Do they know where and how to get information about their rights? 6. What are the most prevalent issues or misunderstandings au pairs have regarding their rights when they arrive?
Working Conditions	7. What common complaints do you observe from au pairs after they begin their work, and how do you address these? 8. Have there been cases where au pairs are tasked with caring for children with special medical needs, and what challenges does this present? 9. If an au pair exceeds the 30-hour work limit, what recourse or compensation is typically available to them?
Au Pair Agencies	10. What criteria do you use to evaluate the reliability of au pair agencies? 11. How do you believe the presence of an agency influences the experience of au pairs? Do you see a difference in complaints between those who are agency-assisted and those who are not? 12. What mechanisms do agencies have in place to ensure au pairs are receiving adequate cultural exchange and are not burdened with excessive work? 13. How often do agencies monitor the situation and satisfaction of both au pairs during the arrangement?
Policy Aspects	14. Given your experiences, do you have improvements or alternatives for the present au pair programme in mind?

9.2.2. Summary of Answers

a) Interview with Jeffrey on 9 October 2024

Jeffrey is a coordinator at FairWork, managing the Arabic, Portuguese, and African teams, where he bridges cultural gaps and organizes informational sessions for clients. Employed by FairWork since 2019, he began as a volunteer and has since held a coordinator role.

Jeffrey explained that most au pairs in the Netherlands come from countries like Brazil, South Africa, Indonesia, and the Philippines. Their motivations include learning English, experiencing Dutch culture, and benefiting from the protection offered by a host family. Au pairs arrive either through agencies or independently. Agencies often sign contracts with au pairs outlining expectations, but family contracts are less consistent, leading to misunderstandings over responsibilities. Common complaints from au pairs include discrepancies in expected work hours and tasks, as au pairs may be treated more as cheap labour than as cultural exchange participants. Agencies are supposed to mediate disputes but sometimes inadequately address complaints, leaving au pairs in precarious situations. Jeffrey notes systemic issues in the au pair programme, describing it as exploitative and recommending a restructuring modelled after Belgium, where government oversight is stronger. For example, the police visits the au pair and host family to check in on both parties.

b) Interview with Ayu on 10 October 2024

Ayu is one of FairWork's cultural mediators who kindly shared her insights and experiences regarding the challenges faced by au pairs in the Netherlands. In the interview, she highlighted systematic issues in the Dutch au pair programme, agency reliability, and the overall support structure for au pairs in the Netherlands.

Ayu began by explaining the dual nature of the au pair experience in the Netherlands. While many young people enter the programme to immerse themselves in Dutch culture and improve their language skills, they often encounter tasks that extend beyond the initial agreement between the au pair and the host family. Throughout the interview, Ayu shared specific experiences of her clients, illustrating the challenges au pairs face. She recounted a story of a young woman who hesitated to report the issues she had with her host family due to fears of conflict, ultimately waiting nine months before seeking help. Ayu stressed the importance of agencies being proactive in checking in with au pairs and providing a safety net that enables them to voice their concerns without fear of retribution. She pointed out that some agencies, like Au Pair International, actively engage with their au pairs and attempt to mediate conflicts, which Ayu views as a positive aspect of their operation.

Ayu also raised concerns about the general perception of au pairs, explaining that many host families see them primarily as inexpensive labour rather than as cultural exchange participants. She suggested that there needs to be a shift in mindset where the focus is not solely on the work they do, but also on the cultural exchange aspect that these programmes are meant to promote. This includes reevaluating the definitions of 'light work' and ensuring that the contracts between au pairs and host families clearly outline responsibilities and expectations. Towards the conclusion of the interview, Ayu advocated for stronger monitoring of au pair programmes, better communication between agencies and au pairs, and clearer regulations that

protect the rights of these young workers. She emphasized that many au pairs are eager to gain valuable experiences and skills, and that the system should support them in doing so while ensuring their well-being.

b) Interview with Joyce on 10 October 2024

Joyce, a legal advisor at FairWork, explained that most au pairs in the Netherlands come from outside the EU - with Brazil and Indonesia currently being among the main countries of origin. Interestingly, some au pairs begin their journey in another EU country, such as Portugal, before arriving in the Netherlands. Although the au pair programme is intended to promote cultural exchange, many participants also seek job opportunities and view their time in the Netherlands as a stepping stone toward long-term employment.

In the Netherlands, it is necessary to work with an agency that is recognized by the immigration service. It seems that some agencies collaborate across countries. For instance, a Portuguese agency may work with an agency from the Netherlands. However, there are also individuals who come to the Netherlands without proper documentation. In some cases, Dutch citizens receive financial support for general caregiving and use this money to pay undocumented au pairs.

Common issues faced by au pairs include low pay, discrepancies between the agreed-upon tasks and the actual work they perform, and long working hours. Often, there are multiple contracts: one with the agency, another with the host family, and sometimes a third one between the host family and the agency. Additionally, there may be contracts from previous agencies in other EU countries. Contracts specify details regarding the host family, working hours, and the types of tasks expected. However, in practice, au pairs often find themselves working more hours and taking on heavier duties than originally agreed upon. Legally, au pairs should work no more than 30 hours a week and are only supposed to perform light household chores. In this regard, it is important to note that agreements do not always have to be written. In Joyce's view, verbal agreements regarding tasks between the au pair and the host family can also be considered labour agreements. However, au pairs are usually not recognized as employees under Dutch labour law, which means that labour inspections do not check for potential exploitation. This makes the role of agencies even more important, as they should ensure that host families comply with the rules. Unfortunately, many agencies fail to fulfil this responsibility.

A particular concern arises when au pairs are tasked with caring for family members with special medical needs. Sometimes, families exploit au pairs as cheaper caretakers, which could be grounds for a formal complaint to the immigration service. Joyce emphasized the need for fair pay and highlighted the difficulties au pairs face in proving their claims, especially since many additional agreements are sometimes made verbally. Overall, she believes that many of these cases could potentially meet the legal criteria for a labour agreement in theory. She hopes that, in the future, labour inspections can become more proactive in checking the situation of au pairs and combating labour exploitation.

9.3. Example of a Weekly Schedule for an Au Pair

This weekly schedule, provided by an au pair that was interviewed for the sake of this memorandum, offers an illustrative example of the daily tasks, working hours, and responsibilities typically expected of an au pair. To protect confidentiality, all names in the schedule have been changed. The schedule, sent to the au pair via e-mail, highlights a variety of duties - including childcare, housework, meal preparation, and engaging children in activities. It also demonstrates how working hours are distributed across the week.

Hi Teresa,

As promised this week's schedule. As I will be away from Wednesday morning till Monday morning, the schedule is long to explain all in detail. John will be at home with the kids and on Thursday his parents are coming for 1-2 nights. For you it's the first week, including cooking the HelloFresh (HF) recipes (for the adults).

"normal chores" are:

- tidy the kitchen incl. dishwasher and empty trash when full
- take the finished breakfast plates from our bedroom, make the kids beds, fold the clean clothes from the day before and put in their closets, or
- put in the laundry basket when dirty (check for stains/smells),
- put the PJs on their beds and tidy their rooms.
- vacuum downstairs: hallway, kitchen, lounge and corridor

Monday - free

Tuesday - 7-11u / 15-18u

In the morning, please make breakfast and bags for the kids (long day). Then normal chores (see above) plus: vacuum our bathroom and upstairs landing before the bathroom, remove the leaves from the front door and put in the green container. Help me fold the clothes and put them in the kids closets.

Please cook the Tomato-basil risotto with coconut milk recipe. When you've finished, please cover the food and put in the fridge outside or on the table outside (on a wooden plank, and make sure it's closed properly, so no birds can snack from it)

From 15u you're with the kids, I will pick them up tomorrow. Please think of some activities and ask them for drinks & snacks when they come home. Prepare their dinner to be ready at 1715u: Karin can eat the pea soup - bottom drawer fridge inside, please check it's still ok and not smelly, Paul can have the chicken burger, normal amount of potato wedges and cooked carrots. 1745u time to put on PJs.

Wednesday - 7-11u / 1230-19u

In the morning, please make breakfast and bags for the kids (short day). Then normal chores (see above) plus: vacuum living room and office downstairs. Help me fold the clothes and put them in the kids closets. Tidy the lounge and the kid's toys please.

Albert Heijn will deliver groceries between 8-10u, pls take them, hand in any empty plastic bottles - John can show you how to prepare. Then pay the driver and put away the groceries. Please don't shove any crates on the floor to prevent scratching, and make sure frozen food is in the freezer, and cooled items are in the fridges.

Please cook the Chicken focaccia toast au gratin recipe. From 1230u you are with the kids, please set the table and set lunch options. Paul has to drink mostly the lemonade and can have a few times apple juice. He cannot drink apple juice all day, it's bad for his teeth. Joran has soccer practice and has to leave 1715u together with John. I will put his soccer gear in his room, please help him get dressed. Prepare dinner for the kids, and have it ready at 17u - if Paul is then already in his soccer gear, he can eat and leave on time. They can have potato wedges, beans or broccoli and choose some kind of meat to bake in oil. You stay with Karin, she can shower and be in her PJs and play/chill until Paul and Joran get home.

Friday 7-11u / 15-18u i

In the morning, please make breakfast and bags for the kids (long day). Then normal chores (see above) plus: tidy the living room, lounge area and kitchen pls. Please think of some activities and ask them for drinks & snacks when they come home. Prepare their dinner to be ready at 1715u: after that, Karin can shower, and they both can put on their PJs.

Thursday - 7-11u / 15-19u

In the morning please make breakfast and bags for the kids (long day). Then normal chores (see above) plus: vacuum kid's rooms, vacuum office upstairs, remove leave at the front door and check the leaves under the veranda - possible vacuum outside with the yellow vacuum from the garden shed. Please cook the Chicken and Mozzarella farfalle recipe, with the groceries from Wednesday, extra chicken, tomatoes and spinach was delivered. Please use this to have enough for 4 adults. (incl. parents of John).

From 15u you are with the kids, ask them for drinks and snack when they get home, think of some nice activities for Paul mostly. Karin has to leave for ballet at 1615u, her ballet clothes are ready in her room, please remind her to get dressed before 16u, she can do her hair herself. John will most likely bring her. You stay with Paul, prepare dinner (Pasta Bolognese with minced meat and tomato sauce - can you make this with ingredients and have it ready around 1730u for him. He needs a bath and can be in PJs at 18u. John and Karin will be back around 1830u, then Karin will have dinner, followed by PJs.

Saturday 9-13u

In the morning normal chores and please make breakfast for the kids. Paul and Joran leave for soccer around 1015u, you will be with Karin at home. Help her get dressed, soccer gear will be ready in Paul's room - Joran can help. Tidy the lounge and ground floor and tidy Karin's room as she is having friends over in the afternoon. Please help Karin prepare lunch around 1230u for when her friends come over at 13u, she wants to make tosti's.

Sunday - free

9.4. Forms to Contact or Report to the Netherlands Labour Authority

The NLA provides two digital forms, a contact form and another for submitting a complaint.

Contact form:

DIGITAL CONTACT FORM

Personal Data

The Netherlands Labour Authority will only use any personal particulars collected by means of this contact form for the purpose for which you have given them. In so doing the Netherlands Labour Authority fulfils all the privacy legislation criteria. Read more about our privacy policy under [Privacy](#).

Name *

Prefix *

Organisation

Address

Postal code

City

Phone number

E-mail address *


Organisation *

Question *

Attachment
(Max 10 Mb)

☐ Madam
☐ Sir
☐ Unknown

(0 characters)



* = Input is required

This form was created at www.formdesk.com

Retrieved from <www.nllabourauthority.nl/contact>.

Reporting form:

FORM FOR SUBMITTING A COMPLAINT TO THE NETHERLANDS LABOUR AUTHORITY (THE MINISTRY OF SOCIAL AFFAIRS AND EMPLOYMENT) ABOUT A POSSIBLE VIOLATION OF SOCIAL LAWS WHILST WORKING IN THE NETHERLANDS

The Netherlands Labour Authority ensures compliance with the Minimum Wage and Minimum Holiday Allowance Act [Wet minimumloon en minimumvakantiebijslag], the Working Hours Act [Arbeidstijdenwet] and the Working Conditions Act [Arbeidsomstandighedenwet].

The Netherlands Labour Authority does not monitor the existence of a written employment contract, or the observance thereof. In the Netherlands, the observance of individual employment contracts or collective agreements is a matter of civil law; contracting parties must ensure compliance themselves. Trade unionists can ask their trade union in the Netherlands or their own country to help them with this. Temporary employees can turn to the SNCU, the (Dutch) Foundation for Compliance with the Collective Agreement for Temporary Employees (see www.sncu.nl). Drivers in the international haulage sector: see www.fnvbondgenoten.nl.

For complaints about the quality of accommodation, you can best turn to your local council or to the fire brigade in your place of residence.

1. YOU ARE?

Last name, first name(s): *	<input type="text" value="X"/>
Date of birth:	<input type="text"/>
Nationality:	<input type="text"/>
Current address:	<input type="text"/>
Address in the Netherlands (if different):	<input type="text"/>
Dutch Personal Public Service Number (!):	<input type="text"/>

Everyone legally employed in the Netherlands has what is referred to as a Personal Public Service Number, which used to be called the tax and social insurance number. This is an important piece of information for all inquiries into salary and working hours. It is therefore very helpful if you specify this number!

2A. AT WHICH COMPANY/COMPANIES ARE/WERE YOU EMPLOYED WHILST WORKING IN THE NETHERLANDS?

Company name:	<input type="text"/>
Address:	<input type="text"/>
Country:	<input type="text"/>
Telephone:	<input type="text"/>
Registration number/trade register number (if known):	<input type="text"/>

Period (from):	<input type="text"/>	until:	<input type="text"/>
Position:	<input type="text"/>		
Name of your boss, or of the person who appointed you:	<input type="text"/>		
Other useful information:	<input type="text"/>		

2B. DO/DID YOU WORK THERE VIA A TEMPORARY EMPLOYMENT AGENCY? IF SO, WHICH ONE:

Company name:	<input type="text"/>		
Address:	<input type="text"/>		
Country:	<input type="text"/>		
Telephone:	<input type="text"/>		
Registration number/trade register number (if known):	<input type="text"/>		
Period (from):	<input type="text"/>	until:	<input type="text"/>
Name of the person who hired you out:	<input type="text"/>		
Other useful information:	<input type="text"/>		

3. WHAT IS THE NATURE OF YOUR COMPLAINT?

3A. About possible non-compliance with the Dutch statutory minimum wage and/or minimum holiday allowance? See www.szw.nl for the amount of the statutory minimum wage. Please realise that breaks and travelling time are not counted as working hours!

If you have received a wage statement from your employer specifying the hours worked, including gross and net amounts, please send copies to:

*Inspectie SZW
Postbus 820
3500 AV Utrecht*

If you believe that this wage statement is incorrect, please send it anyway, pointing out where you believe it was not filled in correctly.

If you do not have such a wage statement, please fill in the outline below as precisely as possible:

Place(s) where the work was carried out:	<input type="text"/>		
Number of hours worked:	<input type="text"/>	please break down per week and per employer	
Employment contract concluded in writing or orally:	<input type="text"/>		
In case it was concluded in writing, please send a copy to the above-mentioned address of the Inspectorate SZW			
(only to be filled in if you concluded an employment contract orally)	<input type="text"/>		

with whom did you conclude the employment contract, and what did you agree upon:

Paid holiday hours taken:

Were any travelling or accommodation expenses withheld from your wages and, if so, what was the amount:

Other information (if known); specific arrangements concerning the calculation basis for wages:

Any specification of your complaint about remuneration, holiday allowance and/or holiday entitlements:

Ditto for employer/ hirer 2 (if applicable)

3B. Possible non-compliance with Dutch legislation on working hours www.government.nl

Starting date of employment:

Final date of employment:

Work schedule per day, including breaks:

Other information about your working hours or specification of your complaint :

If you are employed in the road transport sector, please send copies of the tachograph disk to the Inspectorate SZW.

3C. An industrial accident or a complaint about the possible non-compliance with Dutch legislation on working conditions see www.government.nl (english)

Your employer is obliged to report serious industrial accidents. Serious industrial accidents are industrial accidents that result in hospitalisation for one or more nights. If you are not sure if your employer did this, please give a short description of the nature, place and time of the accident:

If you have a complaint about the health or safety conditions in your place of work, please add a brief description of your complaint:

* = Input is required

This form was created at www.formdesk.com

Retrieved from <www.nl labour authority.nl/topics/report/reporting-unfair-unsafe-unhealthy-working-conditions-or-labour-exploitation>.

9.5. Sample Contracts

As established in the comparative law chapter, Austria, France and Germany provide sample contracts about the legal relationship between the au pair and the host family.

9.5.1. Austria

The Austrian Public Employment Service provides a standardized model contract to guide au pairs and host families in their agreement and registration process. For convenience, both the official German version of the contract and a translated version by the agency AuPairWorld are included in this appendix.

Original version by the authority:

Au-pair-Vertrag

Abgeschlossen zwischen der/dem

Arbeitgeberin/Arbeitgeber (Gastfamilie)	
Name:	
Beruf:	
Adresse:	
Telefon:	

und der

Au-pair-Kraft	
Name:	
Geburtsdatum:	
Heimatadresse:	
Telefon:	

I.

Die Arbeitgeberin/der Arbeitgeber (die Gastfamilie) nimmt die ausländische Au-pair-Kraft in den Kreis der Familie auf. Die Au-pair-Kraft hilft im Haushalt, einschließlich der Kinderbetreuung, mit. Die Au-pair-Kraft beabsichtigt, durch einen mehrmonatigen Aufenthalt in Österreich ihre Kenntnisse der deutschen Sprache zu vervollkommen, die österreichische Kultur und Gesellschaft näher kennen zu lernen und zur Erreichung dieses Zieles an Sprachkursen und kulturellen Veranstaltungen teilzunehmen.

II.

Die Arbeitgeberin/der Arbeitgeber überlässt der Au-pair-Kraft ein eingerichtetes, versperrbares Zimmer zur alleinigen Benützung und gewährt volle Verpflegung. Sie/Er ermöglicht der Au-pair-Kraft die Teilnahme an einem Deutschkurs und trägt dessen Kosten zur Hälfte¹.

Verlangt die Arbeitgeberin/der Arbeitgeber die Absolvierung eines Kurses zur pädagogischen Qualifizierung (z.B. Babysitterkurs) trägt sie/er dessen Kosten zur Gänze.

Es wird eine leichte Mithilfe der Au-pair-Kraft im Haushalt der Gastgeberin/des Gastgebers einschließlich Kinderbetreuung im Ausmaß von 17 Stunden (einschließlich Arbeitsbereitschaft) wöchentlich vereinbart.

Der Entgeltanspruch der Au-pair-Kraft richtet sich nach dem Mindestlohnstarif für Au-pair-Kräfte und beträgt € 551,10² brutto monatlich. Das laufende Entgelt ist anteilig jeweils zum Wochenende auszus zahlen.

Die Arbeitgeberin/der Arbeitgeber ist verpflichtet, der Au-Pair-Kraft eine genaue mit Datum versehene Abrechnung über die geleisteten Arbeitsstunden, das Entgelt und die Abzüge bei der Entgeltauszahlung zu übergeben.

III.

Auf das Familienleben und die Bedürfnisse der Haushaltsführung der Gastfamilie sowie auf die Interessen der Au-pair-Kraft ist Rücksicht zu nehmen. Der Au-pair-Kraft ist jedenfalls mindestens ein ganzer freier Tag pro Woche zu gewähren. Ihr Urlaubsanspruch sowie die Urlaubersatzleistung bei Nichtverbrauch des Urlaubes richten sich nach dem Urlaubsgesetz (30 Werktagen/Jahr).

IV.

Ist die Au-pair-Kraft durch Krankheit oder Unfall an der Mithilfe im Haushalt verhindert, ist ihr das gemäß § 10 des Hausgehilfen- und Hausangestelltengesetzes gebührende Entgelt zu zahlen.

Besteht für die Au-pair-Kraft aus zwischenstaatlichen Sozialversicherungsabkommen kein Krankenversicherungsschutz, ist von der Au-pair-Kraft der Abschluss einer privaten Krankenversicherung nachzuweisen.

Die Au-pair-Kraft muss über die Mittel zur Rückfahrt verfügen.

¹ Werden mehr als die Hälfte der Kosten übernommen, so ist dieser Vertragspassus insoweit abzuändern

² Wert für 2025

V.

Das Au-pair-Verhältnis beginnt am _____ und endet am _____. Der Vertrag kann von jedem Vertragspartner ohne Angabe von Gründen unter Einhaltung einer Kündigungsfrist von einer Woche gelöst werden.

VI.

Der Vertrag wird in fünf Ausfertigungen errichtet, von denen je eine für die Vertragspartner, eine zur Hinterlegung bei der Vermittlungsagentur, eine zur Vorlage bei der Berufsvertretungsbehörde (Botschaft, Konsulat) sowie eine für das Arbeitsmarktservice bestimmt ist.

Ort

Datum

Unterschrift der Gastgeberin/des Gastgebers

Unterschrift der Au-pair-Kraft

Translated version for reference:

Au pair Employment Contract

concluded between the:

Employer (Host family)	
Name:	
Profession:	
Address:	
Tel. No:	

and the

Au pair	
Name:	
Birth date:	
Home address:	
Tel. No:	

I. _____

The host family agrees to include the au pair in the family life. The au pair shall help the family with the household duties including child care. While residing in Austria, the au pair intends to expand his/her knowledge of the German language and experience the Austrian culture and society.

To this end, the au pair agrees to attend a language course and participate in cultural events.

II. _____

The host family shall provide the au pair with a furnished and lockable room for his/her private use as well as full board and lodging. The family shall enable the au pair to take part in a German language course and shall pay half of the course fees¹. Should the employer require the au pair to take part in a pedagogical qualification course (e.g. a babysitting training course), the employer shall pay the course fees in full.

¹ Should the family pay more than half of the language course fees, the relevant passage must be revised accordingly.

The au pair is expected to assist the host family in light household duties and child care (including standby duty) up to a maximum of 18 hours per week.

The au pair's allowance is based on the minimum wage scale for au pairs (Mindestlohnstarif) which is 518,44² euros per month. The wage shall be paid proportionally at the end of every week.

III. _____

The host family's life and housekeeping requirements as well as the au pair's interests should both be taken into consideration. The au pair is entitled to at least one whole day off a week. The au pair's entitlement to vacation and compensation for unused vacation is based on the Urlaubsgesetz (vacation law) (30 work days/ year).

IV. _____

Should the au pair be unable to perform his/her duties due to illness or accidental injury, he/she will still be entitled to receive his/her allowance according to §10 of the *Hausgehilfen- und Hausangestelltengesetzes* (Austrian Domestic Law).

Should the au pair not be insured through bilateral national insurance agreements, the au pair is to provide evidence of his/her subscription to a private health insurance coverage.

The au pair should possess sufficient financial means for returning back to his/her home country.

V. _____

The au pair employment begins on _____ and ends on _____. The contract can be terminated by either party without stating a reason. A notice period of one week should be provided.

VI. _____

The contract shall be produced in 5 copies; one to the host family, one to the au pair, one to the au pair agency, one shall be submitted to the responsible Austrian authorities (embassy, consulate), and one shall be submitted to the Arbeitsmarktservice (AMS).

Place

Date

Signature of the host

Signature of the au pair

² The amount valid in 2024.

9.5.2. France

The ministry of the interior (*ministère chargé de l'intérieur*) provides a sample agreement (*convention*) to be signed between the young au pair (*jeune au pair*) and the host family. The first pages are for filling in, the third contains instructions and the fourth shows relevant norms of the criminal law. It is available in French only, here it has been translated with DeepL.

Original version by the authority:

Ministère de l'intérieur

CONVENTION CONCLUE ENTRE LE JEUNE AU PAIR ET LA FAMILLE D'ACCUEIL : initiale ☐ renouvellement ☐

(articles L. 313-9 et R. 313-12 du code de l'entrée et du séjour des étrangers et du droit d'asile)

IMPORTANT : article 441-6 du code du pénal : Le fait de se faire délivrer indûment par une administration publique ou par un organisme chargé d'une mission de service public, par quelque moyen frauduleux que ce soit, un document destiné à constater un droit, une identité ou une qualité ou à accorder une autorisation est puni de deux ans d'emprisonnement et de 30 000 euros d'amende.

1. Le jeune au pair

Nom de famille :	Prénom(s) :	Sexe : <input type="checkbox"/> M <input type="checkbox"/> F
Né (e) le : à	Pays :	Nationalité :
Adresse dans le pays d'origine :		
Adresse électronique :	Téléphone :	

2. La famille d'accueil (parents et membre(s) de la famille)

Parent 1 :		
Nom de famille :	Prénom(s) :	Sexe : <input type="checkbox"/> M <input type="checkbox"/> F
Né (e) le : à	Pays :	Nationalité :
Profession :		
Adresse électronique :	Téléphone :	
Parent 2 :		
Nom de famille :	Prénom(s) :	Sexe : <input type="checkbox"/> M <input type="checkbox"/> F
Né (e) le : à	Pays :	Nationalité :
Profession :		
Adresse électronique :	Téléphone :	

Composition de la famille : ☐ adulte(s) ☐ enfant(s) / âgés de à ans dont nombre d'enfants de moins de 3 ans
Le cas échéant, salarié(s) aide à la personne ou employé(s) à domicile :

3. Logement de la famille d'accueil (conditions d'accueil du jeune au pair)

<input type="checkbox"/> Appartement <input type="checkbox"/> Maison individuelle	Nombre de pièces dans le logement : <input type="text"/>
Adresse :	Code postal : Commune :
Chambre individuelle du jeune au pair : surface <input type="text"/> m ² , <input type="text"/> fenêtre(s)	
Salle de bain : <input type="checkbox"/> individuelle <input type="checkbox"/> partagée avec :	

4. Organisation des activités et des tâches effectuées par le jeune au pair

Travaux ménagers liés à la vie quotidienne d'enfants de plus de trois ans : <input type="text"/> /heures/semaine	
Tâches effectuées :	
Nombre de jour(s) de repos /semaine <input type="text"/> jour(s)	
Montant de l'argent de poche versé <input type="text"/> euros/mois	Jour de versement :
Enseignement suivi (si information connue) : <input type="text"/>	Nombre d'heures <input type="text"/> / mois
Etablissement : <input type="text"/> n° <input type="text"/> (UAI ou Siret)	Site internet : <input type="text"/>
Adresse de l'établissement :	Code postal : Commune :

5. Durée de la convention et modalités de rupture anticipée

Durée de la convention : <input type="text"/> mois	Date de début de la convention :	Date de fin de la convention :
D'un commun accord, les deux parties peuvent mettre fin à la convention.		
En cas de faute lourde par une des parties, l'autre partie pourra immédiatement mettre fin à la convention.		
En cas de manquement aux engagements de la présente convention par une partie, la rupture de celle-ci prend fin au bout d'un délai qui permette aux deux parties de prendre les dispositions nécessaires, et qui ne peut être inférieur à une semaine.		
Le service des étrangers de la préfecture compétente en sera avisé.		

CONVENTION CONCLUE ENTRE LE JEUNE AU PAIR ET LA FAMILLE D'ACCUEIL :
initiale ☐ **renouvellement** ☐

(articles L. 313-9 et R. 313-12 du code de l'entrée et du séjour des étrangers et du droit d'asile)

6. Engagements et obligations des signataires de la présente convention

6-1. Les parents de la famille d'accueil

Attestent sur l'honneur :

- ☐ ne posséder aucun lien de parenté avec le jeune au pair,
- ☐ que la langue employée dans le foyer est le français,
- ☐ avoir pris connaissance des dispositions du code pénal sanctionnant la traite des êtres humains (en annexe de la présente convention).

S'engagent à :

- ☐ nourrir et loger le jeune au pair pendant toute la durée de validité de la convention,
- ☐ supporter la charge financière de l'assurance maladie prise par le jeune au pair,
- ☐ en cas de maladie du jeune au pair, à continuer à lui assurer le logement et la nourriture jusqu'à ce que les arrangements nécessaires aient pu être pris,
- ☐ ce que l'emploi du temps du jeune au pair lui permette de parfaire sa connaissance de la culture, de la langue, et de la société française,
- ☐ laisser au jeune au pair la possibilité d'assister à des cours,
- ☐ laisser au jeune au pair toutes facilités pour l'exercice de son culte,
- ☐ verser chaque mois à échéance fixe l'argent de poche au jeune au pair.

Se portent garants du :

- ☐ jeune au pair en ce qui concerne ses frais de subsistance, de logement, ou les risques d'accident.

Fait à _____ **le** _____

Signature du parent 1 :

Fait à _____ **le** _____

Signature du parent 2 :

6-2. Le jeune au pair

Atteste sur l'honneur :

- ☐ ne posséder aucun lien de parenté avec la famille d'accueil,
- ☐ avoir pris connaissance des dispositions du code de procédure pénale relatives aux droits garantis aux victimes de traite d'êtres humains, et les coordonnées des associations spécialisées dans l'assistance aux victimes (en annexe de la présente convention).

S'engage à :

- ☐ effectuer les tâches mentionnées au 5° de la présente convention.

Fait à _____ **le** _____

Signature du jeune au pair :

Les dispositions des articles 39 et 40 de la loi n°78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, garantissent les droits des personnes physiques à l'égard des traitements des données à caractère personnel.

Formulaire à joindre signé par l'ensemble des parties prenantes à la demande de visa ou de titre de séjour présentée par le ressortissant

CONVENTION CONCLUE ENTRE LE JEUNE AU PAIR ET LA FAMILLE D'ACCUEIL :
initiale ☐ renouvellement ☐

(articles L. 313-9 et R. 313-12 du code de l'entrée et du séjour des étrangers et du droit d'asile)

Aide au renseignement des rubriques du formulaire

Le formulaire CERFA contient obligatoirement la demande (**feuilles 1 et 2**) et doit comporter toutes les rubriques renseignées en ligne.

La demande est imprimée et signée par l'ensemble des parties prenantes

1 Le jeune au pair :

Les éléments d'identité sont ceux transcrits sur le passeport ou le titre de séjour.
L'âge du jeune au pair doit être compris entre 18 et 30 ans.

2 La famille d'accueil (parents et membres de famille) :

Il doit être indiqué la composition de la famille, notamment le nombre d'enfants avec l'échelonnement des âges (ex : de 4 ans à 6 ans) en précisant le nombre d'enfants âgés de moins de 3 ans.
Le cas échéant, préciser si il y a des salarié(s) aide à la personne ou employé(s) à domicile. Indiquez 0 en cas d'occurrence négative.
Le jeune au pair ne doit pas s'occuper des enfants de moins de trois ans, des personnes âgées, handicapées, ou en situation de dépendance.

3 Le logement de la famille d'accueil (parents et membre(s) de la famille) :

Cochez la situation du logement et les conditions d'hébergement du jeune au pair.
La surface habitable minimale de la chambre mise à sa disposition doit être de 9m², avec au moins une fenêtre.

4 Organisation des activités et des tâches effectuées par le jeune au pair :

La durée maximale hebdomadaire consacrée aux tâches de la famille est de 25 heures par semaine.
Le jeune au pair doit disposer au minimum d'une journée complète de repos chaque semaine.
Le jeune au pair doit disposer du temps nécessaire pour assister à des cours dans les disciplines de son choix.
Le montant minimal mensuel d'argent de poche est fixé dans l'arrêté du ministre de l'intérieur relatif aux modalités de séjour des jeunes au pair.

5 Durée de la convention et modalités de rupture anticipée :

La durée initiale de la convention ne peut excéder un an.
Si la durée initiale était inférieure à un an, sa prolongation devra être jointe à la demande de prolongation de visa demandée à la préfecture du domicile de la famille.
En cas prolongation du séjour au-delà d'un an, une nouvelle convention d'une durée maximale d'un an peut être conclue au moment du renouvellement du titre de séjour qui devra être demandée à la même préfecture.
Au total, le séjour en tant que jeune au pair ne peut excéder deux ans.

6 Engagements et obligations des signataires de la présente convention :

Cochez chaque engagement et obligation avant de signer

⇒ **COORDONNEES D'ASSOCIATIONS SPECIALISEES DANS L'ASSISTANCE AUX VICTIMES**

Numéro VICTIMES du Ministère de la Justice : **01 41 83 42 08**

Cette plateforme téléphonique s'adresse à toutes les victimes d'infractions, quelle que soit la forme de l'agression ou le préjudice subi.

Il s'agit du dispositif téléphonique national de prise en charge des victimes d'infractions pénales.

Il est géré par France Victimes, la fédération nationale des associations d'aide aux victimes et de médiation.

Il offre une écoute anonyme et confidentielle aux victimes, sans jugement, qui a pour objectif de libérer la parole et d'identifier les besoins, afin de proposer une mise en relation avec les associations d'aide aux victimes et/ou tout service partenaire susceptible d'y répondre.

L'annuaire des associations d'aides aux victimes répertoriées par le Ministère de la Justice est disponible à cette adresse :

<http://www.annuaires.justice.gouv.fr/annuaires-12162/annuaire-des-associations-daide-aux-victimes-21769.html>

ANNEXE : rappel des dispositions applicables du code pénal

1) Dispositions du code pénal relatives à la traite d'êtres humains, à la réduction en esclavage et au travail forcé

Article 224-1 A

La réduction en esclavage est le fait d'exercer à l'encontre d'une personne l'un des attributs du droit de propriété.

La réduction en esclavage d'une personne est punie de vingt années de réclusion criminelle.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables à l'infraction prévue au présent article.

Article 224-1 B

L'exploitation d'une personne réduite en esclavage est le fait de commettre à l'encontre d'une personne dont la réduction en esclavage est apparente ou connue de l'auteur une agression sexuelle, de la séquestrer ou de la soumettre à du travail forcé ou du service forcé.

L'exploitation d'une personne réduite en esclavage est punie de vingt années de réclusion criminelle.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables à l'infraction prévue au présent article.

Article 225-4-1

I.- La traite des êtres humains est le fait de recruter une personne, de la transporter, de la transférer, de l'héberger ou de l'accueillir à des fins d'exploitation dans l'une des circonstances suivantes :

1° Soit avec l'emploi de menace, de contrainte, de violence ou de manœuvre dolosive visant la victime, sa famille ou une personne en relation habituelle avec la victime ;

2° Soit par un ascendant légitime, naturel ou adoptif de cette personne ou par une personne qui a autorisé sur elle ou abuse de l'autorité que lui confèrent ses fonctions ;

3° Soit par abus d'une situation de vulnérabilité due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, apparente ou connue de son auteur ;

4° Soit en échange ou par l'octroi d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage.

L'exploitation mentionnée au premier alinéa du présent I est le fait de mettre la victime à sa disposition ou à la disposition d'un tiers, même non identifié, afin soit de permettre la commission contre la victime des infractions de proxénétisme, d'agression ou d'atteintes sexuelles, de réduction en esclavage, de soumission à du travail ou à des services forcés, de réduction en servitude, de prélèvement de l'un de ses organes, d'exploitation de la mendicité, de conditions de travail ou d'hébergement contraires à sa dignité, soit de contraindre la victime à commettre tout crime ou délit.

La traite des êtres humains est punie de sept ans d'emprisonnement et de 150 000 € d'amende.

II.- La traite des êtres humains à l'égard d'un mineur est constituée même si elle n'est commise dans aucune des circonstances prévues aux 1° à 4° du I.

Elle est punie de dix ans d'emprisonnement et de 1 500 000 € d'amende.

Article 225-4-2

I. L'infraction prévue au I de l'article 225-4-1 est punie de dix ans d'emprisonnement et de 1 500 000 € d'amende lorsqu'elle est commise dans deux des circonstances mentionnées aux 1° à 4° du même I ou avec l'une des circonstances supplémentaires suivantes :

1° A l'égard de plusieurs personnes ;

2° A l'égard d'une personne qui se trouvait hors du territoire de la République ou lors de son arrivée sur le territoire de la République ;

3° Lorsque la personne a été mise en contact avec l'auteur des faits grâce à l'utilisation, pour la diffusion de messages à destination d'un public non déterminé, d'un réseau de communication électronique ;

4° Dans des circonstances qui exposent directement la personne à l'égard de laquelle l'infraction est commise à un risque immédiat de mort ou de blessures de nature à entraîner une mutilation ou une infirmité permanente ;

5° Avec l'emploi de violences qui ont causé à la victime une incapacité totale de travail de plus de huit jours ;

6° Par une personne appelée à participer, par ses fonctions, à la lutte contre la traite ou au maintien de l'ordre public ;

7° Lorsque l'infraction a placé la victime dans une situation matérielle ou psychologique grave.

II. L'infraction prévue au I de l'article 225-4-1 est punie de quinze ans de réclusion criminelle et de 1 500 000 € d'amende lorsqu'elle a été commise dans l'une des circonstances mentionnées aux 1° à 4° du I du même article 225-4-1 ou dans l'une des circonstances mentionnées aux 1° à 7° du I du présent article.

Article 225-4-3

L'infraction prévue à l'article 225-4-1 est punie de vingt ans de réclusion criminelle et de 3 000 000 euros d'amende lorsqu'elle est commise en bande organisée.

Article 225-4-4

L'infraction prévue à l'article 225-4-1 commise en recourant à des tortures ou à des actes de barbarie est punie de la réclusion criminelle à perpétuité et de 4 500 000 euros d'amende.

Article 225-4-5

Lorsque le crime ou le délit qui a été commis ou qui devait être commis contre la personne victime de l'infraction de traite des êtres humains est puni d'une peine privative de liberté d'une durée supérieure à celle de l'emprisonnement encouru en application des articles 225-4-1 à 225-4-3, l'infraction de traite des êtres humains est punie des peines attachées aux crimes ou aux délits dont son auteur a eu connaissance et, si ce crime ou délit est accompagné de circonstances aggravantes, des peines attachées aux seules circonstances aggravantes dont il a eu connaissance.

Article 225-4-6

Les personnes morales déclarées responsables pénalement, dans les conditions prévues par l'article 121-2, des infractions définies à la présente section encouront, outre l'amende suivant les modalités prévues par l'article 131-38, les peines prévues par l'article 131-39.

2) Dispositions du code de procédure pénale relatives aux droits garantis aux victimes

Article 10-2

Les officiers et les agents de police judiciaire informent par tout moyen les victimes de leur droit : 1° D'obtenir la réparation de leur préjudice, par l'indemnisation de celui-ci ou par tout autre moyen adapté, y compris, s'il y a lieu, une mesure de justice restaurative ;

2° De se constituer partie civile soit dans le cadre d'une mise en mouvement de l'action publique par le parquet, soit par la voie d'une citation directe de l'auteur des faits devant la juridiction compétente ou d'une plainte portée devant le juge d'instruction ;

3° D'être, si elles souhaitent se constituer partie civile, assistées d'un avocat qu'elles peuvent choisir ou qui, à leur demande, est désigné par le bâtonnier de l'ordre des avocats près la juridiction compétente, les frais étant à la charge des victimes sauf si elles remplissent les conditions d'accès à l'aide juridictionnelle ou si elles bénéficient d'une assurance de protection juridique ;

4° D'être aidées par un service relevant d'une ou de plusieurs collectivités publiques ou par une association conventionnée d'aide aux victimes ;

5° De saisir, le cas échéant, la commission d'indemnisation des victimes d'infraction, lorsqu'il s'agit d'une

infraction mentionnée aux articles 706-3 ou 706-14 du présent code ;

6° D'être informées sur les mesures de protection dont elles peuvent bénéficier, notamment les ordonnances de protection prévues au titre XIV du livre Ier du code civil. Les victimes sont également informées des peines encourues par les auteurs des violences et des conditions d'exécution des éventuelles condamnations qui pourraient être prononcées ;

7° Pour les victimes qui ne comprennent pas la langue française, de bénéficier d'un interprète et d'une traduction des informations indispensables à l'exercice de leurs droits ;

8° D'être accompagnées chacune, à leur demande, à tous les stades de la procédure, par leur représentant légal et par la personne majeure de leur choix, sauf décision contraire motivée prise par l'autorité judiciaire compétente ;

9° De déclarer comme domicile l'adresse d'un tiers, sous réserve de l'accord exprès de celui-ci.

Article 10-3

Si la partie civile ne comprend pas la langue française, elle a droit, à sa demande, à l'assistance d'un interprète et à la traduction, dans une langue qu'elle comprend, des informations qui sont indispensables à l'exercice de ses droits et qui lui sont, à ce titre, remises ou notifiées en application du présent code.

L'autorité qui procède à l'audition de la partie civile ou devant laquelle cette personne comparait s'assure que la personne parle et comprend la langue française.

A titre exceptionnel, il peut être effectué une traduction orale ou un résumé oral des informations mentionnées au premier alinéa.

Les modalités d'application du présent article sont précisées par un décret, qui définit notamment les pièces essentielles devant faire l'objet d'une traduction.

Article 10-4

A tous les stades de l'enquête, la victime peut, à sa demande, être accompagnée par son représentant légal et par la personne majeure de son choix, sauf décision contraire motivée prise par l'autorité judiciaire compétente.

Article 10-5

Dès que possible, les victimes font l'objet d'une évaluation personnalisée, afin de déterminer si elles ont besoin de mesures spécifiques de protection au cours de la procédure pénale.

L'autorité qui procède à l'audition de la victime recueille les premiers éléments permettant cette évaluation. Au vu de ces éléments, l'évaluation peut être approfondie, avec l'accord de l'autorité judiciaire compétente.

La victime est associée à cette évaluation. Le cas échéant, l'association d'aide aux victimes requise par le procureur de la République ou le juge d'instruction en application de l'article 41 y est également associée ; son avis est joint à la procédure.

Les modalités d'application du présent article sont précisées par décret.

3) Dispositions relatives aux sanctions pénales encourues par la famille d'accueil en cas d'abus

Article 225-13

Le fait d'obtenir d'une personne, dont la vulnérabilité ou l'état de dépendance sont apparents ou connus de l'auteur, la fourniture de services non rétribués ou en échange d'une rétribution manifestement sans rapport avec l'importance du travail accompli est puni de cinq ans d'emprisonnement et de 150 000 euros d'amende.

Les personnes physiques ou morales coupables du délit prévu à la présente section encouront également la peine complémentaire suivante : interdiction de l'activité de prestataire de formation professionnelle continue au sens de l'article L. 6313-1 du code du travail pour une durée de cinq ans.

Article 225-14

Le fait de soumettre une personne, dont la vulnérabilité ou l'état de dépendance sont apparents ou connus de l'auteur, à des conditions de travail ou d'hébergement incompatibles avec la dignité humaine est puni de cinq ans d'emprisonnement et de 150 000 euros d'amende.

Article 225-14-1

Le travail forcé est le fait, par la violence ou la menace, de contraindre une personne à effectuer un travail sans rétribution ou en échange d'une rétribution manifestement sans rapport avec l'importance du travail accompli. Il est puni de sept ans d'emprisonnement et de 200 000 € d'amende.

Article 225-14-2

La réduction en servitude est le fait de faire subir, de manière habituelle, l'infraction prévue à l'article 225-14-1 à une personne dont la vulnérabilité ou l'état de dépendance sont apparents ou connus de l'auteur. Elle est punie de dix ans d'emprisonnement et de 300 000 € d'amende.

Article 225-15

Les infractions définies aux articles 225-13 et 225-14 sont punies de sept ans d'emprisonnement et de 200 000 euros d'amende lorsqu'elles sont commises à l'égard de plusieurs personnes. Lorsqu'elles sont commises à l'égard d'un mineur, elles sont punies de sept ans d'emprisonnement et de 200 000 Euros d'amende.

Lorsqu'elles sont commises à l'égard de plusieurs personnes parmi lesquelles figurent un ou plusieurs mineurs, elles sont punies de dix ans d'emprisonnement et de 300 000 Euros d'amende.

Article 225-15-1

Pour l'application des articles 225-13 et 225-14, les mineurs ou les personnes qui ont été victimes des faits décrits par ces articles à leur arrivée sur le territoire français sont considérés comme des personnes vulnérables ou en situation de dépendance.

Article 222-19

Le fait de causer à autrui, dans les conditions et selon les distinctions prévues à l'article 121-3, par maladresse, imprudence, inattention, négligence ou manquement à une obligation de prudence ou de sécurité imposée par la loi ou le règlement, une incapacité totale de travail pendant plus de trois mois est puni de deux ans d'emprisonnement et de 30 000 euros d'amende.

En cas de violation manifestement délibérée d'une obligation particulière de prudence ou de sécurité imposée par la loi ou le règlement, les peines encourues sont portées à trois ans d'emprisonnement et à 45 000 euros d'amende.

Article 222-20

Le fait de causer à autrui, par la violation manifestement délibérée d'une obligation particulière de prudence ou de sécurité imposée par la loi ou le règlement, une incapacité totale de travail d'une durée inférieure ou égale à trois mois, est puni d'un an d'emprisonnement et de 15 000 euros d'amende.

Translated version for reference:

Ministry of the Interior

AGREEMENT BETWEEN THE YOUNG AU PAIR AND THE HOST FAMILY:

initial ☐ **renewal** ☐

(articles L. 313-9 and R. 313-12 of the Code on the Entry and Residence of Foreigners and the Right of Asylum)

IMPORTANT: article 441-6 of the Criminal Code: (...)

1. The young au pair

Family name:	First name(s):	Sex: <input type="checkbox"/> M <input type="checkbox"/> F
Born in: on	Country:	Nationality:
Address in country of origin:		
E-mail address:	Telephone:	

2. The host family (parents and member(s) of the family)

Parent 1:		
Family name:	First name(s):	Sex: <input type="checkbox"/> M <input type="checkbox"/> F
Born in: on	Country:	Nationality:
Profession:		
E-mail address:	Telephone:	

Parent 2:		
Family name:	First name(s):	Sex: <input type="checkbox"/> M <input type="checkbox"/> F
Born in: on	Country:	Nationality:
Profession:		
E-mail address:	Telephone:	

Composition of the family: ☐ adult(s) ☐ child(ren) /aged from ☐ to ☐ of which are under 3 years old ☐
Where applicable, salaried employees for personal aid or domestic worker(s): ☐

3. Accommodation of the host family (conditions for hosting the young au pair)

<input type="checkbox"/> Apartment <input type="checkbox"/> Individual house	Number of rooms in the accommodation: <input type="checkbox"/>	
Address:	Postcode:	Town:
Individual room of the au pair: <input type="checkbox"/> m ² , <input type="checkbox"/> window(s)		
Bathroom: <input type="checkbox"/> individual <input type="checkbox"/> shared with:		

4. Organisation of the activities and tasks carried out by the young au pair

Housework related to the daily life of children over the age of three: <input type="checkbox"/> /hours/week		
Tasks carried out:		
Number of day(s) off /week <input type="checkbox"/> day(s)		
Amount of pocket money paid <input type="checkbox"/> euros/month	Day of payment:	
Course followed (if known): _____	Number of hours <input type="checkbox"/> / month	
School: _____ n° _____ (UAI or Siret)	Website: www.	
Address of school: _____	Postcode:	Town:

5. Duration of the agreement and terms of early termination

Duration of agreement: <input type="checkbox"/> months	Agreement start date:	Agreement end date:
By mutual agreement, both parties may terminate the agreement.		
In the event of gross negligence by one of the parties, the other party may immediately terminate the agreement.		
In the event of failure to fulfil obligations under the present agreement by one party, this agreement is terminated after the end of a period which allows both parties to make the necessary arrangements, and which may not be less than one week.		
The immigration authorities of the competent prefecture will be notified.		

6. Commitments and obligations of the signatories to the present agreement

6.1. The parents of the host family

Sworn statement:

- ☐ not to have any family ties with the young au pair,
- ☐ that the language used in the home is French,
- ☐ have taken notice of the provisions of the criminal code punishing human trafficking (appended to this agreement).

Undertake to:

- ☐ feed and accommodate the young au pair for the duration of the agreement,
- ☐ bear the financial burden of health insurance taken out by the young au pair,
- ☐ in the event of the young au pair's illness, to continue to provide food and accommodation until the necessary arrangements have been made,
- ☐ ensure that the young au pair's schedule allows him/her to further his/her knowledge of French culture, language and society,
- ☐ give the young au pair the opportunity to attend classes,
- ☐ give the young au pair every opportunity to practice his/her worship,
- ☐ pay pocket money to the young au pair every month on a fixed date.

Act as guarantor for:

- ☐ the young au pair as regards his/her living expenses, accommodation, or accident risks.

Done in _____ **on** _____
Signature of parent 1:

Done in _____ **on** _____
Signature of parent 2:

6.2 The young au pair

Sworn statement:

- ☐ not to have any family ties with the host family,
- ☐ have taken notice of the provisions of the code of criminal procedure relating to the rights guaranteed to victims of human trafficking, and the contact details of associations specialising in victim assistance (attached to this agreement).

Undertakes to:

- ☐ carry out the tasks mentioned in no. 5 of the present agreement.

Done in _____ **on** _____
Signature of the young au pair:

The provisions of articles 39 and 40 of law no. 78-17 of January 6, 1978 relating to information technology, files and civil liberties, guarantee the rights of individuals with regard to the processing of personal data.

Form to be signed by all parties concerned and attached to the national's application for a visa or residence permit

Help with filling in the fields of the form

The CERFA form must contain the application (**sheets 1 and 2**) and **all the fields completed** online.

The application is printed and signed by all parties involved.

1 The young au pair

Identity details are those on the passport or residence permit.

The young au pair's age must be between 18 and 30 years.

2 The host family (parents and member(s) of the family)

Please indicate the family's composition, including the number of children and their ages (e.g., 4 to 6), specifying the number of children under 3.

If applicable, specify whether there are any employees for personal aids or domestic workers. Indicate 0 if negative.

The au pair must not take care of children under the age of three, of people who are elderly, disabled or in a situation of dependence.

3 Accommodation of the host family (conditions for hosting the young au pair)

Check the housing situation and accommodation conditions for the young au pair.

The minimum living area of the room must be 9m², with at least one window.

4 Organisation of the activities and tasks carried out by the young au pair

The maximum weekly time devoted to family tasks is 25 hours.

The young au pair must have at least one full day off each week.

The young au pair must have enough time to attend classes in the subjects of his/her choice.

The minimum monthly amount of pocket money is set out in the decree issued by the Minister of the Interior on the conditions of stay for young au pairs.

5 Duration of the agreement and terms of early termination

The initial duration of the agreement may not exceed one year.

If the initial duration was less than one year, its extension must be attached to the visa extension application submitted to the prefecture of the family's place of residence.

If the stay is extended beyond one year, a new agreement for a maximum duration of one year may be signed at the time of renewal of the residence permit, which must be requested from the same prefecture.

In total, the stay as a young au pair cannot exceed two years.

6 Commitments and obligations of the signatories to the present agreement

Check each commitment and obligation before signing.

⇒ **CONTACT DETAILS FOR ASSOCIATIONS SPECIALIZING IN VICTIM ASSISTANCE**

Ministry of Justice VICTIMES number: 01 41 83 42 08

This helpline is for all victims of crime, whatever the form of the attack or the harm suffered.

It is the national telephone helpline for victims of criminal offenses.

It is managed by France Victimes, the national federation of victim support and mediation associations.

It offers anonymous, confidential, non-judgmental listening to victims, with the aim of helping them to talk freely and identifying their needs, in order to put them in touch with victim support associations and/or any partner service likely to be able to respond.

The directory of victim support associations listed by the Ministry of Justice is available at this address:

<http://www.annuaires.justice.gouv.fr/annuaires-12162/annuaire-des-associations-daide-aux-victimes-21769.html>

APPENDIX: reminder of applicable provisions of the criminal code

1) Provisions of the criminal code on human trafficking, enslavement and forced labour

Article 224-1 A

Article 224-1 B

Article 225-4-2

Article 225-4-4

Article 225-4-5

Article 225-4-6

2) Provisions of the code of criminal procedure relating to the rights guaranteed to victims

Article 10-2

Article 10-4

Article 10-5

3) Provisions relating to the criminal penalties incurred by foster families in the event of abuse

Article 225-13

Article 225-14

Article 225-14-1

Article 225-14-2

Article 225-15

Article 225-15-1

Article 222-19

Article 222-20

4/4

Translated with <www.deepl.com>.

9.5.3. Germany

The German Federal Employment Agency (*Bundesagentur für Arbeit*) provides a sample contract that can be used between the au pair and the host family. It consists of four pages and is then followed by a five-page excerpt of the translation provided by the agency AuPairWorld.

Original version by the authority:



Bundesagentur für Arbeit

Vertrag über eine Au-pair-Beschäftigung gemäß dem Europäischen Abkommen über die Au-pair-Beschäftigung vom 24. November 1969

Rechtsunverbindlicher Mustertext in Anlehnung an die vom Ministerkomitee des Europarates am 18. Januar 1972 gebilligte Fassung



Hinweis Bitte Zutreffendes ausfüllen oder ankreuzen.

Gemäß Artikel 4 des Europäischen Abkommens über die Au-pair-Beschäftigung sollen Au-pairs mindestens 17 Jahre und nicht älter als 30 Jahre sein. In Deutschland dürfen Au-pairs aus Nicht-EU-/EWR-Staaten (mit Ausnahme der Schweiz) noch keine 27 Jahre alt sein (§ 12 Beschäftigungsverordnung); das Mindestalter bei Nicht-EU-/EWR-Au-pairs (mit Ausnahme von Au-pairs aus der Schweiz) beträgt 18 Jahre.

Dieser Vertrag über die Aufnahme eines Au-pairs wird geschlossen zwischen

A. Angaben zum Gastgeber

1 Vorname	2 Nachname		
<input type="text"/>		<input type="text"/>	
3 Straße	4 Hausnummer	5 Postleitzahl	6 Wohnort
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

und

B. Angaben zum Au-pair

Au-pair

7 Vorname	8 Nachname		
<input type="text"/>	<input type="text"/>		
9 Geburtsdatum (TT.MM.JJJJ)	10 Geburtsort		
<input type="text"/>	<input type="text"/>		
11 Staatsangehörigkeit			
<input type="text"/>			
12 Straße	13 Hausnummer	14 Postleitzahl	15 Wohnort
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Gesetzliche Vertretung, wenn das Au-pair noch minderjährig ist

16 Vorname	17 Nachname
<input type="text"/>	<input type="text"/>



S1

Au-pair-Vertrag - 10/2023

Seite 1 von 4

C. Allgemeine Bedingungen

Das Au-pair wird von der Gastgeberfamilie während des vereinbarten Zeitraums gemäß den im Folgenden festgelegten Bestimmungen aufgenommen. Während dieses Zeitraums erhält das Au-pair Gelegenheit, insbesondere seine Sprachkenntnisse zu verbessern und seine Allgemeinbildung durch eine bessere Kenntnis des Gastlandes zu erweitern.

18 Für welchen Zeitraum in Monaten wird das Au-pair von der Gastfamilie aufgenommen?

(Bei Au-pairs aus Nicht-EU-/EWR-Staaten, mit Ausnahme der Schweiz, darf die Beschäftigungsdauer höchstens ein Jahr betragen. Die Mindestdauer beträgt 6 Monate.)

19 Wann tritt der Vertrag in Kraft? Der vorliegende Vertrag soll möglichst vor der Ausreise des Au-pairs aus dem Lande, in dem er seinen Wohnort hat, spätestens aber in der ersten Woche der Aufnahme in die Gastfamilie geschlossen werden.

Am (TT.MM.JJJJ)

D. Pflichten des Gastgebers

Der Gastgeber verpflichtet sich, das Au-pair in die Familie aufzunehmen und ihn am täglichen Familienleben teilhaben zu lassen; diesbezüglich gibt er die folgende Erklärung ab, von welcher das Au-pair Kenntnis nimmt:

Angaben zu den Familienmitgliedern

20 Anzahl der Familienmitglieder insgesamt

21 Anzahl der erwachsenen Familienmitglieder

22 Anzahl der Jungen

23 Anzahl der Mädchen

24 Angaben zum Alter der Kinder

	Kind 1	Kind 2	Kind 3	Kind 4	Kind 5	Kind 6	Kind 7	Kind 8
Junge (J) oder Mädchen (M)								
Alter (in Jahren)								

Angaben zur Unterkunft

25 Art der Familienunterkunft

☐ Haus

☐ Etagenwohnung

26 Anzahl der Zimmer (ohne Badezimmer)

27 Anzahl der Badezimmer

28 Entfernung zu einem Einkaufszentrum in Kilometern

29 Entfernung zu einer Bildungsanstalt, die geeignete Sprachkurse in Deutsch anbietet, in Kilometern

Der Gastgeber stellt dem Au-pair innerhalb der Familienwohnung ein Zimmer zur Verfügung. Gemäß Artikel 8 Absatz 1 des Europäischen Abkommens über die Au-pair-Beschäftigung sollte das Au-pair nach Möglichkeit ein eigenes Zimmer erhalten.

30 Welche Art Zimmer stellt der Gastgeber dem Au-pair zur Verfügung?

☐ Eigenes Zimmer (weiter mit 32)

☐ Geeignetes Zimmer

31 Mit wem teilt der Au-pair das Zimmer?



S2

Der Gastgeber stellt dem Au-pair Verpflegung kostenlos zur Verfügung. Das Au-pair nimmt an den gemeinsamen Mahlzeiten teil und erhält dasselbe Essen wie die Familienangehörigen, sofern unter Feld 40 nichts anderes vereinbart wurde.

Angaben zur Beschäftigung der Gastgeber

32 Beruf des Gastgebers

33 Beruf des Ehegatten

Angaben zum Hauspersonal

34 Beschäftigt der Gastgeber Hauspersonal?

☐ Ja ☐ Nein (weiter mit „Kostenübernahme, Freizeit und Urlaub“)

35 Bezeichnung beziehungsweise Tätigkeit des Hauspersonals

Kostenübernahme, Freizeit und Urlaub

Der Gastgeber zahlt dem Au-pair ein monatliches Taschengeld in Höhe von 280 Euro.

Die Arbeitsstunden des Au-pairs werden so geregelt, dass es seine Sprachkenntnisse durch Teilnahme an Kursen vervollständigen und seine Allgemeinbildung durch Teilnahme an Veranstaltungen und Ausflügen verbessern kann. Der Gastgeber unterstützt das Au-pair mit zusätzlich 70 Euro monatlich zur Teilnahme an Deutschsprachkursen sowie den erforderlichen Fahrtkosten zum nächstgelegenen und für das Au-pair geeigneten Deutschsprachkurs.

Dem Au-pair stehen mindestens 1,5 volle Ruhetage in der Woche zu (nicht notwendigerweise am Wochenende, mindestens ein Sonntag im Monat muss jedoch frei sein). Außerdem sind mindestens vier freie Abende pro Woche zu gewähren.

36 Wie viele freie Tage stehen dem Au-pair pro Woche zu?

Das Au-pair erhält uneingeschränkt Gelegenheit zur Ausübung seines Glaubens.

Der Gastgeber schließt für das Au-pair eine Privatversicherung für den Fall der Krankheit, Schwangerschaft und Geburt sowie eines Unfalls ab. Das Protokoll zum Europäischen Abkommen enthält die Bestimmung, dass die Versicherungsleistungen so weit wie möglich die Kosten für ärztliche Behandlung, Medikamente und Krankenhausaufenthalt decken müssen. Die Versicherungsprämie wird in voller Höhe vom Gastgeber bezahlt.

37 Wie hoch ist die monatliche Versicherungsprämie in Euro?

Bei Erkrankung des Au-pairs gewährleistet der Gastgeber weiterhin Unterkunft und Verpflegung und die entsprechende Betreuung und Pflege, bis die erforderlichen Regelungen getroffen worden sind.

Das Au-pair erhält für jeden vollen Monat der Beschäftigung einen bezahlten Erholungsurlaub von zwei Werktagen. Eine Teilnahme am Familienurlaub zählt nur dann als Urlaub, wenn lediglich unwesentliche Aufgaben übernommen werden müssen und keine Anwesenheitspflicht besteht.



S3

E. Pflichten des Au-pairs

Das Au-pair ist verpflichtet, durch eine bestimmte Anzahl an Stunden pro Tag (einschließlich Babysitting) an der Erfüllung der täglichen häuslichen Pflichten mitzuwirken. In Deutschland wurden Höchstgrenzen von 6 Stunden täglich und 30 Stunden wöchentlich festgelegt.

38 Anzahl der Stunden pro Tag, die das Au-pair mitwirkt

Das Au-pair verpflichtet sich, in den unter Feld 38 angegebenen Stunden in angemessener Zeit bestimmte Dienste zu leisten (zulässig sind nur leichte Haushaltsarbeiten und die Kinderbetreuung). Private Angelegenheiten wie das Sauberhalten und Aufräumen des eigenen Zimmers zählen nicht als Hausarbeitszeit.

39 Folgende Dienste werden vom Au-pair geleistet:

Das Au-pair erklärt sich bereit, alle seinerseits erforderlichen Formalitäten zu erfüllen, um den Gastgeber in die Lage zu versetzen, seinen Verpflichtungen zum Abschluss einer Privatversicherung für das Au-Pair für den Fall der Krankheit, Schwangerschaft und Geburt sowie eines Unfalls nachzukommen.

Das Au-pair erklärt sich bereit, unverzüglich das ärztliche Zeugnis vorzulegen, das gemäß Artikel 5 des Europäischen Abkommens über die Au-pair-Beschäftigung verlangt wird. Gemäß Artikel 5 des Europäischen Abkommens über die Au-pair-Beschäftigung muss das ärztliche Zeugnis des Au-pairs weniger als drei Monate vor der Aufnahme in die Gastfamilie ausgestellt sein und Angaben über den allgemeinen Gesundheitszustand des Beschäftigten enthalten.

F. Verschiedenes

Der Vertrag kann durch jede der Vertragsparteien unter Einhaltung einer zweiwöchigen Kündigungsfrist gelöst werden. Ungeachtet dessen kann er von einer Partei mit sofortiger Wirkung gelöst werden, wenn seitens der anderen Partei eine schwere Verfehlung vorliegt. Auch kann jede der Parteien den Vertrag mit sofortiger Wirkung lösen, wenn schwerwiegende Umstände eine solche sofortige Lösung erforderlich machen.

40 Die Parteien vereinbaren ferner Folgendes:

Dieser Vertrag wird in zwei Exemplaren ausgefertigt:

- eine Ausfertigung für den Gastgeber und
- eine für das Au-pair.

G. Unterschrift

Bei Minderjährigkeit des Au-pairs ist seinem gesetzlichen Vertreter eine weitere Ausfertigung auszuhändigen.

41 Ort

42 Datum

43 Unterschrift des Au-pairs
(bei Minderjährigkeit des Au-pairs
Unterschrift des gesetzlichen Vertreters)

44 Ort

45 Datum

46 Unterschrift des Gastgebers



S4

Translated version for reference:



Vertrag
über eine Au-pair-Beschäftigung
gemäß dem Europäischen Abkommen über die Au-pair-Beschäftigung
vom 24. November 1969

– Mustertext in Anlehnung an die vom Ministerkomitee des Europarates am 18. Januar 1972 gebilligte Fassung –

Contract
for au pair employment
according to the European Agreement on the Au Pair Placement
of 24 November 1969

– Model text according to the version approved by the Committee of Ministers of the Council of Europe on 18 January 1972 –

Dieser Vertrag über die Aufnahme eines Au-pair-Beschäftigten wird geschlossen zwischen:

This au pair contract is made between:

Herrn / Mr Frau / Ms

Name / Name

Wohnort / Place of residence

Straße / Street

im Folgenden als „der Gastgeber“ bezeichnet, und
hereafter referred to as “host”, and

Name / Name

im Folgenden als „der Au-pair-Beschäftigte“ bezeichnet
hereafter referred to as “au pair”

Geboren am¹⁾ / Born on¹⁾

in / in

Staatsangehörigkeit / Nationality

Wohnort / Place of residence

Straße / Street

Name des gesetzl. Vertreters, wenn der Au-pair-Beschäftigte noch minderjährig ist / Name of the legal guardian if the au pair is a minor

1) Gemäß Artikel 4 des Europäischen Abkommens über die Au-pair-Beschäftigung sollen Au-pair-Beschäftigte mindestens 17 Jahre und nicht älter als 30 Jahre sein. In Deutschland dürfen Au-pairs aus Nicht-EU-/EWR-Staaten (mit Ausnahme der Schweiz) sowie aus dem EU-Mitgliedstaat Kroatien noch keine 27 Jahre alt sein (§12 Beschäftigungsverordnung); das Mindestalter bei Nicht-EU-/EWR-Au-pairs (mit Ausnahme von Au-pairs aus der Schweiz) beträgt 18 Jahre.

1) According to Article 4 of the European Agreement on the Au Pair Placement, au pairs must be no less than 17 and no more than 30 years of age. In Germany, au pairs from non-EU/EFTA states (exception: Switzerland) and from the EU state Croatia must be no more than 26 years of age (§ 12 Beschäftigungsverordnung); the minimum age for non-EU/EFTA au pairs (exception: Switzerland) is 18 years.

I. GENERAL CONDITIONS

The family will host the au pair for a period of [] month(s)²⁾ in accordance with the regulations mentioned in this document. During this period of time, the au pair shall be given the opportunity to improve his/her language skills and enhance his/her knowledge of the host country.

The contract comes into effect on [],³⁾

II. HOST DUTIES

II.1 The host shall accommodate the au pair and allow him/her to take part in the family's daily life. In this context, the host declares the following to the au pair:

a) The family consists of [] members, among which

[] are adults,

[] are boys aged [] years,

[] are girls aged [] years.

b) The family lives

in a house in an apartment

which includes [] rooms and [] bathroom(s).

c) The distance to the next shopping centre: [] km

The distance to the next educational institution offering suitable language courses: [] km

d) Host's profession:

Profession of the host's spouse:

e) The host employs the following members of domestic staff:

2) For au pairs from non-EU/EFTA states (exception: Switzerland) and from the EU state Croatia the au pair placement may not exceed one year. The minimum period should comprise six months

3) According to Article 6 of the European Agreement on the Au Pair Placement, this au pair contract should preferably be concluded between the parties prior to the au pair leaving his/her home country or within one week upon arrival at the latest.

- II.2 The host shall provide the au pair with;
☐ a separate bedroom, or ☐ a suitable shared bedroom, sharing with ⁴⁾
as well as free board. The au pair will share meals with the host family and have access to the same food as all family members, unless otherwise agreed under IV.2.
- II.3 Furthermore, the host shall pay the au pair a monthly pocket money of 280 euros.
- II.4 The au pair's working hours shall be arranged in a way allowing him/her to participate in a language course and take part in cultural events and excursions, thus enhancing his/her language skills and general knowledge of the host country. Furthermore, the host pays the travel costs to the language course and supports the au pair with an additional 70 euros per month to attend German language courses.
- II.5 The au pair shall receive
 day(s) off ⁵⁾ and at least 4 free evenings per week.
The au pair shall also be given full opportunity to practise his/her religion.
- II.6 The host shall subscribe to a private insurance for the au pair for the cases of illness, maternity and accidents.⁶⁾

The insurance fee amounts to euros per month and shall be paid in full by the host.
- II.7 In the case of illness, the au pair shall remain entitled to full board and lodging, as well as adequate care until appropriate arrangements can be made.
- II.8 The au pair is entitled to 2 days paid holiday per month. Joining the host family on their own holiday shall only be considered a holiday for the au pair if only minor duties are expected and if attendance is not required.

4) According to Article 8 Paragraph 1 of the European Agreement on the Au Pair Placement, the au pair shall be accommodated in a separate room if possible.

5) According to Article 8 Paragraph 3 of the European Agreement on the Au Pair Placement, the au pair is entitled to one full free day per week. No less than once every month this day should be a Sunday.

6) The protocol of the European Agreement stipulates that insurance must cover the cost of medical treatment, medication and hospital treatment, as far as possible.

III AU PAIR DUTIES

- III.1 The au pair commits to work hour(s) per day⁷⁾ (babysitting included) thereby assisting the family with daily household chores. Duties include:

(Detailed information on the duties the au pair is expected to carry out shall be given here. Only light housework duties and child care are considered to be au pair duties.)

Cleaning and tidying up the au pair's personal space is considered a private matter, not forming part of housework duties.

- III.2 The au pair declares readiness to provide all requested documents in order to enable the host to fulfil his duties as defined in II.6 of this contract.
- III.3 The au pair declares readiness to provide a medical certificate as requested in Article 5 of the European Agreement on Au Pair Placement.⁸⁾

IV MISCELLANEOUS

- IV.1 Either contracting party may terminate the contract observing a two weeks (prior) notice period. The contract may, however, be terminated with immediate effect by either party in the event of serious misconduct by the other party or if other serious circumstances render such instant termination necessary.
- IV.2 The parties further agree on the following issues:

7) According to Article 9 of the European Agreement on the Au Pair Placement, the time dedicated to such services shall generally not exceed five hours a day. A maximum of six hours per day and 30 hours per week has been defined as the upper limit for working hours in Germany.
8) According to Article 5 of the European Agreement on the Au Pair Placement, the medical certificate shall be issued less than three months prior to the start of the placement, declaring the person's general state of health.

Dieser Vertrag wird in zwei Exemplaren ausgefertigt:

- eine Ausfertigung für den Gastgeber und
- eine für den Au-pair-Beschäftigten.

Bei Minderjährigkeit des Au-pair-Beschäftigten ist seinem gesetzlichen Vertreter eine weitere Ausfertigung auszuhändigen.

The contract shall be signed in duplicate:

- au pair and
 - host family
- will keep one copy respectively.

Should the au pair still be a minor, the legal guardian in question shall also receive one copy of the contract.

Ort / Place	Datum / Date	Unterschrift des Au-pair-Beschäftigten / Au pair's signature
		(bei Minderjährigkeit des Au-pair-Beschäftigten Unterschrift des gesetzlichen Vertreters)
		(Or the legal guardian's signature should the au pair be a minor)
Ort / Place	Datum / Date	Unterschrift des Gastgebers / Host's signature

We do not assume any liability as to the accuracy of the translations provided. In case of doubt, the original contract will always apply.

8 | 8

Retrieved from <www.aupairworld.com/en/au-pair-programs/germany/general-conditions>.

Main body text: 25,146 words
With footnotes: 29,165 words