

POSTCARE

Posting of third country nationals in care services - the current state of play and scenarios for the future

Research phase

Methodology

The research will be carried out with the use of the following research methods: desk analysis, esp. of legal sources and literature, analysis of the existing quantitative data, surveys, expert interviews, and focus group interviews.

1. The aim(s) of the research

1.1. Understand the driving forces behind the growing number of third country nationals in the care sector

Due to demographic changes resulting in the ageing of the population, the number of persons in need of care is rapidly growing. The in-house care is much preferred over the institutional care by care seekers and their families and also by policy makers. It is sometimes the necessity resulting from insufficient institutional care facilities.

Due to the same demographic changes, the caregiving staff is scarce. In the last decade this resulted in foreign caregivers and foreign care service companies dominating this service in the Member States which populations have aged first (e.g. Germany). However, the Member States whose companies and caregivers provide this service, are also aging and scarce labour resources there have forced the clients and the service providers to look for third country nationals to do this job. Thus the growing number of Ukrainian or Serbian nationals being hired by Polish or Slovenian service providers and posted to Germany or Austria as caregivers. Another hypothesis is that this phenomenon is driven not so much by ageing population but by lower costs of employment or lower expectations as to employment conditions of third country nationals.



The first aim of this research is to verify both hypothesis, and look for possible other driving forces behind the growing number of third country nationals. The Member States which for the last decade have been a source of supply of caregivers are now in the phase of a growing demand for the in-house care service.

1.2. Understand the business models and actors stakes in the cross-border care service

The service of live-in care has some distinguishing features when compared to other types of cross-border services. The service recipient is a consumer (not a company), who by definition is in a vulnerable position. The other weak actor in the provision of this service is a caregiver, who being from another Member State is exposed to legal uncertainty resulting from the mixture of two legal systems in the field of labour law and social security. Combined with the necessity to work in a foreign language and individually, not in teams, such situation may lead to abuse of the employees rights. When it comes to third country nationals, the additional uncertainty derives from a default lack of free movement of workers, or freedom of establishment. Both their right to stay and the right to engage in gainful activity are highly regulated and limited. No wonder, TCN caregivers and their clients need assistance of intermediaries and facilitators of this service. In the mid 2000s this was provided by temporary work agencies, but 15 years later, most of this service is provided by highly specialised care service companies, who no longer lease workers, but who organize the logistics of the in-house care service, taking care for recruitment, training and matching a caregiver to the specific care-seeker's needs. When necessary, they provide replacement, making sure that the service is continuous. The service providers and intermediaries are often perceived as unnecessary cost elevator and are blamed for exploitation of caregivers. Others claim that it is the direct so called *private* hiring of caregivers which drives the shadow economy and modern slavery.

The second aim of this research is therefore a descriptive one: to understand the business models and legal forms of the cross-border



provision of services in the care sector with special focus on facilitating the work of third country nationals.

The descriptive part of the research will also focus on other actors and stakeholders:

- the family of the care-seeker,
- general society and local communities, contributing one way or another to sustain welfare and decent life of the seniors in the society, and benefiting indirectly from in-house care services,
- institutional care and health care system, who are relieved by in-house care services,
- families of caregivers, who part from them for significant time,
- economies and labour market of the country of origin
- policy makers,
- social partners,
- NGO's

1.3. Assess possible development of posting third country nationals from Africa and the Middle East in the care sector

The third aim of the research is to assess possible development of other "directions" of posting third country nationals in the care sector. This issue must be assessed in the light of continuous inflow of immigrants (and refugees) from African countries and the Middle East. If humanitarian aid is to transform to social and economic integration, then one of the potential market with scarce human resources is indeed in the live-in care sector services. The potential benefit of engaging immigrants and refugees in such activity is that it temporarily solves the housing problem. at the same time, the language and culture barriers on both sides may be harder to overcome.

1.4. Recommend policy measures for the future

This project contributes to better understanding of the live-in care services in the European Union. It's special focus is on third country nationals employed in one Member State but carrying out work in another one or in two or more Member States. Since such situation involves the knowledge of many legal systems, unusual working conditions, overcoming cultural and



language barriers, it requires policy measures to protect the most vulnerable actors: the care-seeker and TCN caregiver. Complicated rules of the right to stay and work for TCNs may encourage them and their employers to take the risk and go under the radar. At the same time too liberal or unregulated access to the labour market by TCNs might distort local labour markets. The aim of this project is to suggest policy measures to strike the right balance in this respect.

2. Hypothesis and research questions

- 2.1. The growing number of third country nationals is primarily the result of scarce labour resources in the sending Member States
- 2.2. The growing number of third country nationals is primarily the result of lower wage expectations and lower working conditions demands from the TCNs.

Is the number of caregivers from third countries growing? When and why has this tendency begun? What is the past? What are the reliable data sources to estimate the number (proportion) of TCNs in the service providers posting workers in the care sector.

What is the number (or proportion) of TCNs in the care sector? Is this sector any different from other sectors when it comes to employing TCNs? If so – why?

- 2.3. Hypothesis: TCNs are cheaper to employ and post than EU citizens.

What is the gross/net remuneration and what is the labour cost (including indirect labour costs and administrative costs) of a TCN and that of EU citizen?

- 2.4. Hypothesis: The caregiving sector is dominated by shadow economy and undeclared work.

What are the business models for cross-border provision of live-in care service? what is the difference between body leasing by temporary work agencies and care service by specialised service providers? How popular are particular forms of activity in which TCNs appear as caregivers?

- selfemployed (or bogusly selfemployed) caregiver,



- direct employment by the family or care-seeker,
- temporary employment by agency and posting to the user employer
- civil type contract with a service provider
- employment contract with a service provider
- other forms - what?

3. State of the art – the legal framework

This phase of the research is based on desk analysis. It is important to know what is legal and what is not legal when it comes to posting of a TCN to another MS. The simplified scheme is To this end research teams will prepare the analysis of the sending MS law regarding legal stay (residency) and legal employment of TCNs, the receiving MS regarding legal stay and legal employment of the TCNs and the EU law with special focus on the CJEU rulings. This part should preferably include bilateral research groups, but it is not a necessity.

4. The surveys

Two questionnaires will be designed to run surveys: the first - among third country nationals in the live-in care sector and the second - among the experts – human resource managers, trade unions experts, representatives of administration. The first questionnaire will consist of close-end questions and it will be distributed also among caregivers with EU citizenship. The later will act as reference group to verify research hypothesis 2.1 and 2.2. The second questionnaire will consist also of open-ended questions to sparkle the discussion. The second questionnaire should be used in focus group interview or as in individual interviews. For better comparative results.

5. Individual interviews

The addressees of this interviews administration officers responsible for enforcement of legal stay and legal employment of TCNs, and the policy makers.

6. Focus Group Interview



This is the best research method for developing policy recommendations. Groups of 3-6 experts are given the floor to moderated closed door discussion. The scenarios for moderators may differ depending on what problems will have been diagnosed on the basis of desk research and surveys.

The stages of the research

The desk research will result in draft country report to describe mainly the legal and institutional framework for the conditions to enter and work in both sending and receiving Member State. In the final versions of country reports, the results of the questionnaires and focus expert groups should be included. Potential country specific problems will be described as a result of the survey and interviews phase of the research. The results shall bring answers to the specific research questions and should be incorporated in the final version of the country reports. The interviews and focus group interviews should aim at formulating the policy recommendation. They will be included in the comparative report.

The Partners are encouraged to submit partial results of the research – contributing to the country reports - in scientific journals. The comparative report and policy recommendations will be presented at the final conference and disseminated in the form of academic publication.



Questionnaire 1 – explanatory notes

This questionnaire is to be distributed among two groups of caregivers who are employed in one Member State but take care of a person who lives in another Member State:

1. third country nationals,
2. EU-citizens.

The questions are designed to verify hypothesis 2.1. and 2.2. which will only be possible if two groups are compared. If the differences in the answers are significant the hypothesis 2.1. is verified as prevailing. If differences are small or irrelevant, hypothesis 2.2. prevails. The second aim of the questionnaire is to refine the notion of illegal stay or illegal employment of TCN. The question about the documents should be confronted with the statutory conditions of the right to enter (or stay) and work in both sending and receiving Member States. This should reveal differences between various legal statuses of TCNs. These documents have different weight in legal stay and legal employment. Understanding these nuances will prevent labeling every posted TCN as illegal – an extremely important conclusion to protect workers against labeling and discrimination.

Questionnaire 2 – explanatory notes

The second questionnaire is addressed to managers, service providers and experts. It consists of sample questions and is aimed at a structured open ended questions interview after which policy proposals and best practices may be developed. The same questions should be used during country level focus group meeting and during individual interviews with experts. Questions may be adopted to specific conditions of a given country. Feel free to add other relevant questions and skip the suggested ones if found irrelevant in a given country.

Comments and questions welcome. Please send them to marek.benio@labourinstitute.eu

