

## *Policy Brief*

# PHILIPPINE MIGRATION AND AU PAIR PROGRAMS IN EUROPE

Center for Migrant Advocacy-Philippines

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## TABLE OF CONTENTS

Preface.....	3
Executive Summary.....	4
Introduction.....	7
Au Pair Program Abuses.....	8
Legal Framework of Au Pair Programs.....	10
- Council of Europe.....	10
- European Union.....	10
- International Labor Organization.....	11
Country Specific Au Pair Programs.....	12
- Denmark.....	13
- The Netherlands.....	15
- Belgium .....	17
- Philippines.....	19
Recommendations.....	20
Annex .....	22
References.....	23
Endnotes.....	25

## Preface

With deep concern for the welfare of Filipino au pairs residing in Europe the Center for Migrant Advocacy (CMA) is pleased to present a policy brief entitled: Philippine Migration and Au Pair Programs in Europe. The growing controversy of the au pair programs in Europe initiated the Center for Migrant Advocacy to conduct an analysis of the legal framework that protects au pairs in Europe. In consultation with NGOs, au pairs, policy makers, government departments and other stakeholders, CMA addresses the need for enhanced protection for au pairs. CMA strongly encourages cooperation between government and civil society organizations to protect Filipino migrants.

Recent developments in au pair regulations in the Philippines and Europe prompted CMA to examine the implications that may result from these policies. In 2012 the ban for Filipina au pairs was lifted for Europe<sup>1</sup> after an ad hoc Technical Working Group formulated guidelines to regulate the deployment of Filipina au pairs to Europe.<sup>2</sup> The lifting of the ban gave rise to considerable challenges for policy makers to protect the au pairs in Europe. Welcoming the efforts of policy makers to enhance protection of au pairs, CMA offers its assistance by identifying the gaps in the policies of the Philippine and European regulations concerning au pairs.

This report would not have been made possible without the help of the NGO sector, partner organizations, au pairs, government officials and other stakeholders concerned with the welfare of Filipina au pairs abroad. CMA extends its gratitude to all parties that have contributed to this brief.

The Center for Migrant Advocacy – Philippines is an advocacy Group that promotes the rights and welfare of overseas Filipinos –land- and sea-based migrant workers, Filipino immigrants and their families. The Center works to help improve the economic, social and political conditions of migrant Filipino families through policy advocacy, information dissemination, networking, capacity building, and direct assistance.

## EXECUTIVE SUMMARY

Reports of exploitation and abuse of Filipina au pairs in Europe have undermined the integrity of au pair programs in Europe.<sup>3</sup> The ambiguous legal status of au pairs in Europe has fuelled public scrutiny on the questionable policies governing the placement of au pairs in European countries. As a reaction to the reports of abuse, the Philippine government imposed an au pair ban to Europe in 1998.<sup>4</sup> Despite the ban the number of Filipina au pairs continued to increase in Europe.<sup>5</sup> As a result of the ban, the Filipina au pairs were now undocumented and not protected by Philippine regulations and institutions. Following bilateral agreements between the Philippines, Denmark and the Netherlands<sup>6</sup> and after the issuance of the New Guidelines on the Departure of Au Pairs to Europe by a Technical Working Group, the ban was lifted in 2012<sup>7</sup>.

In the absence of extensive labor immigration policies for domestic workers in Europe, the au pair programs are increasingly used to attract cheap domestic workers. Many Filipino women have been recruited under the guise of the au pair programs. Au pairs are neither recognized as workers nor students in Europe.<sup>8</sup> Hence, Filipina au pairs do not enjoy the full protection and social security provided under the applicable European labor laws and remain vulnerable to exploitation. As au pairs, Filipinas are not paid full wages. Instead, they receive allowances of around 400 Euros varying between countries, far short of the minimum wage of domestic workers.

The au pair sector is typified by this unregulated character. The limited legal mechanisms that are in place to regulate au pair programs are inadequate to provide sufficient protection for au pairs. Acknowledging the vulnerability of au pairs and the inadequate instruments for their protection, the Parliamentary Assembly of the European Council recommended in 2004 to recognize and safeguard the distinctive status of au pairs and appropriately regulate the au pair sector.<sup>9</sup> Officially recognized as a cultural exchange program by European countries these programs should be used for the sole purpose of cultural exchange rather than a cheap recruitment tool to attract cheap domestic labor.

This policy brief analyzes the rules and regulations governing the European au pair programs and assesses if these are sufficient to protect the au pairs from exploitation. Based on these policies, this brief sets forth recommendations for European governments and the Philippine government to safeguard the rights of au pairs. This paper, specifically focuses on Denmark, the Netherlands and Belgium as they are among the top receiving countries of Filipina au pairs.<sup>10</sup> To explain the need for comprehensive policies ensuring the protection of au pairs, the abuses and exploitation of the au pair programs are outlined first. Amongst others, the reports of abuse of the au pair program include excessive working hours, and the limited available time to study as a result of the long working hours or an outright prohibition to study. Other abuse includes discrimination, sexual harassment, and the exploitation of the vulnerability of undocumented au pairs when they overstay their visas in the country of destination. By outlining the legal framework that is intended to protect the rights of au pairs and explaining under what conditions au pairs may be placed in European host families, this paper informs policy makers, au pairs, NGOs and other stakeholders about the rules and regulations governing the placement of au pairs. Lastly, this policy brief will set forth recommendations to enhance protection for Filipina au pairs based on the rules and regulations that were examined.

## Recommendations

***CMA recommends the European governments to:***

- Formulate concrete regulations specifically addressing au pairs stipulating the rights and obligations of au pairs including technical accommodation requirements, exact amount of allowances, hours of work, defining the type of light household chores and payment of return ticket.
- Monitor the compliance of host families by conducting interviews with au pairs and inspecting the houses of the families
- Continuously evaluate and improve monitoring mechanisms.
- Establish an independent complaint mechanism including a toll free 24/7 hotline for au pairs to lodge their complaints and report abuses to; with assurances that their immigration status will not be affected;
- Establish mechanism for availment of temporary protected status for those with pending complaints in the EU countries until the resolution of their cases
- Penalize misuse of the au pair program with appropriate penalties, instead of mere blacklisting
- Promote ongoing dialogue with the Philippine government to thresh out issues/ policy implementation and programs
- Extend the period for which au pairs can find a new host family.
- Ensure that the au pair program is publicly respected as a cultural exchange program and not for purposes of work.

***CMA recommends the Philippine government to:***

- Ensure that European receiving countries of au pairs fully respect and protect the au pair programme as a cultural exchange programme through continuous dialogue.
- Urge au pair receiving countries to report cases of abuse and communicate on policy changes, implementation and monitoring.
- Disseminate information on policies governing au pair placement to all stakeholders, including the new Guidelines for Au Pairs.
- Encourage with au pair receiving countries and offer hotlines to provide info for complaints info etc.
- Mainstream and integrate au pair issues in illegal recruitment and HT programs and policies.

## INTRODUCTION

### Filipino Au Pairs in Europe

The Philippines has a rich history of au pair migration to Europe. In the 1990s, numerous Filipinos arrived in Europe as au pairs, especially in the Netherlands and Scandinavia.<sup>11</sup> In 1998, the Philippine government banned the deployment of Filipino migrants under the au pair program in Europe.<sup>12</sup> This measure was a reaction against reported cases of abuse and exploitation including excessive working hours, sexual assault and discrimination. These cases primarily occurred in the Netherlands, and to a lesser extent in Scandinavian countries<sup>13</sup>

As the ban was unilaterally imposed by the Philippine government, host countries were not restricted to issue visas for Filipino au pairs. Regardless, Switzerland and Sweden discontinued issuing visas for Filipino au pairs. Denmark, the Netherlands and Belgium on the other hand did not.<sup>14</sup> As these governments continued to issue the visas, au pairs were still able to arrive in the respective countries by bribing Filipino immigration officials.

Despite the au pair ban imposed by the Philippine government, which existed for fifteen years, (thirteen years in the case of Denmark, Switzerland and Norway), the number of au pairs arriving in European countries increased substantially.<sup>15</sup> In 2005 only 569 Filipina au pairs were working in Denmark. Five years later Filipina au pairs working in Denmark quadrupled. Similarly in the Netherlands, the residence permits granted to au pairs quadrupled from 103 in 2005 to 463 in 2010.<sup>16</sup>

In 2010 the ban was lifted in Switzerland, Norway and Denmark. In February 2012, the ban was lifted for all European countries.<sup>17</sup> This announcement was preceded by an ad hoc Technical Working Group on au pairs that developed a set of 'Guidelines on the Departure of Au Pairs to Europe'. Vice President Binay stated that: *"The new guidelines [that] we have put in place will now facilitate the departure of Filipino au pairs and provide them with safety nets for their protection without restricting their rights to self-improvement"*<sup>18</sup>

The Department of Foreign Affairs (DFA) is the leading agency responsible for the formulation and implementation of policies that are outlined in the 'Guidelines on the Departure of Au Pairs to Europe'. The Bureau of Immigration and the Commission of Filipino Overseas (CFO) will assist the DFA with its implementation.<sup>19</sup>

Starting March 2012, Filipino au pairs departing to Europe must register with the CFO.<sup>20</sup> As part of the CFO's registration requirements, the au pair must attend a Country Familiarization Seminar (CFS).<sup>21</sup> The CFS provides information about the cultural norms and societal structures in the country of destination. The CFS also educates participants on health and safety issues, airport and travel procedures, and support networks.<sup>22</sup> After completion of the CFS, an au pair sticker is stamped on the au pair's passport. Without this sticker, the au pair is not allowed to leave the country.<sup>23</sup>

## AU PAIR PROGRAM ABUSES

Despite the genuine intentions of the Philippine authorities to stop abuse of the au pairs, the Philippine government does not have jurisdiction over the immigration policies of the respective European countries. While some countries acknowledged the ban by discontinuing the issuance of visas for Filipina au pairs, other European countries continued their au programs.<sup>24</sup> As it was prohibited for Filipinas to depart to Europe as au pair, the women resorted to alternative unsafe and unprotected methods of migration to Europe.<sup>25</sup> Filipina au pairs paid bribes to immigration officers to leave the country. The debt arising from bribing immigration officials was exacerbated by the exorbitant fees that rogue recruitment agencies demanded. Since migration to Europe as an au pair was prohibited by the Philippine authorities, the Philippine government did not implement protection or welfare mechanisms for the Filipina au pairs making them even more vulnerable to exploitation.

Once the au pairs arrived in the country of destination they were exposed to further exploitation and abuse by their host families such as discrimination, sexual harassment and physical abuse.<sup>26</sup> Other forms of abuse include the requirement to work excessive working hours and a limitation of the freedom to study and experience the country's culture.<sup>27</sup> As the au pair live-in arrangements is poorly regulated and monitored, au pair are highly vulnerable to the aforementioned forms of abuse and exploitation.

Further adding to the precarious situation of the au pairs are the growing tendencies to overstay the visas in the destination country, or move to other European countries.<sup>28</sup> By doing so au pairs become undocumented and, thus, increasingly vulnerability to abuse and exploitation.

Due their vulnerable position, au pairs are targeted for human trafficking. The report by the Organization for Security and Co-operation in Europe (OSCE) affirms that *"in the OSCE region, cases of au pairs being exploited in slavery-like conditions have been identified in Belgium, France and the Netherlands"*.<sup>29</sup> Au pair recruitment mechanisms and working conditions need better monitoring to prevent both human trafficking and abuses.

The case studies below illustrate the scope of exploitation and abuse in the European countries.

### Case Study 1<sup>30</sup>

#### Denmark

A woman of Filipina origin completed her au pair contract in Denmark after two years. Upon expiration of the visa, she migrated to another European country to look for job opportunities. Her Danish boyfriend convinced her to come back to Denmark as an undocumented migrant, arranged her bus fare and lodged her in his house. She undertook domestic chores eight hours a day, including cooking, cleaning, massage and childcare. She also worked on weekends outside of the household. She didn't receive any salary. She was not allowed to use the phone and her ID papers were withheld. She did not feel able to refuse and was afraid. She was forced to have sex with an acquaintance of the man. When she wanted to go back to the Philippines, she was forced to stay until she was replaced with a new woman from a third country. When she refused to clean, she was punished with violence and threatened at gunpoint. She was forced to sleep outside the house. The woman explained to the authorities how at first she saw the connection as a personal relationship but became increasingly aware that she was used for labour exploitation. The woman was identified a victim of trafficking for forced labour in the domestic sphere and received a prepared repatriation. No charges were raised against the offender.



## Case Study 2

### Denmark

At first, while still in the Philippines, it was new to me to hear about au pair work. I had never heard about it before. I applied through an agent. I think it is illegal to have an agent. I paid the agent around DKK10,000 (...) Unfortunately, the agent is not allowed in the Philippines, so when we go to the embassy we say that it's a direct hire, that we found the host family on the internet. (...) The agent takes the money and looks for a host family on the internet. They pay to access the information of the host family. For me, I come from a community where you need to go to the city to access the internet, so it's more convenient to go to an agent. The agent has an office and can do it at night and she provides the information on the procedures. She also has my identity. She calls my hosts on the phone, she mimics my voice. When I arrived, my host family said: you once called us before, and I said no, I just met you. They think they talked to me, but no, it was my agent. So when I arrived here, I had no exact information on them — this information lies with my agent. My agent gave me the emails and said: read those and memorize them, and I did this. My agent is selling me as if I am a domestic helper. You know, how you can sell a person: I am a very good cook...I felt like, NO this is not me... she is just a very good novelist. (...) So this is the process, and it would be really bad if an au pair is being sold as a domestic helper and then when she arrives, she is shocked that her work is as a domestic helper, and the host family is very expectant as well. (B, Filipina au pair in Denmark)<sup>31</sup>

## Case

## study

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### Netherlands

"V, a Philippino girl, came to the Netherlands as an au pair. At her first host family, despite other agreements on paper, V not only had to look after the children but also had to do increasing usework, and work on Saturdays. Without her knowing it, V became undocumented, because the host family had not registered her. A row broke out and V went to another family where she encountered the same problems: there was no residence permit and V was given too much work to do. V went to a third host family. Her duties there included cleaning the house and the swimming pool, walking the dog, cooking for the 15 and 18 year old sons and being on hand in the evenings and at weekends to serve guests. V was in fact a maid and she earned between €450 and €500 per month. She did not have her own passport and was afraid of the lady of the house, who treated her badly. After more than 5 years of illegal residence, V went to an NGO which tried to mediate. Her boss said she would sort out V's registration and insurance, but some months later the situation had not changed. Then V's host family offered her a loan of €1,000 to build a house in the Philippines. The NGO warned that this would increase her dependence, but V still took the loan. V's working conditions continued to be poor and she was not allowed to rest when sick, for example. When it became too much for her, she left. Because the situation was beyond mediation, the NGO collected V's things from the family. V gave back the money she had borrowed and got her passport in exchange. The NGO wants to ask a lawyer whether she could claim back wages."<sup>32</sup>

## LEGAL FRAMEWORK FOR AU PAIR PROGRAMS

### The Council of Europe

The 1969 Council of Europe Agreement on Au Pair Placement is the only international legal instrument that specifically addresses Europe's au pair policies. Ratified by only 5 of the 47 Member States, the outdated 1969 agreement has provided little protection for au pairs. Remarkably, the Netherlands and Belgium have not ratified the agreement.<sup>33</sup>

This Council of Europe Agreement contains provisions on the relationship between the host family and the au pair. Under this agreement the au pairs are entitled to board and lodging (where possible a separate room), adequate time to attend language courses for cultural and professional improvement, one free day per week and a certain sum of money as pocket money.<sup>34</sup> The agreement neither specifies the minimum allowance, the conditions of the room nor the amount of free time. It merely stipulates that a contract must be formulated to address these concerns.<sup>35</sup>

The inadequate and outdated protection of the agreement is reflected in a statement of the European Parliament in 2011 acknowledging that the agreement; *"does not necessarily meet the need for the regulation of au pair migration today and thus, it cannot be characterized as a strong mechanism for the international regulation of au pair migration"*.<sup>36</sup>

In 2004, the Parliamentary Assembly of the Council of Europe developed a recommendation called 'Domestic Slavery: Servitude, Au Pairs and Mail-Order Brides' that recommends EU Member States to recognize a distinctive status for au pairs, ensuring working conditions and regulate the industry. This document states:

*"modern-day slavery is predominantly performed by women who usually work in private households, starting out as migrant domestic workers, au pairs or mail-order brides". It therefore recommends member states to recognize and safeguard the distinctive status of au pairs (neither students nor workers), that their working conditions and social cover are fixed and that the au pair industry is appropriately regulated through the creation of a system of accreditation of agencies"*.<sup>37</sup>

### European Union

EU member states generally encourage the immigration of high skilled workers while deterring the immigration of low skilled workers. Since domestic workers are not considered high skilled workers, many Filipina women resorted to immigration under the cover of au pair programs.<sup>38</sup> In 2005, the European Council adopted the 'Global Approach to Migration', to encourage labor migration and improve border management between EU member states and third countries.<sup>39</sup> In this approach labor migration was mainly promoted for high skilled workers. Although migration issues remained a priority for the European Union throughout 2010 (IOM 2011)<sup>40</sup> the EU was primarily concerned with the control of the EU's external borders and the facilitation of the migration of highly skilled workers into Europe rather than the protection of migrants. These restrictive migration policies encourage migrants to pursue unregulated and unsafe migration alternatives such as the au pair programs.

EU citizens who are employed as au pairs are considered mobile workers, according to EU law.<sup>41</sup> Recognized as mobile workers, EU au pairs are entitled to the protections and welfare benefits provided to EU citizens working in other EU member states. The same protection is not enjoyed by non-European au pairs. It was not until 1984 that the European Commission recommended the ratification of the Council of Europe Agreement on Au Pair Placement<sup>42</sup>, in which the au pair is recognized as belonging to a special category that has features of a students and workers.<sup>43</sup>

While the Northern European countries have restrictive immigration policies for domestic workers, some southern European countries acknowledged the demand for domestic workers by allowing limited immigration of domestic workers. In 2005, the Italian government reserved a proportion of migration quotas for domestic workers. In Spain, *“quarterly lists of shortage occupations to be filled by migrant workers are drawn up for each province which may include domestic workers”*<sup>44</sup>

## **International Labor Organisation**

In the lead up to the adoption of ILO Convention 189 (C189)<sup>45</sup>, there were discussions on whether or not to include undocumented migrants workers and au pairs in the convention. Report IV (1) 2010 stated that *“given the abuses that can occur against young people working as au pairs, the ILO’s constituents may wish to consider “au pairs” as both workers and young people on a cultural exchange, and to regulate their working conditions”*.<sup>46</sup>

Some governments opposed the inclusion of undocumented migrant workers and au pairs in the ILO Convention 189. In the Netherlands, it was stated that *“au pairs working as child minders in a private household, who are primarily employed as part of a cultural exchange, should not be covered by all the protection provided under the draft instrument”*.

## Country Specific Au Pair Programs

This paper analyzes the legal frameworks of Denmark, the Netherlands and Belgium. The rationale behind the emphasis on these three countries is based upon the amount of Filipina au pairs residing in these three countries, the reports of abuse and exploitation as well as the fact that they have not ratified the European Council Agreement on Au Pair Placement. Denmark, the Netherlands and Belgium are amongst the top receiving countries of Filipina au pairs.

### Denmark

Since 2004, the Philippines has been the largest sending country of au pairs to Denmark. The residence permits granted for au pairs in Denmark increased from 475 in 2004 to 2,140 in 2010. In 2009, 78% of the au pairs in Denmark were from the Philippines.<sup>47</sup>

The Danish au pair program is regulated by immigration policies and is based on the 1969 Agreement on Au Pair Placement. Under this agreement, au pairs are neither distinguished as workers nor students.<sup>48</sup> The entitlements of the au pairs prescribed by this agreement are largely lacking. The bilateral agreement ; 'Guidelines on the selection and deployment of Filipino au pairs to Denmark' between Denmark and the Philippines complements the European Council agreement.<sup>49</sup> The eligibility requirements, duties and tasks and obligations of the host family of the agreement between the au pair and host family regulate the placement of au pairs in Denmark. " The purpose is for the au pair to improve language and/or professional skills as well as broaden his/her cultural horizon by becoming more acquainted with Denmark".<sup>50</sup> In return, the au pair participates in the host family's domestic chores (e.g. cleaning, washing clothes, cooking, babysitting) for a maximum of five hours a day, and no more than six days a week."<sup>51</sup>

Au pairs going to Denmark require a residence permit. In order to obtain this, they must contact the Danish Immigration Service. No intermediary agencies exist in this system.

#### The au pair must meet the following criteria

- Must be between 17-29 years old
- Must not be married nor have children
- Must have completed the equivalent of nine years of schooling
- Must have a knowledge of either Danish, Swedish, Norwegian, English or German
- Must not previously have had two or more au pairs stays in other Western countries and must previously not have held a Danish residence permit
- Family relations between the au pair and the host family are not allowed.
- The au pair must not have stayed in Denmark for more than one year as an au pair with different host families.
- Should assume a role as a member of the family and thus contribute to the household by carrying out chores within the family's daily housekeeping, such as babysitting, cleaning and washing clothes.
- Is entitled to a minimum monthly allowance of DKK 3,150 (aprox.400 Euros), free food and lodging.
- Must carry out daily chores for 3 to 5 hours per day, 6 days a week (18 to a maximum of 30 hours per week).
- Is entitled to one full day off every week
- Is entitled to sufficient time off to take language courses<sup>52</sup>

**The host family is required to meet the following criteria:**

- Must be comprised of at least one parent and one child under 18 living at home
- At least one parent must be a Danish citizen (in order to introduce the au pair to the Danish culture and language)
- Must not have been given a penalty period as a result of a previous abuse towards an au pair.
- Must not receive public assistance as the primary means of support under the terms of the Active Social Policy Act.
- The host family and the au pair must not be related.
- Must cover all travel costs specified as; cost of the visa, POEA processing fee OWWA membership and airfare.
- Must cover the au pair with three types of insurance (work-related, leisure time & accidents) Since March 2012, is required to pay for the Country Familiarization Seminar fee (for Filipino au pairs).<sup>53</sup>

**The agreement's general provisions include:**

- A written contract signed by the host family and au pair. Both parties have the right to terminate this contract with two weeks' notice in the case of serious violations.
- A residence permit which may be granted for a maximum of 2 years (unless it is possible to apply for an extension).
- Working conditions of the au pair.
- Right and contractual obligations<sup>54</sup>

The eligibility requirements are intended to ensure that the program is used for the purpose of a cultural exchange and not for work. These requirements target unmarried, graduated young people that would like to gain professional and cultural experience whilst improving their language skills. Danish guidelines stipulate that the *"au pair must have a natural connection to your life so far, including your educational background and employment history"*.<sup>55</sup> Nevertheless, the eligibility requirements of the Danish immigration services do not exclude Filipina au pairs who have the intention of supporting their family by remitting the limited allowances to the Philippines. Strict eligibility requirement can hardly be considered an effective measure to ensure that the au pair programs are used as a cultural exchange and not for work.

Host families are responsible for insurances covering the au pair for work related injuries, leisure time and accidents and the cost of returning the au pair back to their country in case of serious illness/injury or death.<sup>56</sup> Although the light household chores are defined as *"to contribute to the household by carrying out chores related to the family's daily housekeeping, such as babysitting, cleaning and washing clothes"*,<sup>57</sup> reports indicate that au pairs have been required to take care of farm animals, tending to shops, cleaning in more than one household and heavy gardening tasks.<sup>58</sup>

The Danish authorities have implemented a mechanism that penalizes exploitation of the au pair programs. Sanctions for the irregular use of the au pair scheme include, fines, imprisonment and blacklisting.<sup>59</sup> Abuse constituting violence against an au pair, illegal recruitment, disregard for the tasks and duties, maximum working hours, accommodation and allowance can be penalized by banning the host family for a period of time ranging from 5 to 10 years.<sup>60</sup> The au pairs may lodge a case in Danish courts should breach of the contract occur. Apart from the funding of NGOs to support au pairs by i.e. hotlines and information distribution, there is no public authority for complaints.<sup>61</sup> In the period from 2007 to 2011 only three families were banned<sup>62</sup>. While the au pairs

have the opportunity to file complaints against their host families, the strict immigration policies deter them from filing complaints. If the agreement is terminated the au pair only has 14 days to find another host family before deportation.<sup>63</sup> The limited period to find another host family may deter au pairs to terminate the agreement and accept abuse of the au pair program in fear of deportation.

The protection for au pairs in Denmark provided under the European Council Agreement, Bilateral agreement between Denmark and the Philippines, and the au pair guidelines are insufficient to ensure adequate enforcement. The penalties for exploitation of the au pair program are hardly ever enforced. Ongoing reports of abuse suggest that the protection provided under the rules and regulations that were implemented by the Danish authorities offer inadequate and insufficient protection. Further regulations should ensure that the au pairs are protected and that the program will be use solely for the intention of a cultural exchange.

## The Netherlands

Although the immigration of Filipina au pairs in the Netherlands is not as substantial as in Denmark, the Netherlands has experienced a tremendous increase of Filipina au pairs from 2005 to 2010. One third of the 1,377 residence permits for au pairs in 2010 were granted to Filipinos.<sup>64</sup>

Unlike Denmark, the Netherlands did not ratify the European Agreement on Au Pair Placement. Instead, the placement of au pairs is regulated by the Dutch Aliens Act 2000 as amended by the Modern Migration Policy Act, the Regulations on Aliens and the Implementation Guidelines.<sup>65</sup> The Dutch Immigration and Naturalization Service (IND) is mandated to develop the rules which apply to au pairs. An important change in policy is enacted by the Dutch Modern Migration Policy Act law by designating au pair agencies as the sole sponsor of an au pair instead of the host family.<sup>66</sup> As a result, the au pair and host family cannot apply for au pair resident permits without the authorization of an accredited agency.

### Au pairs:

- Must be between 18 and 25 years old
- Must have a valid passport
- Must have health insurance with cover in the Netherlands
- Must not be married and not have a duty of care or be responsible for the actual care of own family members
- Must not constitute a risk to public order
- Must sign a declaration of awareness
- Must be tested for tuberculosis in the Netherlands
- Must not have previously stayed in the Netherlands on a residence permit,  
Must not have previously worked for the same family abroad  
Will only carry out light domestic work to assist the host family
- Must perform light domestic duties for a maximum of 8 hours per day and in total of 30 hours per week. This includes babysitting during night hours.
- Are entitled to two days and two nights off per week
- Must not pay a sum of money exceeding 10 per cent of the monthly allowance, equaling €34, for example registration fees or mediation fees, nor fees for taking a course to prepare for the stay in the Netherlands.
- Is not allowed to pay a sum of money as a security deposit or bond to a Dutch or foreign mediation agency, an au pair agency, nor to an exchange organization.
- Is not allowed to finalize a contract with a host family, a Dutch or foreign mediation agency, nor with an exchange organization. Furthermore, it is not allowed that this contract demands the au pair to pay money or a penalty, such as a sanction, for failing to comply with one or more provisions of this contract.
- Is not allowed to perform activities for persons who require specialized care as these tasks require specific skills. This is because these duties are not light domestic activities.<sup>67</sup>

### Host families:

- Must consist of a minimum of two persons
- Must support the au pair during the stay in the Netherlands
- Must meet the 'standard amounts considered adequate financial resources' set by the Minister of Social Affairs and Employment
- Must sign a sponsor declaration of awareness of the right and duties of the au pair and the host family.

- Have to pay for the visa, flight tickets, insurance and the pocket money (maximum of €340 plus free bed and board.
- Must pay the agency fee<sup>68</sup>

#### **The obligations of the agency**

- The duty to inform
- The duty to administer
- The duty to care
- The responsibility for foreign national's repatriation.<sup>69</sup>

According to these regulations au pairs are not allowed to work more than 8 hours a day and 30 hours a week. Research indicates that that au pairs in the Netherlands were required to work far more than 30 hours a week and were not allowed to have 2 days off<sup>70</sup>. To ensure that the allowances are used for cultural immersion, the eligibility requirements target au pairs without dependents. Remittance of allowances leave the au pairs in a vulnerable situation. As the allowances are far below the minimum wage of domestic workers, the money available to au pairs is already limited. Further remittances to support their families will limit the opportunities for au pairs to immerse into the culture of the host country. Although the eligibility requirement target au pairs without dependents, they do not ensure that the allowances are not remitted to the Philippines.

If the chores of the au pair are not in accordance with the Dutch au pair policy, it is considered as a breach of the Aliens Law, the Labor and Aliens Law and the Minimum Wage and Holiday wage and can be penalized by the department of immigration by for instance cancelling the visa or by filing a civil case for contract breach.<sup>71</sup> While Denmark imposes prison penalties and fines for misuse of the scheme, the Netherlands merely blacklists host families that misuse the scheme. As part of the enforcement mechanisms a hotline was established by the immigration services in 2004 to respond to complaints of au pairs.<sup>72</sup> As the hotline was set up by the Dutch Immigration and Naturalization Service, who has the authority to deport migrants, au pairs may be reluctant to complaint in fear of deportation. The enforcement of the au pair regulations have been criticized by various non-governmental organizations, such as Bayanihan in the Philippines<sup>73</sup> Other networks ,such as the Europe- based Babaylan Philippines' Women Network and the Netherlands- based RESPECT Network Europe, have been critical of the policy's guidelines regarding au pair agencies, sponsors, and the protection of au pairs.<sup>74</sup> These organizations have also expressed concern about au pairs' overstaying visas and continued employment as undocumented domestic workers.

As part of the new amendments to the au pair regulations, au pair agencies are designated as the sole sponsor of the au pairs.<sup>75</sup> The intermediacy through accredited recruitment agencies is intended to increase the accountability of the sponsors of the au pairs while preventing abuse. These agencies are responsible for the placement and monitoring of the au pairs. A list of IND recognized agencies are authorized to apply for residence permits. If these agencies fail to comply with their obligations the agencies are suspended from the list.<sup>76</sup> Hence, only agencies that fulfill their obligations and ensure the protection of the au pairs are authorized to apply for residence permits. A collective of registered agencies founded an organization that facilitates the *"creation of a uniform and standard industry norm"* to *"care for the needs of the au pairs and their host families"* by introducing a code of conduct.<sup>77</sup> As these regulation have been introduced recently, the implications remain to be seen. In principle the monitoring of au pairs can improve detection of exploitation of the program. However several NGOs have been critical of the implementation of sponsor responsibility.<sup>78</sup>



## Belgium

In 2008, 7 out of 49 au pairs in the region of Brussels were Filipino. In the Flanders region, 29 out of 68 au pairs were as Filipinos. In a 2009 study, 86 out of 311 were reported as Filipino. In 2011, this number rose to 76 out of 333 and in 2012 to 83 out of 316.<sup>79</sup>

In the absence of specific au pair laws, the au pair program in Belgium is regulated by the Law Concerning the Employment of Foreign Employees and the Royal Decree concerning the Execution of this law.<sup>80</sup> Unlike au pairs in Denmark and the Netherlands, au pairs in Belgium have to obtain a work permit and an employment authorisation prior to their placement.<sup>81</sup> Despite these measures, the au pair and the host family are not considered to have an employee-employer relationship.

### **The following requirements are imposed by the Federal Government Service of Employment, Labour and Social Dialogue**

#### **The au pair must:**

- Be between the age of 18 and 26 from the date of the granting of the employment authorization and work permit
- Commit not to hold any other job in Belgium during the au pair period
- Be eligible for higher education in the country of origin or prove that he/she has attended higher education until at least the age of 17
- Possess a basic knowledge of the host family's common language or commit to acquiring this basic knowledge through taking an intensive language course immediately after arrival in Belgium.
- Attend au pair placement courses recognized by the Minister who has the authority over employment and provided evidence proving his/her attendance
- Not have obtained a work permit before.<sup>82</sup>

#### **The host family must:**

- Provide a single room to the au pair and ensure free access into the house
- Provide the au pair an insurance covering medical pharmaceutical and hospitalization expenses in case of sickness or injuries Allow the au pair have at least one full day of rest per week and also the opportunity to participate in the exercise of his/her religion or philosophical views
- Pay the au pair a monthly sum of at least € 450 as pocket money or by bank transfer
- Ensure that one of its family members has not reached the age of 13 at the start of the placement
- Provide evidence that family members bellow the age of 6 are provided with child care until reaching the age of 6 or the end of the agreement between the au pair and the host family.
- Provide evidence of moral conduct for each family member over the age of 18 at the start of the agreement.
- Commit to provide insurance for the potential premature repatriation caused by sickness and injury as well as paying the for costs incurred by the State for repatriation of the au pair.
- Declare themselves as consenting to allow access by monitoring housing officials into their home
- The participation of the au pair in family routine tasks, including childcare, may not exceed four hours per day and 20 hours per week. These tasks cannot be the main purpose of stay.<sup>83</sup>

*“in case of non-compliance with the conditions above, the au pair will be considered subject to the standard employment agreement of domestic workers”*<sup>84</sup> Compared to the rules and regulation governing au pair programs in the Netherlands and Denmark, the Belgium policies contain more favourable conditions for au pairs. While Denmark and the Netherlands allow host families to require the au pair to work up to 6 or 8 hours a day, the Belgium policies limit it to 4 hours a day and not more than 20 a week. Children below the age of 6 must be taken care for by child care instead of the au pair and the host family must provide insurance for repatriation and medical expenses. Before the placement of au pairs social inspectors ensures that the host family and au pair comply with the conditions.<sup>85</sup> Perhaps more importantly in case of any violations of the conditions including abuse or exploitation, the au pair will be protected by labor laws for domestic workers, which apply better working conditions and minimum wages. This provision ensures that an au pair is recognized as a worker if the placement of the au pair is not for the purpose of cultural immersion or abuse and exploitation. As such, the au pair is considered a worker if he/she is required to work as a worker.

## Philippines

The au pair ban unilaterally imposed in 1998 by the Philippine government did not prevent an immense increase of Filipina au pairs in Europe, quadrupling in the Netherlands and Denmark.<sup>86</sup> As it became clear that the ban did not stop the migration of au pairs to Europe and only limited the protection of the au pairs, the Philippine government lifted the ban for all European countries in 2012.<sup>87</sup> This was preceded by the issuance of guidelines.

Under these guidelines an au pair is *“intended to become a member of the family in the host country for cultural exchange to improve their linguistic and cultural knowledge which they can obtain better in the country they are received.”*<sup>88</sup> Recognized by the Philippine government as a cultural exchange program, placement of the au pairs is not regulated by the Philippine government agencies that govern the deployment of Overseas Foreign Workers (OFS). The welfare and protection enjoyed by foreign overseas workers (OFW) under the Overseas Workers Welfare Administration (OWWA) and the Office of the Undersecretary for Migrant Workers Affairs (OUMWA) do not apply to the au pairs. Reintegration services under the National Reintegration Center for OFWs (NRCO) are not available to Filipina au pairs and labor disputes of Filipino au pairs cannot be resolved with the National Labor Relations Commission (NLRC). The protection of the Philippine government agencies do not apply to the au pairs. Instead the conditions below under the au pair guidelines regulate the deployment of OFWs.

### The au pair must:

- Be between the age of 18 and 30
- Be unmarried and without children
- Be placed under a cultural exchange arrangement with a European host family for a maximum of 2 years, unless otherwise allowed by host countries.
- Attend a country familiarization seminar (CFS) to be conducted by the Commission on Filipinos Overseas (CFO)<sup>89</sup>

### Host families must

- Shoulder the travel costs related to the sponsoring of the au pair, including cost of visa, CFO sticker and air fare.
- Shoulder the cost of repatriation in the event of death of the au pair.
- Shoulder the costs of repatriation in the event that he/she becomes ill or injured to the extent that he/she can no longer fulfil his/her contract.<sup>90</sup>

The country familiarization seminars are vital for the protection of migrant workers. The seminars empower the au pairs by outlining the contractual rights and obligations in the countries concerned, including what duties and tasks the au pair is required to perform, the maximum hours of work, and the working and living conditions. It also provides the au pairs with information on settlement concerns, values, cultural realities in the host country, health and safety issues, airport and travel procedures and networks.<sup>91</sup>

## Recommendations

***CMA recommends the European governments to:***

- Formulate concrete regulations specifically addressing au pairs stipulating the rights and obligations of au pairs including technical accommodation requirements, exact amount of allowances, hours of work, defining the type of light household chores and payment of return ticket.
- Monitor the compliance of host families by conducting interviews with au pairs and inspecting the houses of the families
- Continuously evaluate and improve monitoring mechanisms.
- Establish an independent complaint mechanism including a toll free 24/7 hotline for au pairs to lodge their complaints and report abuses to; with assurances that their immigration status will not be affected;
- Establish mechanism for availment of temporary protected status for those with pending complaints in the EU countries until the resolution of their cases
- Penalize misuse of the au pair program with appropriate penalties, instead of mere blacklisting
- Promote ongoing dialogue with the Philippine government to thresh out issues/ policy implementation and programs
- Extend the period for which au pairs can find a new host family.
- Ensure that the au pair program is publicly respected as a cultural exchange program and not for purposes of work.

***CMA recommends the Philippine government to:***

- Ensure that European receiving countries of au pairs fully respect and protect the au pair programme as a cultural exchange programme through continuous dialogue.
- Urge au pair receiving countries to report cases of abuse and communicate on policy changes, implementation and monitoring.
- Disseminate information on policies governing au pair placement to all stakeholders, including the new Guidelines for Au Pairs.
- Encourage with au pair receiving countries and offer hotlines to provide info for complaints info etc.
- Mainstream and integrate au pair issues in illegal recruitment and HT programs and policies.

## ANNEX I: Au pair and host family eligibility requirements and responsibilities

<b>Au pair eligibility requirements and responsibilities</b>		
<b>Denmark</b>	<b>The Netherlands</b>	<b>Belgium</b>
Age: 17-29	Age: 18-31	Age: 18-26
Marital Status: single	Marital status: not married	
No Dependents		
Education: 9 year schooling		Eligible for Higher Education in the home country
Language: Working knowledge of Danish , Swedish Norwegian, English or German		Basic knowledge of French or Dutch. Must undergo language courses
No previous residency	No previous illegal stay	No previous employment residency
No right to work	No right to work	No right to work
	Must not pay more than 34 euro for recruitment	
Maximum 2 year duration	Maximum 1 year duration	Maximum 1 year duration
	Willing to undergo a Tuberculosis Test	
Perform light household chores for 3-5 hours a day, maximum of 6 days a week	Perform light household chores for a maximum of 8 hours a day, 5 days a week with a maximum of 30 hours a week.	
<b>Host family obligations and eligibility requirements</b>		
<b>Denmark</b>	<b>The Netherlands</b>	<b>Belgium</b>
Monthly allowance: DKK 3,250	Monthly allowance of EUR 340	Monthly allowance of EUR 450
Provide a room and food	Provide a room and food	Provide a room and food
Provide insurance for medical expenses, work related injuries, leisure time, accidents, repatriation in the case of serious illness or death	Provide insurance for medical expense for the repatriation of the au pair in case of serious illness or death.	Provide insurance for medical expenses and repatriation in case of serious illness or death
1 full day off work a week	2 full days off work a week	1 full day off work a week
Host family composition: at least one parent with Danish citizenship and one child under the age of 18	Host family composition: two household members	Host family composition: at least one child under the age of 13
Sufficient time off for language courses	Sufficient long term means of support	Family member must provide police clearance
Finance the repatriation of the au pair		

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