

REPORT FROM SPAIN ON THE POSTING OF THIRD-COUNTRY CITIZENS IN CARE SERVICES

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I. Introduction

Description of Spain as a sending and host country.

If we look at posted workers considering the criteria established in Directive 2018/957, we could conclude that **Spain is a sending State more than a receiving State of posted workers** (almost three times more). Moreover, the **Member States with the greatest influence in our country, both recipients and senders, are France, Germany and Portugal**. Although the receiving and sending countries are practically the same, except for the United Kingdom, which appears only as a receiving State with nearly 18,000 workers, 13% of the total number of posted workers from Spain

However, knowledge and analysis of the data referring to the posting of third-country citizens in the **healthcare workers** context; therefore, not affected by Directive 2018/957 and not considered posted workers in the provision of a transnational service, is very complicated due to the lack of control over them.

In order to have approximate knowledge of the situation of these groups in our country, as a receiver of these workers, we are going to take a look at a series of statistical data from different sources:

- 1) **registration in the social security system**: in December 2021, was 19,842,427 working people, and we can specify that in terms of care services:
 - 288,818 persons, 1.45% of the total, are registered in the sector of activity known as *care in residential centres*,
 - 345,553 persons, 1.74% of the total, are registered in the activity sector as *social services without accommodation*,

- 418,454 persons, 2.1% of the total, are registered in the *sector of domestic staff employees*. [This is often the sector in which carers of the elderly and/or dependent persons are assigned].
- 2) **the work authorisations for foreigners** granted in 2021, reaching a total of 88,077 persons, are as follows, broken down into the professional sectors related to care work:

By sector of activity	Employees	Autónomos
Care in residential centres	435	2
Social services without accommodation	415	2
Domestic workers	26,740	33

- 3) **foreign workers employed in the labour market**, that is, registered in the social security system in 2021, is 2,256,015 persons.

Of these, 946,906 persons are from Europe (including Russia, Moldova and Ukraine), and 790,362 are from the European Union (including the EEA).

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[It is necessary to point out the existence of a shadow economy, absence of hiring, among care workers, both with the provision of these services by people without legal regulation of their situation in Spain, and people who, having this situation of residence regularised, do not have an employment contract and are not registered in the Spanish social security system].

Analysis of surveys of workers in Spain.

As a complement to the above, it is interesting to know the results of the surveys of employees working in the care sector.

Profile of the surveyed person:

- by age: 20% are under 40 years old; 47% are in the age between 40 and 55 years old, and the remaining 33% are over 55 years old,
- by gender: 93% are women, compared to 7% men, who mostly represent the 55+ age group,
- by nationality: 40% of those surveyed belong to European Union countries; specifically, Romania, Portugal and Bulgaria in the same percentages, 33% in each case.

60% are workers from third countries; specifically from: Ecuador, 56%; Peru, 22%, and Colombia or Morocco, 11% in each case.

Type of work performed by the respondent:

- only 27% are employed as live-in carers, in the home of the person they are caring for; of these, 75% are women,
- 7% are registered as self-employed, and 40% have an employment contract, working as employees.
- 53% of workers do not have an employment contract; it is worth noting that 25% of them are from the EU Member States; however, one of the workers surveyed stated that she was a Portuguese student living in Spain and combining her work with her studies; hence the lack of a contract when she "exchanged" accommodation and food as a student for caring for the dependent person with whom she lives.

Type of document available related to their stay in Spain:

The lack of knowledge on this issue is significant on the part of the workers surveyed, as only 40% of the respondents answered. Of these, 100% indicated that they had a national identity card, and 67% also indicated that they had an analogue passport.

Caring for two people in the same home:

On this question, 80% would accept such extra care in exchange for additional remuneration, which is double what they receive for 25% of these and does not specify the remaining 75%. On the other hand, 13% answered that they would not accept this possibility, and 7% said they had already cared for two people.

II. Legal and institutional framework

The entrance and regulation of legal residence in Spain are set out in ***Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration***, whose updated regulations can be consulted on the Spanish Government's website:

https://extranjeros.inclusion.gob.es/es/normativa/nacional/general_extranjeria/index.html

Regarding **the management of hiring by a Spanish employer in the country of origin**, there is an *Order ISM/1289/2020, of 28 December, which regulates the collective management of hiring in the country of origin for 2021*, to guide the entry of workers in sectors with the difficult-to-cover workforce in the domestic labour market, depending on the national employment situation and the country's reception capacity. This management makes it possible to:

- establish the number of stable jobs that foreign workers can fill for each calendar year;
- establish several visas for job-seeking aimed at children or grandchildren of Spanish nationals or limited to certain occupations;
- and regulate the specifics for hiring seasonal workers or workers for work or services.

Visas and documentation:

Within a maximum period of two months following notification of the resolution granting the temporary residence and work authorisation, the employer must apply for the visa in a grouped manner, together with a series of documentation: ordinary passport or travel document, recognised as valid in Spain, valid for at least four months; certificate of criminal record; medical certificate that he or she does not suffer from any of the diseases that may have serious public health repercussions; granting of the temporary residence authorisation and work contracts; as well as the return commitments signed by the workers.

The visa will be issued within a maximum period of five days, which may be extended to a maximum of fifteen days when the large number of workers to be documented makes this essential.

In the case of temporary residence and work authorisations relating to job offers for work or service activities, the foreign worker must be registered with the social security system within three months of entry into Spain and must apply for the Foreigner's Identity Card within one month of entry or declaration of entry into Spain, when the duration of the authorisation exceeds six months.

III. Comparative analysis of employment conditions between EU citizens and third-country workers

In Spain, all workers fall within the scope of the collective agreement of their professional sector of activity, with the *Workers' Statute* as a supplementary rule, which regulates the labour relations between the employer and the worker and minimum working conditions that are developed in the collective agreements; therefore, as a rule, there should be no differences in the employment conditions of one or the other (the failure of employers to comply with certain groups of workers is another matter).

In addition, there is **Law 45/1999** on the posting of workers in the framework of the transnational provision of services, which transposes *Directive 2018/957* into Spanish law and whose last revised and updated publication took place on 28 April 2021.

This law **extends to citizens of third countries that are not the EU Member States and who have the authorisation to work in their country of origin, without requiring them to obtain a new work permit to do so in Spain, the coverage given to posted workers**; putting all of them on an equal footing in their employment conditions; in matters such as employment conditions, social security coverage, salary remuneration, information, etc.

Information, in Spain, to workers and employers on the regulations governing the provision of services and on their conditions of employment

All the regulations concerning posted workers in Spain, as well as the contacts of the labour authorities, can be found on the single national website, in Spanish and English; applicable to third-country nationals with a contract in Spain:

http://www.mites.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores/desplazamiento/index.htm

Third-country citizens also have a website on the Spanish *Immigration Portal*, which includes aspects related to residence and work in Spain:

<https://extranjeros.inclusion.gob.es/es/InformacionInteres/InformacionProcedimientos/Ciudadanosnocomunitarios/residirtrabajar.html>

Finally, all of them can consult aspects related to their tax regulations and regulatory models, as well as aspects related to the social security system:

<https://www.agenciatributaria.es/AEAT.internet/Inicio/ Segmentos /Ciudadanos/No Residentes viajeros y trabajadores desplazados/Trabajadores extranjeros desplazados en Espana/Trabajadores extranjeros desplazados en Espana.shtml>

<http://www.seg-social.es/wps/portal/wss/internet/InformacionUtil/32078/32253/2519/2523>

IV. Conclusions: Supply and demand evolution; problems and obstacles in the posting of third-country workers and best practices and recommendations

The following has been obtained from the research phase carried out with experts, trade unions, public representatives and employers in the following way:

1. Publication of the interview questionnaire on a platform created ad hoc and whose link has been sent to various employers in the care sector, trade union representatives and civil servants with functions related to the subject of our study.

https://docs.google.com/forms/d/e/1FAIpQLSfOjDUkZTD5sXXGVLNE_LyGaqJWSVz7kkUHhdtNwwvdSQ7SwA/viewform

2. Once these questionnaires had been analysed, telephone interviews were conducted (and, in four cases, face-to-face interviews) to clarify or expand on some of the answers received and complete some aspects of the responses.

3. It was not possible to organise a focus group due to two circumstances: a) the existence of a high impact of the pandemic during the time foreseen for its implementation, which made it advisable not to carry it out; and b) the work difficulties of the employers to be able to attend a meeting of these characteristics.

Interviews conducted:

A total of thirteen interviews were conducted, with the following actors:

- 9 managers of companies dedicated to the intermediation of carers with dependent persons,
- 2 representatives of trade unions,
- 2 public servants with functions of processing files and certifications of employment registrations with care workers from outside Spain.

Analysis and conclusions

Stakeholders involved in the care provided by workers from third countries.

100% of people interviewed have indicated that these stakeholders are specified as:

- the person with care needs,
- - the family of the dependent person, and
- - the carer, not only from third countries, their answers applied to any carer.

In addition, 100% of respondents pointed out a fourth actor, highlighting its importance in the care of dependent persons: the intermediary companies of these services. However, none referred to carers from third countries, and none referred to the whole activity.

15% of those interviewed mentioned the trade unions as a fundamental stakeholder, together with those mentioned above, as the watchdogs to ensure that the employment conditions of workers are complied with by employers.

Finally, all the interviewees agree in pointing out that governments have their importance in a first phase focused on normative regulation, but that, afterwards, they have no incidence in the application of the same, nor the involvement with this sectoral activity.

Legal framework and obstacles.

Once again, 100% of those interviewed point to a clear normative regulation for workers' entry and work performance in our country and refer to the existence of *Collective Management Agreements for hiring in their origin country*.

The trade union representatives refer to the existence of irregularities in the performance of work by carers in aspects such as the non-application of the collective agreement or the application of a collective agreement of another professional sector (normally, the one established for domestic workers); excess working hours and remuneration not in line with the provisions of the agreement. On this issue, employers are against the occurrence of such circumstances, and civil servants have no opinion on this issue due to a lack of knowledge.

Both trade union representatives and civil servants are concerned about employment without a contract, which administrations do not always control.

Obstacles and problems other than legal ones.

In general, linguistic barriers are not recognised, although cultural and customary barriers may exist; it should be borne in mind that a large part of the population from third countries working in health care come from Latin American countries where the Spanish language is spoken.

76% of those interviewed agreed that there are unclear obligations when it comes to establishing the functions of carers and in terms of actual employment conditions; in this sense, it was acknowledged that there are breaches of the conditions regulated in collective agreements or that there are recruitments in professional categories other than carers to apply collective agreements with other employment conditions that are more beneficial for the employer.

❑ Description of good practices.

All interviewees agree in pointing out the existence of clear regulations in Spain (Law 45/1999 and the Law on Foreigners) that regulate both the working conditions for working persons coming from the other EU States or third countries; and their entries and exits to and from Spanish territory.

It is acknowledged that there is control by the authorities (especially the Labour and Social Security Inspectorate) and by the trade unions themselves in the case, fundamentally, of companies providing home carers. However, there is a complaint that more controls of this nature would be necessary.

As far as employment conditions are concerned, they consider that what is regulated both in the Workers' Statute and in the collective agreements is sufficiently guaranteeing; however, the trade unions raise doubts as to whether they are fully complied with by employers and, more specifically, by the family members or interested parties who directly hire the carers. In this case, it is more frequent to find workers hired to carry out domestic tasks in the home who combine these functions with those of carers of dependent persons, without specific qualifications and the regulations established for care carers being applied to them in matters such as salary, working hours, breaks, holidays, etc.

❑ Solutions.

The employers propose the possibility of regulating the sector so that care services for the elderly and dependants cannot be contracted without the intermediation of an accredited company, prohibiting direct contracting by the interested parties and/or family members. This proposal would aim at control", on the part of these companies, of the labour market for carers.

On the other hand, the trade unions call for better control by the labour and social security inspectorates, for which they understand that it is necessary to hire more officials with these functions. The aim is to pursue employers' abusive practices and establish sanctions in case of non-compliance.

❑ Future scenario: forecast growth of this type of services

In general, all the interviewees agree that this is a growing sector for two main reasons: the ageing of the population and the lack of extensive resources from the authorities in the form of residential or home care.

They also believe that in the direct hiring of carers by relatives or interested parties, there will continue to be a majority of workers about whom there are doubts as to their hiring and employment conditions; and this seems to continue to be the trend, especially with the current economic crisis in Spain.

The majority of these workers come from Latin American countries (especially Peru and Ecuador) due to the absence of linguistic barriers and the special liking they show for this attention, and from Morocco (a neighbouring country with important settlements in our country);. However, there are also many workers from two EU countries: Bulgaria and Romania (although they are hired directly in Spain, with no displacements from their country of origin).

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