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

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Country Report Germany

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Note: The content was last updated on the sixth of March 2022.

This report thus does not include the most recent developments in the field caused by the activation of the EU directive 2001/55/EG applicable to TCNs from Ukraine.





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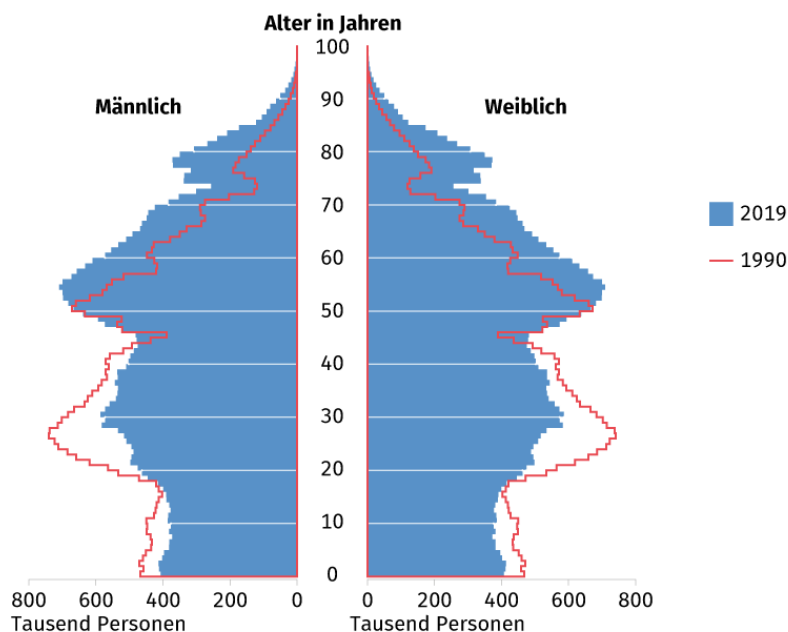


1. Introduction

As most western European civilizations, also Germany's population is rapidly ageing. The share of elderly persons aged over 70 has increased from 8 million in 1990 to 13 million in 2019. While in 1990 the core of the population consisted of 30-year-old persons, in 2019 the 55-year-old persons are the majority in the German population. The German Federal Agency for Statistics expects this development to continue more rapidly in the upcoming years (Statistisches Bundesamt, 2020). As Figure 1 shows graphically, unlike in 1990, there are no large numbers of young generations to come after those who are 30 today.

Altersaufbau der Bevölkerung 2019

im Vergleich zu 1990



© Statistisches Bundesamt (Destatis), 2020

This change in population is particularly alarming for Germany due to a lack of caregivers for the increasing numbers of elderly and the way the German social security system works.

Large parts of the German social security system are not organized a capital funded system but rather as “Pay-as-you-go”-system (Hauser, 1999). This is also the case for the German state care insurance system. In the German pay as you go insurance financing practice, the insurance-expenditures of an a current year are financed by the contributions of the current workforce – rather than by contributions made in the past by the current beneficiaries. Thus, the current





beneficiaries of the social system are largely dependent on the contributions of the current workforce¹. This is called the dependency ratio.

Germany shares the second place of the highest share of elderly over 65 at 22% with Greece, Finland, Portugal and Bulgaria (Eurostat, 2021). With 23%, only Italy has a higher ratio of elderly compared to the workforce. At the same time, Germany and Italy also have the lowest rate of young people (<20 years) with just 18% of the population (Eurostat, 2021). Because age is directly related to the need for care, the German caregiving system can be expected to run into severe difficulties of financing the needs of their elderly in the future.

Furthermore, less workforce and more care-dependent elderly also implies that fewer personnel is available to provide the caregiving. This demographic change is, combined with more reasons, leading to a lack of caregivers in Germany. Some of the other reasons why there is a lack of caregivers are suboptimal working conditions, including a not particularly competitive salary, and a tendency of Germans not to take care of their elderly relatives on their own – which further increasing the need for caregivers. The German term “Pflegenotstand” – care crisis collects a myriad of these reasons as well as its consequences and is slogan to many movements aiming to counteract this critical development (Kutschke, 2014; Hüther and Kochskämper, 2018; Sahmel, 2018).

In the literature, three approaches to tackle the care crisis are predominantly discussed: improving the working conditions in care – to make working in care more attractive and keep present caregivers in the job; improving the education system – to make caregiving an attractive and future-proof choice for young generations and recruiting personnel from abroad – to overcome the structural problems of finding enough caregivers within Germany.

This paper is about the third measure: the recruitment of personnel from abroad. Germany has long reached out to other nations to prop up their caregiving workforce. There are three general modes of caregiving in Germany and thus workplaces for mobile or migrating caregivers: First, there is care at home, which needs to be further divided into care at home by private arrangements, e.g., by families, neighbors and friends, and care by mobile nursing services. Next, there are partially stationary arrangements in the form of day- and night-care. At last, there are fully stationary care in elderly homes.

Caregivers from abroad are employed in all sectors of the German caregiving industry. Those with a professional education as caregivers, so called ‘Fachkräfte’, are commonly employed in the latter two kinds of professional caregiving institutions and in mobile nursing services. These services are commonly partially financed by the public care insurance. To get reimbursed for their services, their employees and organizational structures must meet a minimum standard that is defined and regularly controlled by the insurers.

While, migrating caregivers with less or no formal qualifications can be employed as helpers at such professional institutions, they are much more likely to be found in private

¹ Even though the retirement age in Germany is 67 the age limit of the dependency ratio is set to 65 to allow better comparability across nations.





caregiving arrangements. Being employed via a private contract with a regular firm or family, as opposed to an employment in a care insurance financed firm, does not require formal qualifications. In such a situation, it is most important that family and caregiver get along well and that the caregiver can provide the required services – regardless of the formal education.

2. Live-in care

The most popular private caregiving arrangement with non-professional international workforce is that of live-in care. Here, the caregivers move in with the care dependent person. The profile of an ordinary live-in caregiver from Poland that works in Germany is that of a 46 – 55 year old woman with mediocre to medium German proficiency, a high school education but not university degree and just 11% possess an education in healthcare job (Petermann et al., 2017). In the household of the dependent person, they fulfill the common tasks of domestic labor known as the “three Cs” for the elderly: cooking, caring, cleaning (Anderson, 2000). They work for about 6 ½ hours per day and almost seven days a week, amounting to 45 hours of work per week (Petermann et al., 2017).

In the household they live in, they commonly have at least a personal room, sometimes a full flat available. They receive this lodging together with a board in addition to their salary. The net salary of Polish live in caregivers in 2016 summed up to amounts of about 1000 – 1600 Euro net and averaging at 1175 net. When the lodge and board is included with an equivalent of about 500 Euro, the salary amounts to about 2000 Euro gross (Petermann et al., 2017). The legal and institutional frameworks that enable this type of work in Germany are laid out in chapter 4.

For a long time, primarily European countries posted live-in carers to Germany. This inner-European labor mobility was further facilitated with the European Union and the Schengen-Agreement. The primary source of migrating workforce in the German healthcare sector was Poland. For the live-in care, the agencies that organize labor mobility 94% state to work together with Polish citizens (Holsing and Leitner, 2021). To reduce the complexity of this report, we thus concentrate on Poland as sending state of both, European caregivers and TCNs that do not immediately begin their work in Germany but rather use Poland as ‘transit-country’.

Despite the persistency of labor mobility arrangements within the EU, less and less workers are willing to permanently migrate or constantly move between Germany and its neighboring EU states. This can be accounted to a handful of developments:

First, the economic upsurge of the main sending states and all EU member states makes it financially less attractive to mobilize the own workforce and leave the home country.





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Second, the workforce that is willing to migrate or supply their workforce as mobile workers is increasingly drained by the excessive demand for health- and elderly-care services in the European union.

Third, the demographic development in the main sending countries as well as the corona crisis makes the caregiving workforce increasingly valuable in their home countries as well. Being needed at their home country and being provided with better working conditions makes it comparatively less attractive to join another country's workforce.

Thus, countries like Germany, that face a shortage of caregiver-supply, started to look for new labor supply outside of the European Union. From a European perspective, these citizens of non-EU countries are called 'third country nationals' – TCNs. They face more difficulties in mobility into and within the EU than their EU-equivalents. At the same time, many TCNs also tend to have a higher motivation to leave their home country and migrate to the EU – probably permanently. Furthermore, they often have a good education and are eager to improve their lives through taking a meaningful job. They are thus a valuable source of labor. Global developments, such as an increasing number of natural disasters, a lack of proper healthcare in pandemic situations and most recently, affecting a frequent home country of migrating TCNs, the Ukraine conflict makes the perspective of moving to Germany ever more appealing.

While TCNs can work in all kinds of positions, starting the life in Germany as a live-in caregiver comes with several attractive benefits: It is easy to arrive in the new home, because the caregivers immediately receive a salary, board, and lodge with their employment. Since they are directly integrated into a German family, they get to know the German culture quickly and have a chance to practice German. When they are working together with agencies that care, they also receive formal education and language classes in order to fasten up their integration.

Propping families who intend to keep their relatives at home until high age with the required personnel to do so also relieves the social system for various reasons. For example, it is the cheapest for the German care-insurance because homecare has a lower reimbursement factor than stationary care. Employing non-professional caregivers in positions that do not require professionally trained caregivers frees up these resources for other jobs. And of course family members, that might be trained to work in another job, can continue doing so and generating the positive effects of employment.

3. Research objective and structure

This joint study of European nations aims to understand the working conditions, labor mobility hindrances and expectations of TCNs that work in live-in caregiving situations for European households. This is done to better understand the obstacles that TCNs face when entering Germany as live-in caregivers in an effort to improve their situations and further facilitate their integration. Taking appropriate measures to foster their contribution to taking care of our elderly will support our nation in the difficult task of taking care of our elderly.



Given the outlined demographic and socioeconomic developments, this is not optional anymore. Germany is in dire need of more caregivers to overcome the pressing issue and encouraging and supporting TCNs to join the country in this task is an important step towards easing the situation. Live-in care is the appropriate caregiving section to begin this task, because it is the most convenient for the elderly to stay at home and the least financially burdensome for the care insurance and families.

This work first lays out the regulatory differences for TCNs compared to EU-workforce willing to migrate in chapter 4. Next, we introduce descriptive findings of our empirical study about this group of workers in Chapter 6. This study needs to be understood as a pre-study to give a first understanding of the situation of TCNs in live-in situations. Thus, chapter 6.5 and 7 draw conclusions from the empirical findings and identifies avenues for more detailed research in synthesizing the findings on the situation of cross-country mobile labor in the live-in caregiving sector. The report concludes with recommendations and implications on how to continue our dealings with the topic.

4. Legal and institutional framework of Germany as the receiving member State

There are three legal models of employing a live-in caregiver in Germany: The direct employment of a live-in caregiver by a German host-family (or very rarely, a company that employs the workers that live with the families); the use of a work posting company which employs the caregivers abroad and sends them to temporarily work in Germany; or hiring a self-employed / freelance live-in caregiver (Haberstrumpf-Münchow, 2020).

Neither of these three models is free of risk for the families, caregivers, and agencies. They also vary in the degree of how well they are suited for TCNs. This chapter introduces the three legal models and provides a first impression of their suitability to employ non-European live-in caregivers.

4.1 Employing a live-in caregiver

The majority of work in Germany is organized with contracts of employment directly between the employer and employee. This type of work can also be used for live-in caregiving with European citizens. This is guaranteed by Article 3 paragraph 2 of the Treaty on European Union as well as the Articles 4 paragraph 2a, 20, 26 and 45-48 of the Treaty on the Functioning of the European Union, which state that any European citizen has the right to freely move within the European Union, accept job offers from all European member states and settle in other member states for the purpose of employment (Konle-Seidl, 2021).



However, the German labor laws are comparatively strict. It provides substantial securities for the employee, while at the same time posing financial and legal risks for employers. Some of these labor laws interfere immediately with the ability to provide a live-in caregiving situation with directly employed caregivers (Petermann et al., 2018). The three fields that are most relevant to realize a live-in caregiving situation are worktime, contract time limitations and social security.

4.1.1 Worktime restrictions

The German labor law, more specifically the law on worktime (German: Arbeitszeitgesetz – ArbZG) requires employers to strictly obey worktime limitations for employed workers.

Paragraph 3 ArbZG limits the daily worktime to 8 hours per day. Exceeding a worktime of eight hours is only permitted for a limited amount of time and when a compensation in the form of an equal amount of leisure time is provided within the next half year.

The worktime limitation is not too much of a problem for live-in caregivers, given that Petermann et al. (2017) found that the daily worktime of a live-in caregiver amounts to about 6 1/2 hours per day. However, paragraph 5 ArbZG requires the presence of an uninterrupted break of 11 hours for employees. This can be traced back to the EU legislation 2003/88/EU Paragraph 5 (*Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time*, 2003).

The required 11-hour layup can only be reduced temporarily to 5.5 hours in official caregiving institutions, such as hospitals or retirement homes. This reduction possibility does not apply to families or time-work agencies. Thus, the frequently needed caregiving operations with the layup pose a substantial limitation in the employment of a live-in caregiver. Whenever the layup is interrupted, the law requires it to start all over again for 11 uninterrupted hours.

Given these limitations, it is likely that employing a live-in caregiver will lead to offenses against the ArbZG. Only if the caregiver is allowed to rest for 11 hours at once and have days off to rest and compensate for any amount of work that exceeded the 8 hours per day.

4.1.2 Contract time limitation

The second restriction opposing the direct employment of a live-in caregiver from abroad is the need for a succession of repeatedly limited time contracts. Many caregivers from abroad want to work for a period of time and afterwards return to their home country. This requires their work contracts to end repeatedly after a given period.

Realizing this by contractual agreements is limited by the German law on part-time work and limited-time-contracts (German: Teilzeit- und Befristungsgesetz – TzBfG). According to §14 paragraph 2 TzBfG, such time-limited contracts can be only made for a maximum of two years. A time-limited contract that runs longer than two years will be construed as a non-time limited, indefinite work contract.





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This also applies to several contracts between the same employer and employee. It is not allowed to have more than four time-limited contracts in a row. Furthermore, the total time that a contract can be limited cannot exceed two years.

4.1.3 Social security, salary and bureaucracy

Since the families will be regular employers, they must register themselves as such and the live-in caregivers as regular employees. This implies that they need to : register a tax id, an ID with the employment agency, register an accident insurance and social as well as paying minimum wage and the taxes for the employee. This is not an easy thing to do for anyone. Literature and interest groups recommend making use of a tax accountant to ensure that the employment is legal.

4.1.4 Directly employing TCNs

To employ a TCN in Germany, the TCN needs a work permission from the German embassy. The application needs to be filed in cooperation with the employment agencies, who ensure that no adverse effects on the national labor market and social system will be caused by admitting the TCN to Germany.

The main requirement to be allowed to work in Germany is the successful completion of a training in the profession that a TCN wants to work in. This is regulated by the “Fachkräfteeinwanderungsgesetz” (FachKrEG). The professional degree must be recognized by the employment agency. The great number of necessary documents, partially notarized, for this recognition. An example list is provided in Appendix 1. Filing such an application is a long process and probably not feasible for most families. In addition, the applying caregiver must be younger than 45 in order to be able to generate enough social security contributions to be eligible of becoming part of the German retirement system without the need of state subsidies. This age restriction can only be overcome when the TCN possesses a significant amount of personal capital to care for their retirement on their own.

4.2 Receiving a live-in caregiver posted from another EU-country

The second mode of receiving a live-in caregiver in Germany is to hire and employment agency from abroad that posts a worker to the family in Germany. This work posting is common, because it has significantly less downsides compared to personally hiring a caregiver. The caregiver is employed by the sending country within the EU. The regulations that apply in the main sending country Poland on employing workers and sending them to Germany are the topic of chapter 5. Here we shine light on the receiving country perspective.

The workers are posted to Germany for a contractually agreed time. The conditions on posting workers is regulated in the German “Arbeitnehmer-Entsendegesetz” (AEntG), which is supposed to fulfill the EU Posted Workers Directive (*Directive 96/71/EC of the European*





Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, 1996). The AEntG requires the posting company to adhere to the minimum requirements of the local German labor law. This implies that the regulations of the ArbZG, introduced in chapter 4.1.2 as well as the minimum wage apply. However, since the employer is in this case a company and not the family, they are not affected should charges be pressed. Since the employer is also residing in a foreign state, consequences are less likely to occur.

Regarding the social security status, the posted caregiver can remain in the social security system of the sending country. In order to ensure that valid social security is present posted workers need to provide a so called “A1-Certificate” (Deutsche Rentenversicherung, 2021). When there is proof that the social insurance system of the sending country covers the worker, no contributions to the German system must be made. This is beneficial for families, because most sending countries have lower social security standards and contributions than Germany does. On the downside, this also implies that posted caregivers cannot benefit from the German social security system.

Also TCNs are posted via this model. The TCNs in this case apply for a Visa with work permit in the country of the posting company. Once a work and residence permit were granted in the sending country, the worker is sent to Germany just as a European citizen from the sending country would be.

However, this procedure is subject to a variety of restrictions in Germany. The permit from the sending country must be a long-term work and residence permit (> six months). This visum is and must be granted for the purpose of working in the sending country. Therefore, some embassies require that an employment must be present for a certain amount of time before the posting of a worker. E. g., Slovakia requires 6 months of previous employment in Scandinavia). Thus, the primary intention of granting the work permit cannot be to post the worker to a foreign EU country. Furthermore, the work in another EU country must be of temporary nature and not to e.g., permanently provide workforce in the receiving county.

If the previous conditions do not apply, the receiving EU country must grant the visum, not the posting one. If the conditions are fulfilled, the TCN with a visa from the sending country can be posted to another EU-country. There seems to be an intransparency in the information on when exactly this is allowed without another German visa application. The German embassy in Slovakia for example states that TCNs can cross the border for a maximum of three months per year without a further visa (Auswärtiges Amt Slovakei, n.d.). The German embassy in Poland on the other hand generally requires the application for another Visum if a TCN intends to work in Germany (Auswärtiges Amt Polen, n.d.). It thus seems recommendable to engage in a clearing process with the German embassy of the sending state to ensure that posting a TCN worker is legal in Germany.

The relevant Visa for having a clear statement on the legality of posting a TCN within two European countries is the “Vander Elst”-Visum. This visum specifically attests TCNs employed in a European country the allowance to work in Germany for a specific period of time in a





previously defined profession. It is a Visum that follows European jurisdiction based on the case of Raymond Vander Elst (*EuGH, 09.08.1994 - C-43/93, 1994*). While in general the European freedom to provide services apply to TCNs as well, matching the conditions on when exactly freedom of service provision is given and when another visum is required is hard to decide. Thus, the Vander-Elst-Visum allows TCNs, sending firms and authorities to check with the embassies whether the conditions of the Vander-Elst case, and thus the requirements of the European regulations on freedom to provide services, are met in this specific case (e. g. *BVerwG, 20.06.2019 - 1 B 12.19, 2019*).

4.3 Engage a freelance live-in caregiver

The third option to employ a live-in caregiver in Germany is to hire a freelance caregiver. The position of being self-employed allows caregivers to decide on their own about their worktimes and salaries. This alleviates the two main restrictions from the employment and the work posting model of live-in care.

However, there is the risk of disguised employment for the family, a possibly involved agency, and the caregiver. The German social security system poses several requirements on workers to be regarded as self-employed. The three most important ones are: 1. economic dependency of one client; 2. Being subject to directives of the client, including the option to decide on when and where to work and 3. Working as independent businessperson, including the choice of own prices and carrying the risks and benefits of the own economic activity.

The position of live-ins makes it sometimes hard to clearly decide on whether these conditions of self-employment are fulfilled.

Opponents of this model frequently state that live-ins are bound to the instructions of the families and thus need to be considered as their immediate employees. Furthermore, many freelance live-ins tend to work for just one family and thus become economically dependent on this client (Emunds et al., 2021).

Proponents argue that it is not the family who states the conditions of work, but the type of work as caregiver does. Just because a specific type of work requires certain activities to be done at certain times, like bedding or scheduled meetings, does not imply that a self-employed person loses its independence. And while working for only one client is an indicator of a lack of economic independence, it is not sufficient to assume it. Any freelancer can choose to commit to e. g. a large project of one client without harming its independence. This is particularly true when the possibility exists to switch to a different project or client if the freelancer desires to do so. Given the previously described situation of the German caregiving market, no freelance live-in caregiver is forced to work for just one family or economically dependent on that family (Petermann et al., 2018). If anything, the family is dependent on the caregiver.

European citizens are allowed to instate a business in all member states of the union. TCNs do not have this privilege. To register a business in Germany, they need to apply for permission according to § 21 Abs. 1 AufenthG. It seems unlikely that a solo freelance caregiver will be



granted this permission as it requires a business plan, a degree of financial commitment of the founder, previous experience as a businessperson and whether the newly founded business of the TCN will have positive effects on the German labor market.

5. Legal and institutional frameworks of the main sending Member State(s)

This report focusses on Poland as the main sending country of live-in caregivers to Germany. Next to the regional proximity to Germany, Poland's employment system is fostering its position as host country for posted labor. Next to the common state of being employed and a freelancer, there exists a third type of work contract in Poland, the "umowa zlezenie" (UZ) – loosely translated a free service contract (Haberstrumpf-Münchow, 2020).

Live-ins that are employed via an UZ in Poland are more similar to freelancers than regular employees since they are not bound to legal worktime restrictions and technically free to provide their services in any manner and time that they wish. At the same time though, they have a binding and long term service contract with a company, which also pays their social security contributions and their salaries.

Thus, these workers possess regular social security in Poland, which can be proven with the previously described A1-document. Coherently, they do not need to pay social security in Germany if they are posted here. Because at the same time they can be considered as freelancers, the worktime restrictions that affect to regular employees in Germany are not directly applicable. This makes the constellation of UZ and posting to Germany the most common model of live-in employment.

Also TCNs can be employed in this manner. They do however need to have a work permit in Poland. For possible ways to enter the Polish nation as a TCN, we direct the interested reader to the fellow country report of Poland on this matter. The German authors' ability in navigating the Polish jurisdiction are limited due to language barriers and a lack of education in the Polish legal system.

As stated in the previous chapter, TCNs that have a long-term work permit in Poland technically have the option to use their workforce in other European countries as well. However, the German embassy in Poland requires them to register for a Vander Elst Visa to ensure that the posting of labor to Germany is legal. Currently, from a German point of view based on the statements of the responsible authorities, it appears insufficient for a TCN to possess only a Polish work permit to work in Germany or be posted to Germany by a Polish company.

Whether this enforced requirement of registering for a visum is in line with Chapter 3 of the Treaty on Establishing the European Community goes beyond the scope of this paper. Further research is needed, a. o. to assess whether this could be considered a too great incision on freedom of labor within the EU and a discrimination against Polish companies who legally



employ TCNs. Eventually, even new rulings of European courts may be required to answer these questions.

6 Comparative analysis of employment conditions and expectations of EU-citizens and TCNs in live-in care

6.1 Research question

The previous chapters described the legal and administrative differences present for live-in caregiving in Germany between TCNs and European citizens. We reported substantial difficulties for TCNs from common sending states to work in the European Union. Particularly for TCNs that have no professional education in their job, which commonly applies to live-in caregivers, no certainly legal way to enter and work as live-in in Germany could be found.

Facing these difficulties brings up the question whether the receiving countries have a sufficient interest in employing TCNs that justify overcoming these barriers or facilitating a change in policies to lower them. This depends mainly on the conditions and expectations that TCNs experience and have towards their positions.

If TCNs would, for example, be more inclined to cover demanding live-in-caregiving positions or work for less salary, receiving EU-country's interest to allow them easy modes of employment should be high. Allowing TCN live-in caregivers to enter the country would then allow more citizens to age in the comfort and safety of their homes. Furthermore, it would take stress from strained elderly care system of the receiving country.

6.2 Method

We investigate this question with an empirical sequential mixed method research design (Creswell, 2009). First, we met with a focus group of experts in the live-in caregiving industry in Germany and Poland. The focus group was split into two parts, each lasting 1 ½ hours. They were held as an online video conference due to the pandemic situation. They reported insights on the German live-in caregiving market and about the posting of TCNs to Germany.

To assess the attitudes and expectations that TCNs have towards their jobs as live-in caregivers by surveying them. We drafted a survey of descriptive questions to investigate the issue at hand. It consists of three parts: First: questions regarding the caregiver and the legal documents they possess for their work, including their nationality and Visa availability; Second: Questions regarding the caregivers' last job, including the working conditions and type of contract they were working on; Third: questions regarding their ambitions and expectations towards the employment as live-in caregiver and their intentions to permanently migrate to the EU.



This survey was feedbacked by an industry specialist in an interview lasting approximately one hour. After integrating the remarks from this meeting, the three-page survey was finalized in German and transferred into a self-hosted online survey platform. The survey questions were now translated into Polish and Ukrainian by respective native speakers. The translated survey was back-translated by other persons into German and proofread by the research team in order to ensure the questions' consistency across languages.

The finished survey was then distributed by a large recruiting firm for live-in caregiving workforce that aims to work in Germany. They distributed it via eMail to their database of approximately 1500 caregiver contacts from non-EU countries, predominantly the Ukraine, and a non-specified amount of European live-in caregivers as a reference group. These workers are not exclusively working for this company; hence the answers do not give any information on working conditions with this firm. Amongst all respondents, the research team held a raffle for 3 x 10€ shopping vouchers. After the survey results were in, we met again with a smaller expert panel than the first to discuss the results in one hour.

The findings from the meeting before the survey are reported in chapter 6.3. The survey results are described in chapter 6.4. At last, results from the discussion of the results with experts are integrated into the discussion of the survey results in section 6.5.

6.3 Qualitative focus group meeting

The qualitative focus group consisted of six representatives from German agencies that use the services of foreign country companies (posting companies) to provide German families with live-in caregivers; four representatives from posting companies from abroad with offices a. o. in Poland, Croatia, Bulgaria, and the Ukraine); and the two head researchers from the German POSTCARE project team. To foster open information exchange and for privacy reasons, all parties agreed to remain anonymous.

On the topic of the use of TCNs, the representatives of the German agencies said that live-in caregivers from TCNs are very reliable and much liked by the customers. In general, they are well suited to cover difficult caregiving positions. At the same time, their German proficiency, and other skills (caregiving, cooking etc.) were not perceived as worse than those of the European caregivers. Posting companies and agencies reported that they have an easier time to recruit and assign jobs to TCNs than to EU citizens.

The German agencies report that the live-in caregiving concept becomes more accepted in the German society. There are more and more families that want to make use of a live-in caregiver from abroad. At the same time, the emergence of live-in caregiving into the mainstream market has also changed the expectations of the families. Many families hope to find a bargain caregiver from abroad and look for cheap solutions.

The price pressure is particularly strong when families learn that the large subsidies from the German state for caregiving are not accessible when a live-in caregiver is employed. The access to these subsidies appears to be one of the highest aspirations of the agencies.



The posting companies confirm that the increased demand is also experienced on their side. Furthermore, posting companies and agencies state that EU citizens become increasingly demanding towards the job conditions as live-in caregivers. In line with this, all experts reported an increase in difficulties to recruit caregivers from the EU. Particularly difficult positions, such as families with more than one person requiring help or persons that have severe dementia symptoms are hard to cover with EU personnel.

To provide sufficient supply, posting companies began to resort to TCNs. This comes with more work for the and thus was hinted to not be their primary choice. But given the developments in supply and demand – in combination with the families' limited willingness to pay, forces them to find new sources of supply to satisfy the agencies in Germany.

However, the German agencies reported uncertainties regarding the legal situation of the TCNs in Germany. In general, they did not mention to make any differences on working with TCNs or European citizens. In both cases, they rely on the information that they are given by the posting companies from abroad. The posting companies assume the posting of TCNs is legal due to the presence of a work visa and the Schengen freedom of work movement.

For agencies in Germany, resorting to what they are used to doing, means to check for the presence of an A1 document. For within-EU-work-posting this is the main requirement to be legal, at least concerning the social security questions. However, regarding whether TCNs are legally allowed to work in all EU countries once they have a work permission in one member state was heavily debated amongst the participants. A concise answer was not found – thus further clarification of the legal situation is needed in upcoming research. This is also particularly relevant, since it became clear almost no German agencies are very involved in the workings of the posting companies abroad. Thus, they rely on them to work legally sound.

To conclude, the changes in the German live-in market cause changes in the industry structure. One of the changes is the interest in using TCNs for live-in care in Germany. The experts named a variety of substantial differences between European and TCN live-in caregivers. In order to assess such differences firsthand, we surveyed the caregivers directly.

6.4 Survey results – descriptive statistics

As described in the method chapter, the survey was reviewed by industry experts and distributed by a large posting company to their database of live-ins. After a four-week response window and a reminder, the response rate amounted to a mere 1.7% based on the TCN recipients of about 1500 Euro. 26 respondents answered at least 2/3 of the survey questions. One response had to be excluded since the answers show clearly that the questions were either not read or not comprehended (e.g. answering 510 days when asked for how many days per week s/he wants to work).



6.4.1 Demographics

Of the 25 remaining responses, 17 (68%) were Ukrainian, two were from Belarus (8%), one from Russia (8%) and one from Georgia (4%). We evaluate these 21 answers (84%) combined as the group of third-country nationals (TCNs). Additionally, four (16%) Polish (EU-Nationals) live-in caregivers answered our survey. They serve as reference group.

The average age of the respondents was 47 years. The TCN live-in caregivers were substantially younger (46 years in average) than the Polish live-in caregivers (54 years in average). 17 of the responding Ukrainian live-in caregivers were female and 4 male, whereas all four Polish respondents were female.

Concerning the language proficiency, of the TCNs, about two third (n = 13, 62%) stated to speak German on a basic level (A1-A2) and another third (n = 8, 38%) stated to speak German on a conversational (B1-B2) level. In contrast, of the four Polish respondents three of four stated to speak German on a conversational (B1) level and one at a basic level.

6.4.2 Contract types

TCNs work on a variety of contracts. When asked about how their last work placement as live-in caregiver was organized, nine replied with the Polish Umowa Zlecenie, the civil contract. Seven stated to be in permanent employment with a Polish company. One was working as a freelance caregiver, one just stated to have a work permission and one did not state which contract she had. Furthermore, two worked without any contract at all, thus likely entirely illegal. Looking at the Polish live-in caregivers, they all worked with a Polish Umowa Zlecenie.

6.4.3 Visa and work permissions

None of the TCNs possessed a EU citizenship (e.g. through marriage) when working in the EU. They had the following documents with them when passing the border: 13 had a biometric passport, two an analogue passport and five responded to not have any ID-document at all.

Regarding the Visa of the TCNs, four stated to possess a Schengen-Visum with work permission from their workplace country, in this case Germany. Six stated to possess a Visum with work permit from the country of their posting company (in this case Poland). One respondent had a Vander-Elst Visum. Three Ukrainian respondents replied that they did not have to provide a Visum because they are allowed to travel without a one. Eight TCN respondents replied to have an A1-Form from their workplace. And five respondents replied to have a EU health-insurance when starting their last work placement in Germany.

The Polish citizens possess EU-citizenship. Two of them stated to possess an A1 document during their last work stay and all replied to possess health insurance.



6.4.4 Working conditions and payment

Amongst the TCN live-in caregivers, 12 reported to have clear work and recreational times scheduled. Five replied not to have such a regulated work schedule. Four did not give a clear answer but rather opted to comment.

The comments stated that there was free time, but mainly when the elderly person was asleep or when other family members did have time to take care for them. Whenever a warden was required, they had to be on duty. Ten of the TCNs were allowed to leave their workplace / the home of the elderly when they had free time. Eleven reported that this was not allowed for them.

Of the elderly persons they cared for, twelve needed attention during the night and nine did not. Five of the TCN live-ins reported to have 11 hours of free time daily. Sixteen had no chance to rest for eleven hours at once. In nine of the households that employed a TCN, a mobile nursing service was present. In median, it visited 2 times per day on an average of 6 days per week.

The TCNs answered to have earned 1267,20 Euro net per month in average during their last work placement. Many of the qualitative comments (14) on the last position as live-in were positive. A minority reported about difficulties to relate to the relatives of the elderly persons, others about problems due to severe dementia and several noted that the families' requirements regarding cooking skills were rather high.

In contrast, all four Polish respondents reported to have fixed work and recreational times. However, just two of them were allowed to leave the home of the elderly person in their free time. Just one of the elderly persons they cared for needed night-time attention. Regardless of this, two of them did not get eleven hours continuous break-time. Two of the families had an additional mobile nursing service employed. It visited once a day for 5 – 7 days a week. The average monthly net income generated from the job as reported by the Polish citizens was 1687,50 Euro. All qualitative reviews of their last appointment as live-in caregivers are very positive.

6.4.5 Expectations towards the job

Concerning the expectations towards the job, the TCNs aspire their monthly net income to add up to 1537 Euro. For this, they want to work about 10 hours per day on 6 days of the week. This sums up to a net salary of 5,69 Euro/hour. In average, they would like to work for 6,9 months per year as a live-in caregiver in Germany. When dropping two outliers, who answered that they want to stay only one month, the average duration they want to work increases to 7,63 months per year.

Fourteen of the TCNs were willing to take care of two persons in the same household. Three of these would do so for no additional payment. Six required the salary to be twice as high for taking care of two persons. Five would want an additional payment for taking care of



the second person. Despite being asked, they did not specify how much more they find appropriate.

Thirteen of the TCNs answered that they aspire to permanently migrate to the EU. three did not make a statement and five were not interested in permanently migrating to the EU.

The Polish respondents on the other hand aspired their monthly net payment to be as high as 1837,50 Euro in mean. For this, they want to work an average of 7,75 hours on 5,75 days of the week. This amounts to a net salary of about 9,16 Euro / hour. They want to work as a live-in caregiver for six to eight months of the year.

Three of the Polish caregivers would be willing to take care of two persons at the same time if they would be paid double the salary. Another live-in caregiver would charge 300 Euro more for taking care of another person and the fourth polish respondent had no interest in taking care of more than one person at the same time. None of the Polish live-in caregivers were interested in permanently migrating to another country.

6.5 Conclusions on the quantitative survey and results of post-survey focus group

First, it is important to note that, due to the small response rate, the responses are not to be interpreted as representative for the total of live-in caregivers. Even though there is, to our best knowledge, no reliable information on the actual population size of live-in caregivers from abroad working in Germany, particularly not about the amount of TCNs amongst them, and thus no reliable estimate on what a representative sample is, the reported results can certainly only serve as a pilot study. We can indicate stark differences between the groups and identify general descriptive and qualitative information, but this cannot be understood as a final assessment of the situation. Further research with a broader response is necessary.

The results of the survey, however, paint a clear preliminary picture. This picture is consistent with what the qualitative focus group meetings suggested. The TCN live-in caregivers are willing to work much longer hours for less salary than their Polish counterparts. Regarding the effective net salary, they expect almost just half of the salaries that Polish caregivers do. All salaries are understood without the free accommodation and food***. The lower expectations make it much easier to post TCNs to more difficult positions than European citizens.

Regardless the lower salary expectations, the qualitative interview partners did not confirm that this is their expectation. They are certainly willing to pay competitive salaries on the level of what EU citizens earn today – between 1500 – 1800 Euro net. Their predominant interest in employing TCNs lies in the better availability and willingness to work in difficult positions. In addition, it was confirmed that the high aspirations of the Polish caregivers, to earn more than 2000 Euro net, cannot realistically be met with the current industry structures. The families' willingness to pay does not allow such high payments unless not agencies or posting companies are in charge.



The issue of taking care of two persons at the same time gains relevance for the invited industry participants. With the arrival of live-in caregiving at the mainstream of the German society, an increasing number of families expect that a live-in caregiver can take care of more persons at the same time. This seems unrealistic regarding the expectations that were assessed in the survey. If double the salary shall be paid, it is practically and legally more sound to post two workers.

After all, and in line with our survey results, the work is already demanding when only one family member needs help. There is reasonable doubt whether two persons can be cared for by one caregiving person, unless the second person only has minor need for care. All qualitative workshop participants agreed that the working conditions that the TCNs aspired were in no way acceptable and what they envision for their work placements.

Particularly controverse is the topic of legality. When reviewing the answers on the documents that the TCN caregivers had with them on their last stay, it seems likely that the respondents were either not thorough in answering the questions, not aware of what they needed for a legal stay in Europe, or were knowingly working illegally in Europe.

In the focus-group the posting companies stated to ensure that all workers have a Visa in a Schengen state. However, as noted already before, between the focus group participants did not have a unanimous opinion on whether a work visa in a European member state is sufficient to work legally in Germany. This adds to the uncertainty in the field of employing TCNs in German live-in caregiving.

7. Synthesis

Overall, the empirical data gathering is painting a concise picture of TCNs employment as live-in caregivers in Germany. TCNs are more willing to take over difficult caregiving situations, they ask for less money and are willing to work longer hours than their European counterparts. Thus, their admission to the German caregiving system should be a valuable addition to help easing the care-crisis. Since caregiving in live-in situation is not always requiring a formal education, measures to support families must look beyond professionally trained caregivers. TCNs seem particularly predestined to support the German caregiving system, because the live-in labor provides a soft start to establishing an existence in a new country.

7.1 Problems and obstacles in posting of TCNs as live-ins to Germany

The literature research of this paper could not identify a practically feasible way for non-professionally trained TCNs to join the German workforce. While technically the posting of a



TCN via European countries, which might have less strict TCN admission policies, appear to be a path that may comply with European law, German authorities and regulations practically prohibit this approach.

Whether this practice of restricting labor mobility of TCN workforce which is legally employed within other European countries is consistent with Articles 59 and 60 of the treaty on the establishment of the European community could not finally be decided within the scope of this work. While there are indications that it may not be, it was not only theoretically impossible to provide a clear answer on this, but indeed also subject of great discussion amongst the specialists that participated in the expert panels. With lacking legal certainty, the risks for families, agencies and posting firms to be subject of prosecution on terms of human trafficking appears to be very high in Germany.

7.2 Best practices and policy recommendations.

For the moment, there exists no legal certainty on employing TCNs as live-ins in Germany. This prohibits their use. At the same time, the German caregiving system could greatly benefit from admitting TCNs to work as live-ins in Germany. The empirical work displays that TCNs working as live-ins show a much higher dedication to their work, are willing to work for less salary and take care of more persons in need than European live-ins.

Providing a feasible and legal way to employ TCNs in Germany seems thus valuable for the ageing society of Germany. Having access to a greater amount of live-in workforce allows more elderly to stay at home longer. Filling the required positions with labor that is not over-qualified, e. g. with willing TCNs without formal education, frees desperately needed workforce for caregiving jobs that require professional trainings, e. g. in hospitals or intensive care units. Judging from the present research, policy has a high incentive to regulate live-in caregiving situations and the admission of TCNs to it.

Regarding the modes of live-in caregiving, chapter 4.1 reveals that all legal models used for live-in caregiving suffer from some degree of legal insecurity. A more sophisticated legal framework for live-in caregiving was established by Austria (Pichlbauer, 2018). They created the “Hausbetreuungsgesetz” in 2007 (Löschnigg, 2008). It regulates that live-in care needs to be provided by two untrained caregivers who switch their position every other week or two and have regulated work and rest-times.

A model that regulates live-in caregiving must walk a fine line between easing the restrictions that protect the workforce from exploitation while not exposing them to unjust treatment by the families. Caregiving by live-ins, particularly foreign live-ins from Europe and third nations, can be a mutually beneficial arrangement if done right.

Within the first year of the Austrian legislation on live-in caregiving, the number of legally employed live-ins tripled from 7.700 to 20.000 (Neuhold, 2013). Creating certainty on how to employ a live-in caregiver in Germany with an easy model would thus not only remove a burden from families, it would likely also encourage thousands of illegally employed live-ins to join



the legal workforce. Regulating it in the wrong way however, for example by not allowing highly fragmented work-times, may force even more live-ins and families into the black market, creating an adverse effect.

When a model for live-in caregiving is development by the legislation, it is well advised to also consider an option for TCNs to join the live-in workforce. Regarding the current situation in the western nations, Europe will soon be drained of caregivers in all member states. Unfortunately, the current ways of recruiting caregivers from outside Europe, such as the Triple-Win project (Federal Employment Agency/International Placement Services and Deutsche Gesellschaft für Internationale Zusammenarbeit, n.d.) or other national programs (Bundesministerium für Wirtschaft und Energie, n.d.), are far too formal for families and untrained caregivers. They rather address hospitals and large caregiving institutions.

Possible ways to also enable families to make use of TCNs and integrate them into the German system may be through combining live-in care with the option to start a professional training as caregiver in Germany. This requires new structures in professional training that allow remote tutoring and more flexible work schedules. Another possible option is the integration of live-in work into a remote study program. Here the migration law would need to ease the restrictions on the work amount of TCNs that come to Germany in line with what will be regulated for live-ins.

Summing up, Germany is in dire need of more live-in caregivers. European live-ins become increasingly rare and demanding, which will make live-in caregiving more inaccessible for families. But live-in caregiving eases the strain on the national caregiving system and should thus be promoted. Therefore, Germany needs regulations on A: how to employ live-in caregivers and B: how to allow TCNs to join the live-in caregiving workforce. So far, both questions remain unanswered, which creates uncertainty for all involved parties. It also fosters unwanted, and probably unintended, black market and trafficking activities in the effort of allowing elderly to stay in their own home for as long as possible. Legalizing live-in homecare and the use of TCNs in these arrangements is a win for all involved parties: the families, the German society and healthcare system and the live-ins who want to make a living in the EU and provide their workforce.



References

- Anderson, B., 2000. *Doing the Dirty Work?: The Global Politics of Domestic Labour*. Zed Books.
- Auswärtiges Amt Polen, n.d. Brauche ich ein Visum zur Einreise nach Deutschland? [WWW Document]. URL <https://polen.diplo.de/pl-de/03-service/03-01-visainformationen-de/visum-brauche/490700> (accessed 3.5.22).
- Auswärtiges Amt Slovaekie, n.d. Vander Elst-Visa [WWW Document]. URL <https://pressburg.diplo.de/sk-de/service/visa/vander-elst/2220860> (accessed 3.5.22).
- Bundesministerium für Wirtschaft und Energie, n.d. Auszubildende aus Drittstaaten für die Pflege 52.
- BVerwG, 20.06.2019 - 1 B 12.19, 2019.
- Creswell, J.W., 2009. *Research design: qualitative, quantitative, and mixed methods approaches*, 3rd ed. ed. SAGE Publications, Inc., Los Angeles.
- Deutsche Rentenversicherung, 2021. A1-Bescheinigung [WWW Document]. Deutsche Rentenversicherung. URL https://www.deutsche-rentenversicherung.de/DRV/DE/Ueber-uns-und-Presse/Presse/Meldungen/2019/190312_a1_bescheinigung.html (accessed 2.27.22).
- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, 1996. , OJ L.
- Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, 2003. , OJ L.
- Emunds, B., Kocher, E., Habel, S., Pflug, R., Tschenger, T., 2021. *Gute Arbeit für Live-In-Care - Gestaltungsoptionen für Praxis und Politik (Policy Paper No. 2021/2)*, NBI-Positionen.
- EuGH, 09.08.1994 - C-43/93, 1994.
- Eurostat, S.O. of the E.U., 2021. *Demography of Europe — statistics visualised*.
- Federal Employment Agency/International Placement Services, Deutsche Gesellschaft für Internationale Zusammenarbeit, n.d. *Project Triple Win Nurses from third countries for the German labour Market*.
- Haberstrumpf-Münchow, 2020. *Die Beschäftigung von polnischen Haushaltshilfen in deutschen Pflegehaushalten aus rechtlicher Perspektive*, in: Städtler-Mach, B., Ignatzi, H. (Eds.), *Grauer Markt Pflege: 24-Stunden-Unterstützung durch osteuropäische Betreuungskräfte*. Vandenhoeck & Ruprecht, Göttingen.
- Hauser, R. (Ed.), 1999. *Alternative Konzeptionen der sozialen Sicherung.*, 1st ed, Schriften des Vereins für Socialpolitik. Duncker & Humblot.
- Holsing, C., Leitner, S., 2021. *Branchenreport 2021 – Häusliche 24-Stunden-Pflege und -Betreuung*.





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- Hüther, M., Kochskämper, S., 2018. Pflegenotstand – so viele Fachkräfte fehlen wirklich.
- Konle-Seidl, R., 2021. Free movement of workers.
- Kutschke, T., 2014. Pflegenotstand und Fachkräftemisere. Heilberufe 66, 54–56.
- Löschnigg, G., 2008. Hausbetreuungsgesetz / Günther Löschnigg ; Sabrina Schmid, 1. Aufl. ed. Verlag des ÖGB, Wien.
- Neuhold, C., 2013. ÖGB - Warnung vor Billigpflege aus Internet [WWW Document]. Österreich Politik - Nachrichten - Wiener Zeitung Online. URL https://www.wienerzeitung.at/nachrichten/oesterreich/politik/540630_Warnung-vor-Billigpflege-aus-Internet.html (accessed 3.5.22).
- Petermann, A., Bohl, J., Brinkmann, R., Seebohm, F., 2018. Rechtliche Modelle für Betreuung in häuslicher Gemeinschaft.
- Petermann, A., Ebbing, T., Paul, M., für Gesundheits, B., Saarland, S., PflegeAllianz eV, H., 2017. Das Tätigkeitsprofil von Betreuungspersonen in häuslicher Gemeinschaft. Berufsakademie für Gesundheits-und Sozialwesen Saarland. Saarbrücken.
- Pichlbauer, E., 2018. Das österreichische Pflegesystem: Ein europäischer Sonderfall. Bertelsmann Stiftung.
- Sahmel, K.-H., 2018. Pflegenotstand — ist das Ende der Menschlichkeit erreicht? Pflege 71, 18–22.
- Statistisches Bundesamt, 2020. Mitten im demografischen Wandel [WWW Document]. Statistisches Bundesamt. URL <https://www.destatis.de/DE/Themen/Querschnitt/Demografischer-Wandel/demografie-mitten-im-wandel.html> (accessed 2.26.22).





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Appendix 1: TCN education acknowledgement

Checklist to grant a license to use a healthcare profession title in Germany (Berlin version)

Source: https://www.berlin.de/lageso/assets/gesundheitswesen/drittstaat/ds_checkliste_nah-eng.pdf

The following documents must be submitted:

1. Evidence of jurisdiction

- Confirmation of employment for a position in the Federal State of Berlin, or
- Current excerpt from the civil register concerning your main residence or proof of usual residence in the Federal State of Berlin or
- Applications for vacancies in the Federal State of Berlin, invitations to interviews, etc.

2. Application form

3. Curriculum vitae in tabular form and in chronological order (with signature and date) showing the training

courses completed, your professional career and your employment to date.

4. Proof of identity (passport or identity card)

5. Birth certificate (in the case of name change e.g. by marriage please also provide this certificate)

6. Official certificate of good conduct of document type 0 from the **Federal Republic of Germany** (not older than 3 months when submitted). The application for the purpose of a "Erlaubnis zum Führen der Berufsbezeichnung-BQFG" is to be made at the citizen's offices in Berlin, from abroad you can apply to the Federal Office of Justice for a certificate of good conduct.

7. Certificate of good conduct from the police or judicial authorities of your **home country and**, if applicable, the **country of study** (not older than 3 months when submitted)

8. Certificate of good standing issued by the competent authority of the country in which you were employed (not older than 3 months when submitted)

9. Medical certificate (please use form) issued by a physician **licensed in Germany** (not older than 3 months

when submitted)

10. Evidence of successful completion of training

Evidence of formal qualifications entitling the holder to the unrestricted right to carry out the profession in the country of training or, if applicable, the home country (e.g. diploma, examination certificates, evidence of work experience, professional identification)

Overview of subjects and hours with theoretical and practical lessons and examination





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- Evidence of completed internships with details of duration and areas of work
- Evidence of previous professional experience and further training (e.g. work book, detailed certificates from previous employers, extensive further training - if available)

11. **Proof of German language skills** - level B 2 (for Speech Therapists C1) certificate from Goethe institut, Telc or TestDaf; not older than 3 years

