



postcare

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

# Summative Report

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## Summative Report

|   |  |    |
|---|--|----|
| 1 | Introduction                                       | 7  |
|   | 1.1. Third country nationals                       | 7  |
|   | 1.2. War as a game changer                         | 9  |
| 2 | Care   | 10 |
|   | 2.1. Basic notions                                 | 10 |
|   | 2.2. Live-in care services                         | 10 |
|   | 2.3. Remuneration based on working time            | 12 |
|   | 2.4. Price limits of live-in care service          | 14 |
|   | 2.5. Third country nationals in institutional care | 15 |
|   | 2.6. Models of live-in care activities             | 16 |
| 3 | The actors   | 21 |
|   | 3.1. Senior – a person in need of care             | 21 |
|   | 3.2. Caregiver (TCN)                               | 22 |
|   | 3.3. Family  | 24 |
|   | 3.4. Fraudulent service providers                  | 25 |
|   | 3.5. Genuine service providers                     | 27 |
|   | 3.6. Intermediaries                                | 28 |
|   | 3.7. Social partners                               | 28 |
|   | 3.8. Policy makers                                 | 29 |
| 4 | The Law  | 29 |

|          |   |           |
|----------|---|-----------|
| <b>5</b> | <b>Research</b>                               | <b>33</b> |
|          | 5.1. Methodology                              | 33        |
|          | 5.2. The aims of the research                 | 34        |
|          | 5.3. Recommend policy measures for the future | 37        |
|          | 5.4. Hypothesis and research questions        | 37        |
|          | 5.5. State of the art – the legal framework   | 38        |
|          | 5.6. The surveys                              | 38        |
|          | 5.7. Individual interviews                    | 38        |
|          | 5.8. Focus Group Interview                    | 38        |
|          | 5.9. The stages of the research               | 38        |
| <b>6</b> | <b>Scenarios for the future – Foresight</b>   | <b>39</b> |
|          | 6.1. Problems                                 | 39        |
|          | 6.2. Recommendations                          | 40        |
|          | 6.3. Conclusions                              | 42        |





# 1 Introduction

## 1.1. Third country nationals

Third country nationals (TCNs) are the citizens of countries other than the member states of the European Union, European Economic Area and Switzerland. A more precise legal definition can be found in Art 2(6) Regulation 2016/399:

A third-country national means any person who is not a Union citizen within the meaning of Article 20(1) TFEU and who is not covered by point 5 of this Article [members of the family of a Union citizen exercising the right to free movement to whom Directive 2004/38/EC (...) applies or third-country nationals and their family members, whatever their nationality, who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.

In some areas the positive side effect of the common market and in particular of lifting internal barriers among Member States has led to recognition of the employment and residency rights awarded to TCNs in one Member State by all the other Member States. In other areas their rights remain subject to policies of individual Member States. In particular, TCNs' access to labour markets remains in the autonomous competence of national legislation, but the entry and residency is harmonized to the extent needed to exercise free crossing of internal borders at least in the Schengen area.

As a result the same person holding a foreign (non-EU) passport may be crossing internal border between two Member States both legally and illegally depending not so much on their nationality, but on the purpose of their trip, duration of stay, employment status, their employer's place of normal activity, etc.

The Schengen acquis has set up common rules regarding crossing of the external borders of the Schengen zone. There are two groups of TCNs listed in the Appendixes I and II of the Regulation 2018/1806/EC: those who need visas to enter and stay and those who are exempted from this obligation for a short stay of 90 in every 180 consecutive days<sup>1</sup>. On top of this some Member States

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<sup>1</sup>Regulation (eu) 2018/1806 of the European Parliament and of the Council of 14 November 2018 Listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. L. 28.11.2018 303/39

have bilateral agreements with third countries allowing their nationals to enter and stay only in the respective Member State.

Posting of a TCN worker should reduce the risk of such legal uncertainty, because posted worker is considered a part of the labour market of the sending Member State, where their status is clear. Theoretically this could be the reason why providing in-house care services by TCN caregivers is based on the posting of workers rather than on direct employment. As our study shows, this is not the case. The legal uncertainty of the residence and employment status of a posted TCN is higher in the cross order situations resulting from free movement of services than it is in the case of free movement of workers. Institutional and especially legal framework of a given Member State plays crucial role in choosing the employment and residency model for TCNs in the care sector. For instance, in Spain direct employment of TCNs from Columbia, Ecuador, Honduras and other South American countries in the care sector prevails over posting of workers. Ukrainian caregivers hired in Poland are usually posted to Germany and other Member States.

In this study we look closely to the conditions of legal entry, stay and employment of TCNs. But this is not all there is in providing care for seniors and disabled persons in their households. Demographic changes in the last two decades have led to faster and deeper process of population ageing in Europe. The pace and the stage of population ageing differs from country to country, but the tendency is very clear. The reasons are: longer average life expectancy on one hand and lower total fertility rate on the other. As a result the proportion of older and younger people in the population is changing in the favour of the former. Better health and wellbeing are not sufficient to neutralize longer lives' impact of ageing of society. Thus the number of persons in need of assistance in their daily routine is growing rapidly. At the same time the working age population is shrinking and the vocational training systems are not ready to shape the desired skills, and social insurance schemes are not adapted to (co)finance the individual in-house care for seniors and disabled persons.

These demographic and economic conditions cause scarcity of trained, qualified caregivers in the working age cohort. Institutional care is less preferred by beneficiaries and although financially more affordable, not easily accessible due to the same shortage of skilled staff as in the in-house care services. For the same reasons, since 2004 which marked the accession of 10 new Member States, care services in the wealthier and faster ageing countries are provided by companies recruiting and posting workers from less wealthy and "younger" corners of the EU. After almost two decades the ageing of population has reached also the new Member States of the EU. Their older members of population need care for themselves and the resources of caregivers are scarce. Inevitably this must have led to turning to TCNs as caregivers.

However they are both hired directly in the EU-13 and posted further to EU-



15 Member States. The main driver of hiring and posting TCNs is lack of own caregivers in the EU, i.e. shortage of skills. The differences in earnings between the low wage and high wage countries are also an important factor, especially in the black market. In the formal economy the rules on hiring TCNs and conditions of posting them temporarily to other Member States prevent from social dumping by lowering wages, tax or social security contributions evasion. Our study shows however that black market takes 80–90% of the market. The most desired solution to this problem is better enforcement of the existing rules.

Last but not least, the caregiver’s job is demanding and insufficiently rewarded. The profession is highly unregulated with the exception when medical or paramedical treatment is considered (nurses). Assistance in daily routine is not a recognised vocation in most of the Member States. No formal qualifications are needed for such job and only general conditions of employment apply. Vocational training is addressed to medical staff and oriented for institutional care. In reality the skills for in-house care can be acquired mainly by experience. Training is organised by service providers but it covers only a small group of all the caregivers. In the case of TCNs the situation is even worse. If they get any training at all, priority is given to basic language skills, and professional caregivers skills are left aside.

This report is based not only on the desk research of the EU regulatory framework and jurisprudence, but also on the country reports of eight countries represented in the project: Germany, Greece, Italy, the Netherlands, Poland, Serbia, Slovenia and Spain. On one hand, the picture is incomplete, but on the other hand the selection of the countries is not purely accidental. They are representative for the “posting mix” of TCNs in the care services.

We have surveyed mainly sending countries (PL, SLO), mainly receiving countries (GER, NL), sending and receiving at the same time (ES, IT) and mainly gateway and transit countries (GR). On top of that Serbia as a candidate state shows the perspective of the country of origin of TCN caregivers. The different characteristics discovered during the analysis have contributed to better understanding of the driving forces behind the growing phenomenon of the posting of TCNs in the live-in care services.

The study aims at describing and understanding the institutional and practical barriers in the provision of care services in the EU when a caregiver is a TCN. It also aims at understanding the reasons for the growing role of TCNs in this sector.

## 1.2. War as a game changer

The number of legally working and residing TCNs has been growing steadily in the EU, EEA and Switzerland until the outbreak of Russian military aggression on Ukraine in February 2022. Since the Council’s Decision of March 4th 2022<sup>2</sup> the inflow of war displaced TCNs is considered to be a “mass influx”. Indeed, according to UNHCR data, the number of (mainly Ukrainian women and children) fleeing from war to EU has exceeded 6.16 million unique persons only in the first 5 months of

the war<sup>3</sup> [UNHCR, 2022]. Almost 3,5 million enjoy temporary protection status. It means that the inflow of TCNs is no longer steady, but sudden and massive.

When the POSTCARE project has been drafted and later on, when the survey has been advanced, the assumption of a steady growth of migrants was shaping our research conclusions and scenarios for the future.

However in February 2022 a sudden change in dynamics of inflow of TCNs had to be taken into consideration. It has influenced the conclusions, scenarios for the future and policy recommendations.

## 2.1. Basic notions

Before going into detailed analysis of the legal framework for the posting of third country nationals in the care services, two basic terms must be explained. What is **live-in care** service? Not only how it is defined but what are its characteristics and who are the actors and stakeholders? Are their stakes complementary to each other or conflicting? This descriptive analysis will help to answer not only the question why is this service delivered mainly in a cross border and/or migration patterns but why the number of third country nationals as caregivers is growing. And will it continue to grow? Second term which needs a thorough explanation before narrowing our study to third country nationals is the concept of **posting of workers** in the framework of freedom to provide services in the EU. It is necessary to look at it from the perspective of freedom of services, from the perspective of posted workers' working conditions and social security. Last but not least how these rights differ or alter when a caregiver is a third country national?

## 2.2. Live-in care services

It is a useful exercise to start with the names the actors and stakeholders use for live-in care services. There are quite a few terms which describe the same service and reveal its different features, sometimes expectations of the client or the promise of the service provider. "Live-in care" and "in-house care" are probably the most precise terms and stress the fact that the caregiver lives in the same household as the person in need of care.

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<sup>2</sup>Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, OJ L 71, 4.3.2022

<sup>3</sup>UNHCR, 2022.08.01 – <https://data.unhcr.org/en/situations>

It also differentiates this service from institutional care, both medical care and housing for seniors and persons in need of constant care or assistance in daily routine. The term “Senior care” on the other hand precisely shows who is the beneficiary of the service and what is the purpose of the service. The disadvantage is that limits the service to a certain age group and excludes younger disabled persons in need of care or assistance. Still all three terms mentioned above are much more accurate than a widely spread term: “24-hour care”, which exemplifies the expectations of the person in need of care or (more likely) his or her family. It often serves as a misleading marketing promise of a service provider. Using this term openly neglects not only working time provisions but the right to free time and leisure of the caregivers. Equally misleading but for a different reason is the term “Home care”. It mixes the care for a person with the care for his or her household. Using this term allows to burden caregivers with housekeeping, shopping, cleaning, repairing, gardening and cooking. In case of Spain the tendency is opposite: persons hired as housekeepers are quickly forced to extend their duties to care over a dependant senior.

To sum up the terminology mashup in a European context it is worth mentioning two more problems.

1. Translation of the terms between official EU languages too often changes the context of discussion or the personal scope of application of the rules completely. In extreme cases senior caregivers are transformed in the translatory process into au pair or baby sitters (sic!). Due to lack of regulatory measures related to this service and profession, in EU countries with high culture of collective bargaining, caregivers randomly fall in the same scope as nurses or as baby sitters or as cleaning personnel. This lack of accuracy is a mushroom for intentional abuse of the rights.
2. In some legislations, e.g. in Germany, there is a well regulated service of institutional care (Pflegedienst) which falls in the realm of health care professions and highly unregulated in-house care service or support (Betreuungskraft). Too often this distinction is lost without a context. This is profound in the case of cross-border provision of live-in care services, because highly qualified TCN nurses take the job opportunity as unqualified caregiver, simply because his or her qualifications will not be recognised by authorities of the receiving Member state.

The best definition of the live-in care service would have be a descriptive one which characterises the nature of actions or interactions, the place where it is served and most of all the essential actors involved in this service: a client and a caregiver.

Live-in care is a service of taking care for dependent elderly or disabled people at their home, assisting them in their daily routine live activities, which they are not fully capable of doing on their own.

### 2.3. Remuneration based on working time

One may ask where is the caregiver hidden in this definition? Well – she is in the name of the service. The term live-in care implies that the caregiver works and lives in one household with the person in need of care. As will be explained later this trait of the service makes it extremely difficult if not impossible to accurately calculate or register the working time of a caregiver and separate it from rest and leisure time.

Before the covid-19 pandemic this was hard to explain, but with a wide spread of remote work and work-from-home, the number of people who live and work at one place has grown significantly. In all such cases it is nearly impossible to distinguish between work and free time. Naturally, this may lead to abuse of workers' right to rest. On the other hand, the control of the employer over the process of work is weaker. These problems have been always the feature of live-in care and continue to cause conflicts. Institutional reason for this conflict is embedded in labour law, which is not ready to fully detach remuneration from the working time. In practice this reverses the progress in the protection of employees' rights back to Frederick W. Tylor times, whereby each action of a worker was time-measured to improve efficiency<sup>4</sup>. The problem is that in Tylor's times this was improving lean production and according to Taylor was supposed to shorten the working time. We know today, that his concept has been altered to exploit workers, and yet still today, the same concept application is attempted in live-in care services.

Fair remuneration in live-in care the more difficult to set, the more we attempt to set it on the working time. The workload, its intensity and, as a consequence, time spend to do it differs. It depends mostly on the health condition and specific care needs of each individual in need of care. It may be determined on case to case bases, not generally. One of the best practices in the care services is therefore a thorough assessment of individual care needs before sending out a caregiver with qualifications matching these needs often after prior training tailored to those needs.

Another working time problem is a shattered day of work. Care activities are unequally distributed in a day. Morning and evening hygiene, dressing up and undressing, helping with meals, walking, conversation or reading – each of these

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<sup>4</sup>Frederick W. Tylor: The Principles of Scientific Management, Harper & Brothers, New York, 1911

activities take some time and there are intervals between them. In some cases caregiver might be called for assistance also during the night. There is a huge difference in taking care of a mobile senior and a person who is incapable of walking on their own. Different approach is needed in case of seniors with dementia and with senior with vision problems. Adjusting and adapting the service to these needs is a secret of high quality live-in care service. Thus the effective work of a caregiver may vary from 4 hours to 10 hours a day, but never are these working hours consecutive.

A good illustration of this problem is given in a German Federal Labour Court (BAG) judgement from 2021 in the case of a caregiver posted from Bulgaria to Germany<sup>5</sup>. The contractual number of hours per week was 30, which the court accepted not only as coming from the will of the parties but also as sufficient (although minimum) to deliver the service. The plaintiff caregiver demanded additional payment of remuneration for the time of being ready to work on call. The Court has classified being in the same household and being ready to work as on-call duty (German: Bereitschaftsdienst) and held that the caregiver was entitled to remuneration at the statutory minimum wage rate for periods of readiness to work on call.

The plaintiff's claim was accepted in full because the employer failed to argue or prove that the on-call duty was shorter or absent. The court has admitted that a 24 hours work is not possible, and that each such case should be assessed separately. Also in German law the labour contract is treated on the same terms as a contract between a professional or commercial party and a consumer. So in case of doubts or in case of inaction on the party of employer, the right is given to the plaintiff as requested in the law suit.

The give away from this judgement is that the very concept of basing remuneration of a live-in caregiver on the working time may and will potentially generate conflict. Moreover there is no contractual clause which could prevent such conflict from occurring in the future. Thus a policy recommendation would be to develop perhaps a more complicated method of fair remuneration based on required qualifications and necessary duties in individual cases of seniors in need of care rather than on the time spent on them and the time spent while waiting for the specific care need to occur. Perhaps the remuneration for live-in care work should be treated on similar terms as the remuneration of maritime workers. The comparison may seem distant. Nonetheless both maritime workers and caregivers work far from home for longer periods of time, living and working in the same place for many weeks. They both have tasks to do on more or less regular (daily) basis and they both stay re in alert in case of storm/sudden need. The biggest difference is not the ocean that prevents maritime workers from going out to the city between the shifts. In that sense, they are not fully free to use their free time as they

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<sup>5</sup>Federal Labour Court BAG (Germany) case, Urt. v 24.6.2021 – 5 AZR 505/20

please. Possible unexpected need of a senior plays similar role to the ocean in a caregiver's free time, unless a replacement is guaranteed by the family of a senior or by institutional/medical care. What really differentiates these two jobs is the fact that marine work is subordinated and controlled by superiors and the captain, whereas the work of a caregiver is more independent, self-organised, more like remote work.

Fair remuneration should certainly take into account the possibility of being called during free time, which is the very feature of this job. But instead of basing it on the number of hours per day or per week, as it is now, it should rather be based on the number of days/weeks "at the sea", or in this case days of live-in care. Number of hours per day or per week will it continue to cause conflicts.

Thoroughly calculated live-in care based on the number of hours – both readiness and actual work – would require 4 shifts of full time caregivers (including weekends, sickness leaves, holidays and other absenteeism). This would make such service economically unaffordable and would inflate unregistered work. A flat-rate supplement to the basic remuneration for the inconvenience of shattered working time would be less controversial and might contribute to the feeling of fairness in remuneration. Thus, a half way solution to the fair remuneration is possible but only with a significant financial support from the state/public/social security system.

As expert interviews and interviews with the stakeholders have shown, unlike in other sectors, the driver of unregistered employment is not only an indirect labour cost (income tax and social security contributions), but working time regulations fit for twentieth's century factory lean production work which when applied to live-in care make this service unaffordable. To put it in other words, the fast ageing high wage countries are not able to apply the high standards and costs of employment they have developed for their own workers. This is one of the reasons why care services are provided mainly in the grey economy and in a cross-border manner. In the next section, we will explore the client reasons why the service cannot be provided by four full time caregivers 24 hours a day.

#### 2.4. Price limits of live-in care service

Live-in care services have a very unique feature absent in other cross-border services: a recipient of the service is a consumer. In other popular cross-border services, the client is another company. In construction work the service provider is a subcontractor of a local service provider or of an investor – usually the company or public entity.

In transport and logistics, the service recipient is a company, so is the case in manufacturing services. It is the care services which are delivered to an end user, a client who is a natural person in need of care. So if there are changes in the legislation which make the service more costly, which was the case after introduction of the enforcement directive 2014/67/EU enforcing the posting of workers directive. This directive has introduced new obligations on employers

posting workers to another Member State, which have generated additional costs. The costs of translating workers' documentation, appointing a representative to liaison with local authorities, or the cost of simple notification about posting workers are covered by employers, but they influence the final price of the service and this way they are conveyed on the service recipients in the receiving Member States. As explained, in other types of services, higher cost of service is covered by a company which has higher flexibility than the family budget. In the case of live-in care services, personal or family budget of a person in need of care constitutes the unbreakable limit to increasing of costs.

This is also the reason why many seniors cannot afford institutional care delivered in the care homes. It is true that the fixed costs are spread among many seniors living in institutional care home. So the service should be less expensive. Hiring four full time caregivers to take care for five care recipients makes 24 hour care financially affordable and the work shifts never exceed 8 hours a day (or night). The caregiver leaves work place and is never called at night. So the question arises why the cost of potentially more expensive individual live-in care is in fact comparable or cheaper than institutional care. Well, the answer to this question is complex and lies not only in simple economics of the long term care. But let us start with economics.

Companies providing live-in care services compete not only with institutional care homes, and not only with caregivers hired directly by the senior or by the family with no social security or taxes, i.e. with unregistered caregivers. The large important player on the market is informal care.

**Informal care** is the care provided by family members, neighbours or community members. It is of course legal, unregulated and free of charge, which does not mean costless. The alternative cost burdens family member who has to reduce their own gainful activity in order to devote time to a senior. Looking at the informal care from the perspective of commercial provision of care services in whatever form, the commercial services and the very presence of remunerated live-in caregivers on the market unloads the economic potential of senior's family members, who may perform occupational activity of a much higher added value than the work of live-in caregiver. This benefit of live-in care services is often forgotten in the debate. Both institutional and in-house care, including all forms of unregistered employment, release the economic potential of (mainly) women who otherwise would have to quit their jobs to become informal caregivers. It is therefore false to say that informal care is an unpaid family care services. The price is paid in lost job opportunities of informal caregivers and their lost income from own occupational activity.

## 2.5. Third country nationals in institutional care

According to our study, the growing skill shortages in the EU labour market call for growing participation of TCNs in the long term care sector. However due to



difficult procedures of recognition of formal vocational qualifications for TCNs, they find jobs mainly in the live-in care and less so in the institutional care. In the latter case, they are employed directly and are never posted from another EU Member State. Thus, their employment in institutional care takes exclusively the form of work migration.

They are recruited abroad (outside the EU) and employed by a care home, on the basis of a work permit and a visa, usually after labour market test or “priority” test, which is intended to prove that there are no suitable candidates with the EU citizenship to take up the job. In most Member States such test is a pre-condition for issuing a work permit for a TCN.

The situation is different in case of live-in TCN caregivers who are rarely employed directly. The only exception is Spain where direct employment of TCN live-in caregivers prevails. In case of Germany and the Netherlands it is occasional. Most of TCN live-in caregivers are employed in Poland and Slovenia and posted to other EU Member States.

## 2.6. Models of live-in care activities

There are many ways to provide care for elderly and disabled persons at a affordable price. Our study shows that most of them require breaking the law and lead to jeopardise workers’ rights. All the country reports point out unregistered work as the most serious problem of the live-in care. At the same time, the country reports list and analyse the legal forms and good practices of employment in the provision of live-in care services.

Legal models of live-in care include:

1. posting of workers,
2. direct employment,
3. self-employment.

Within the posting of workers there is an important distinction between **live-in** care service provision and the service of **leasing care** personnel. The subject of these two types of services is very different and has an important influence on the quality of care and on the distribution of responsibilities and risks among the parties. It is rarely distinguished in the public debate, and – more surprising – it is not duly recognised by researchers<sup>6,7</sup>. Just after 2004, a year marked by the enlargement of the common market by 10 new Member States leasing of personnel by temporary work agencies was the only business model for cross-border delivery of the live-in care service. One of the reasons was the 7 year transition period, during which free movement of workers was blocked by all but 3 old fifteen Member States. The exceptions were Ireland, Sweden and UK. If a



worker from Central or Eastern EU Member State was needed in any other of the old 15 Member States they would need a visa and work permit just like before the accession. However if they were employed by a company in one of the new Member States and posted within the framework of freedom to provide services, they would not require any visa nor a work permit. It should not come as surprise that temporary work agencies were blooming. Already then care services were needed although on a smaller scale than now. Getting a job via temporary work agency was easier than applying for work permit. With time some of the temporary work agencies gradually evolved into care service providers. Such specialised companies are responsible for the service of taking care of a senior person. Posting a caregiver is a necessary element of this service, but it is a recruitment, training, matching the specific needs of a senior with specific skills of a caregiver and most of all – assuring the continuity of care despite changing caregivers. In case of temporary work agencies, the nature of the service is leasing of an employee and keeping his/her payroll.

The responsibility of the care activities is on the client's end, who becomes a user employer. It important to stress that leasing temporary workers in the care sector is rare, and most of the services in the formal economy are provided by specialised care companies.

Another typology within the posting of workers model would be based on the **social security** principles and distinguish the model based on insurance in the sending Member State and in the receiving Member State. It important to realise that social security legislation is not the matter of free choice (as is the case in applying labour law). Objective criteria laid out in Title II of the Regulation 883/2004/ EU on the Coordination of Social Security Systems assure that one legislation is applicable and determine which one it is. There are three rules which determine applicable legislation:

- Art. 11 Lex loci laboris
  - for migrant workers,
- Art. 12 Continued sending Member State legislation
  - for posted workers and
- Art. 13 Place of residence or employer's registered office
  - for highly mobile workers carrying out their work in two or more Member States

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<sup>6</sup>J. Steiner, V. Prieler, M. Leibfingler, A. Benazha w artykule: 'Truly Legal!? Legal framing and legality narratives in live-in care in Austria, Germany and Switzerland'

<sup>7</sup>S. Leiber, V. Rossow, Beschäftigung von Migrantinnen in der sogenannten „24-Stunden-Betreuung“ in Privathaushalten. Expertise im Auftrag des Sachverständigenrats für Integration und Migration für das SVR-Jahresgutachten 2022, Berlin,

Since the criteria determining the applicable legislation are well established and known to employers and employees, business models and contracts may be and most often are tailored to prevent unexpected or uncontrolled changes of the applicable legislation.

This way service providers, clients and caregivers may have a limited influence on the applicable legislation. In extreme cases this leads to cherry picking and contribution shopping. A company from a high contribution Member State sets up a **letterbox** company in a low contribution Member State using the freedom of establishment, recruits caregivers there and post them to a high contribution Member State. It's only purpose is to hire workers through this branch and then post them to another Member State. A letterbox company has no intention to deliver services in the country of establishment. The problem with letterbox companies is that despite gaining an unfair competitive advantage, they are not exactly illegal. They are constructed on one of the fundamental economic freedoms – the freedom of establishment. Last but not least: it is very difficult to prove the intention and even more difficult to prove lack thereof. In the ongoing legislative initiative of the Commission to amend Regulations 883/2004/EU and its enforcement Regulation 987/2009/EU a controversial attempt has been made to constrain the possibility of using Art. 13 by letterbox companies. Unfortunately the proposed amendment would also prevent genuine companies from benefitting from Art. 13 .

Another variation of the posting of caregivers would be based on a **business trip** rather than on posting of workers. Depending on the chosen model there are discrepancies in caregivers' rights. In business trip, the contractual place of work does not change and the employee is entitled to board and lodging. In case of posting of caregiver there is contractual temporary change of place of work, which means that a caregiver is not entitled to business trip costs refund. These two models may influence the net remuneration because per diem allowance is a cost (not gain) and as such it is subtracted from the basis of tax and social security contributions.

**Direct employment** is by far the most popular model of employing a live-in caregiver and this is the model in which most undeclared work is hidden. Protection of a household privacy makes monitoring and control of the working conditions, tax and social security duties untraceable. Contracts are verbal and a label of being “illegal worker” is put on caregiver to invoke an impression that he or she is breaking law. From the client – beneficiary of the service – perspective the risk of being charged of unregistered employment is very low. There are few reasons why a small fraction of the demand is still fulfilled by specialised service providers: access to information on the seniors in need of care and on the potential caregivers.

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<sup>8</sup>For detailed analysis of the amendment proposal see Benio M., Kiełbasa M., Schwarz S.: Social Security Coordination: How to Stop Abuse of Law by Letterbox Companies? ELMI Working Papers, 26.05.2021 Kraków

The former is usually covered by intermediaries in the receiving Member State, while the latter – by service providers from the sending Member State. Another reason to hire a registered caregiver or to use the services of a specialised service provider is security and liability for potential damage or malpractice. The very nature of the grey market is that the contracts are weakly supported by the justice system. So all potential conflicts and misunderstandings must be solved by the parties and not in court litigations.

Self-employment is a legal but controversial model of live-in care service provision. A self-employed caregiver must advertise their services, take care of the marketing, searching for a client, and take the business risk of losing the only client upon his or her death. Some of these management tasks and a large portion of the business risk is eagerly covered by intermediaries – companies whose activity is to take care of self-employed caregivers – from registering their activity, choosing optimal tax model, assistance in searching clients, signing default live-in care contracts, to getting new assignment whenever a senior is moved to institutional care, hospitalised or... deceased. The self-employment model is the more controversial the more a caregiver is dependant on intermediary.

There is no clear distinction between independent business and subordinate work and in each case the features of the contract must be examined.

All three models are present in Germany and Italy. In the Netherlands senior care is predominantly institutional. Live-in care covers small and unresearched fraction of the demand for senior care. Spain is the only country where third country nationals are hired in the form of direct contracts with the senior or senior's family. The reason for that is language and cultural proximity of immigrants from Central and South American countries.

If illegal models are included, the variations are endless: starting from unregistered employment, cross-border bogus self-employment and domestic bogus-self-employment. The most difficult for classification are the situations where there is only one or two elements missing in otherwise full legal compliance models. For instance, as will be explained in the next chapter, posting of a TCN requires that his or her habitual place of work is in the sending Member State. This is difficult to assess in case of TCN's first cross-border assignment if they had arrived to the sending Member State only recently. It has become even more controversial after the outbreak of Russian war in Ukraine. Ukrainians who enjoy temporary protection in one Member State have the right to legally reside and work there by default without work permit. There is no minimum work record in their (now new) habitual place of work before they are posted to another Member State. There are even doubts if being subject to social security legislation 30 days prior to posting is required for remaining in the sending Member State's legislation during posting. As this requirement was introduced as a measure against frequent changes of the applicable legislation and against fraudulent abuse of the coordination principles by means of reverse posting. It is safe to say, that Ukraine is no longer their habitual

place of work, as they are neither free nor safe to return there.

Nonetheless is the Member State granting temporary protection their habitual place of work if just after being employed they are posted to another Member State? The answer to this question is positive. In case of unquestionable lack of hard indicators, one must give priority to the will of a worker. The objective exclamation of this will to make a given Member State their habitual place of work was the very application for temporary protection to that Member State.

All our country reports stress the dominating role of **unregistered work** of caregivers – not only TCNs but EU citizens alike. Indeed, unregistered direct employment of a caregiver from a low wage country combined with the provision of accommodation and subsistence is by far the most widespread form of acquiring the care services. Undeclared work of caregivers was also pointed out to be the most serious unsolved problem with negative effects on the safety and quality of the care service. Not only does it distort the market, but too often leads to exploitation or abuse of caregivers rights as workers, shifting the blame and the risk of illegal employment from employer to the caregiver. The research on undeclared work in this sector is very limited. The very nature of undeclared work is that it escapes the statistical reporting and thus can only be estimated on the basis of secondary indicators. In the case of care services such good indicator is the number of persons receiving the care allowance in a given Member State compared with the number of registered caregivers. The number of registered caregivers can also be only estimated on the basis of the number of portable documents A1 issued under the letter Q in the NACE type of activity: social help and social work.

The 2021 analysis based on cross-reference of the number of PDs–A1 attestations issued by social security competent institution in Poland (ZUS) for the care service and the number of beneficiaries of the care allowance in Germany has shown that the caregivers with a valid PD–A1 cover only 10% of the demand for in-house care services<sup>9</sup>. It means that 90% is informal care, and undeclared work. Unfortunately it is impossible to estimate the size of the informal care. Nonetheless it is safe to say on the basis of this research that live-in care services in Germany are dominated by undeclared direct employment of caregivers. As German and Polish country reports show the factor which fuels unregistered work is the legal protection of private households which prevents labour inspectors and customs inspectors from entering the premises where the care is provided without a consent of the owner. Indeed the service providers report that the control is always based on documents and never on the real working and living conditions of caregivers.

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<sup>9</sup>Benio M. Transgraniczna opieka domowa nad seniorami. Podaż w Polsce, popyt w Niemczech

Wielkość szarej strefy – Cross-border live-in senior care. Supply in Poland, demand in Germany – Analysis of the Grey Zone. ELMi Working papers 2021.

The Dutch, Italian, Spanish and Slovenian country reports also point out to unregistered work as the most serious problem in the delivery of care services.

**Posting of workers.** Careful analysis of these popular models lead to the conclusion, that despite additional costs related to the posting of workers, cross-border provision of live-in care service is the safest for the most vulnerable actors: the senior and the caregiver. In the next section we take a closer look to the actors in the cross-border provision of live-in care services by TCNs. We have asked national experts to describe the actors, analyse their (at times) conflicting interests and the ways these conflicts are mitigated. And here is the picture.

## 3 The actors and their stakes

### 3.1. Senior – a person in need of care

An elderly or disabled person, dependent due to old age or damage to health. A person who, without the help of other people, is not able to perform everyday life activities. In Germany, a convenient formal criterion for determining the subjective scope of this concept is to qualify a person for one of the five degrees of care (pflegegrade). The adoption of the formal framework of the German system of care jurisprudence for determining who the patient is has the additional advantage of being consistent with a clear distinction between nursing care (Pflege) and accompanying care (Betreuung). The former includes activities of a medical nature, such as the dosage of medicines, injections, changing bandages or conducting rehabilitation exercises. Of course, not all people qualified for the care benefit require accompanying care. It can be cautiously assumed that constant accompanying care and not only care are required by 3,4,5 care degree beneficiaries.

The demand for live-in care services results from the fact that nursing care workers make home visits only with the frequency and duration that are necessary for nursing (medical) reasons. For this reason, live-in care and nursing care are other types of services that should complement each other. While the care service brings pain relief, live-in care allows to maintain the quality of everyday life.

The interest of a senior is to get a decent quality support in everyday live activities, like walking, eating, washing, using toilet, preparing food, shopping, reading, socialising. All this must be provided at an affordable price. Seniors expect continuous 24 hours presence of one and the same caregiver, who would speak their language.

They wouldn't mind if a caregiver has other household skills and easily accept "small favours" in activities like house cleaning, window cleaning, gardening, house repairs, driving, grandchildren babysitting (as au pair) etc. They willingly provide a room and access to bathroom, kitchen, TV, and internet. Those benefits in kind

are usually provided free of charge and on top of the remuneration. In the sending Member State these benefits in kind might be regarded as taxable income. The European law leaves the qualification of such benefits subject of national legislation and they may differ between the Member States.

Whatever the model and source of financing of the live-in care service, it must be stressed that the person in need of care, called herein a senior for lack of better expression is the most vulnerable actor on the stage of live-in care services. His or her dignity and comfort of life, despite of senior age and/or health detriment depend on all other actors. A senior is most directly dependant on the caregiver, his or her skills, patience, personal attitude.

### 3.2. Caregiver (TCN)

The situation of TCN caregiver differs from country to country for two reasons. In case of Germany, the Netherlands and Poland the caregiver assisting in daily routine (non medical activity) is not regulated but it is a recognised profession. In case of Slovenia, Italy and most of all – Spain, there is no distinction between medical (nursery) and non medical (assistance) care. On top of that In Italy and Spain collective agreements play much more important role in shaping working conditions (and especially remuneration) for all the professions. The personal scope of application of collective labour agreements is therefore expanded on unregulated “similar” professions.

As a result the caregiver’s work may be classified as the closest to a nurse and covered by collective agreement for nurses. This implies inter alia the recognition of nurse qualifications – a condition reported as most difficult to meet by TCNs in the Spanish, Italian, Serbian and Slovenian country reports. In case of Italy this leads to a small number of TCNs employed in care services, but in case of Spain TCNs are formally hired as housekeepers, and formally covered by collective agreement for housekeepers. Then their duties are gradually extended on taking care for senior members of a family, sometimes babysitting.

This was unexpected and interesting finding of the comparative analysis: in Germany TCNs hired as caregivers are gradually burdened with housekeeping work, whereas in Spain housekeepers duties are gradually extended to care for seniors.

Our research shows significant differences in the average profile of EU-citizens caregivers and TCNs. Caregivers are predominantly females and this is where similarities end. EU-citizens are in their fifties whereas TCNs are in various age groups from their twenties to sixties. As for the motivation to take up an assignment as a live-in caregiver in another country TCN caregivers today resemble caregivers from Central and Eastern EU Member States from fifteen years ago. They were people who were forced by economic situation to look for any job abroad. Men went to manual labour, and women as domestic helpers (housekeepers) and unskilled caregivers. Those are TCNs’ motives today. Housekeepers from Ecuador, Columbia, Honduras come to Spain and become caregivers. Unskilled workers

from North Macedonia, Albania, North African countries come to Italy and Greece driven by economic necessity and take up any job available. Serbian nurses go to Slovenia get a job there and then they are posted to other Member States as caregivers. Similar pattern is used in case of Ukrainian women hired in Poland and posted to Germany.

All these directions of work migration are driven by income differences, poor economic situation including high unemployment back home and skill shortages in the EU. The most recent driving force is fleeing from war in Ukraine.

In case of EU-citizens from Central and Eastern EU Member States, there live-in care job is most often taken by people looking for casual work or additional income. It is willingly taken by employees of the public sector (teachers, social workers, nurses) who do have a job back home but their modest salary is not enough to meet their needs. So from time to time they take unpaid leave and go to Germany for a few weeks to repair their family budget with a saved caregiver’s remuneration. The second group are early retirees who are still active. The third and a growing group consists of persons who work exclusively as live-in caregivers and only abroad but with long intervals to live life to its full back home. The income they earn abroad is enough for them to live a comfortable life and devote themselves only to family, travelling or hobby. Their intervals between subsequent live-in care assignments are longer and longer whereas the assignments are shorter.

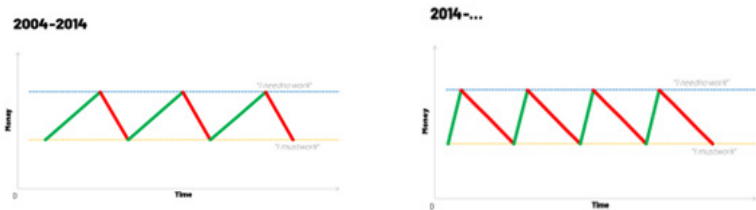


Fig. 1. Live-in care assignments and intervals

Source: data from a live-in care service provider from Poland.

Based on data from a Polish service provider, the average number of days of stay of an individual caregiver in the senior’s household was growing from 53 to 59 days in the years of 2011–2013 and then it has been steadily decreasing to reach 49.6 days 2019. In the first year of the COVID–19 pandemic (2020), there was a sharp growth of the duration of assignment to 55 days. Initial restrictions on crossing borders, and obligatory quarantine had caused less frequent returns home and an extension of the period of stay at senior’s home. It seemed also to be in line with the general recommendation to limit mobility and at the same time it did not jeopardise the continuity of care for the seniors.



In the survey for this project we have asked caregivers from EU and from third countries about their readiness to take up more duties for the same or higher remuneration and if they would extend their assignment duration. The answers from EU posted caregivers and TCNs were compared. In case of additional tasks (e.g. taking care of two seniors in the same household) the answers were similar but TCNs were less reluctant to increasing the duration of their assignment.

The conclusion is that TCN caregivers are valued not so much for being cheaper but for being more flexible. At the same time they usually have lower language skills. The outstanding exception is Spain as a receiving country for obvious reason that TCNs come to Spain from Spanish speaking countries of South and Latin America.

All country reports show that the awareness of workers rights especially in posting of workers is very low in case of all live-in caregivers, but due to language barrier (see Spanish exception) the law awareness is lower among TCNs than the EU caregivers. If TCNs have formal qualifications to be a nurse or a licenced caregiver, rehabilitation specialist etc. in their home country, their qualifications are almost never recognised in the EU Member State, with no distinction between directly employed and posted caregivers.

The paradox of this very characteristic feature is that TCNs are often more valued and sought by seniors and their families as they may be unrecognised and unlicenced but very experienced and competent nurses. They take up live-in care job remunerated under their real qualifications. This conclusion is confirmed in the Serbian and Slovenian reports: The drainage of skilled medical personnel who take up jobs below their qualifications in the receiving Member States is a serious jeopardy to the health care systems of the sending MS or TCN's country of origin.

### 3.3. Family

Family of a person in need of care is a very important actor. They benefit from the live-in care service indirectly – by making sure that their closest member of family is safe and taken care of. They benefit directly by receiving a relief from the moral and economic duty to take personal care for the senior in the family. The very presence of caregivers unloads economic potential of working members of the family (usually female) who would have to reduce earning activity or simply quit the job in order to take care personally for a senior in need. They usually perform work with a higher added value than the work of a caregiver, so the economy of the receiving Member State also benefits from the presence of a TCN caregiver.

At a first glance the interest of the family and that of the senior are the same. But all too often they represent conflicting interests. The family members frequently participate in financing the service, and at times – contrary to senior preferences – they are more interested in the quantity (continuity) than in the quality of the service – They are interested in 24 hours readiness to work.

They would like caregivers to do housekeeping, cleaning, cooking for entire family,



gardening, babysitting, walking dogs and doing all other domestic work.

### 3.4. Fraudulent service providers

The country reports point out that undeclared work is the biggest problem in live-in care services, we start the description of service providers with illegal models of organising the service. **Individual caregiver** can directly conclude a contract with a senior of the family and become service provider. A caregiver can be employed directly on the basis of employment contract with a senior or it's family. Most of unregistered workers do have such contracts in an oral form only. It is not precise but a widespread expression used in the literature that the work with no contract. This is not entirely true or precise. The fact that they do not have a written contract does not mean they have not agreed on the essence of mutual obligations, i.e. the care activities, the remuneration, the accommodation. So undeclared work starts with the lack of a written agreement. The caregivers are pushed into the black market for many institutional reasons. First, a TCN would need a work permit, for which the senior or his/her family would have to apply to local employment authority, producing proof that there are no EU citizens willing to take this job. At the same time the risk of being charged with illegal employment is relatively low, given the protection of private property from being searched by labour inspection or immigration office. A TCN caregiver with no work permit becomes an "accomplice in a crime", and/or – like in Germany – illegal resident risking deportation with a ban on entry for 2–5 years. They should rather be treated as human trafficking victims.

Last but not least, the cost of such service can be lower for the family and the remuneration can be higher, since public dues (taxes and social security contributions) are not paid. Important side effect is that such illegally employed TCN has no health insurance or social security protection.

The described above undeclared work model does not meet the needs of a senior. One caregiver would not be able to provide 24 hours care for uninterrupted period until a senior will have ceased to need it upon his/her death. Also unregistered caregivers need information on possible clients, a replacement in case they get ill or would like to make a break for going home to visit their own family. All these problems can be solved by sham intermediaries, fake service providers and letterbox companies. These are cross-border organisations to facilitate fraudulent practices in the care service sector.

An **illegal intermediary** who, on behalf of seniors and families, recruits women, third-country nationals staying on the territory of a sending Member State or even directly from the territory of third country. Recruiters often advertise on online forums, established and moderated by other actors outside the country where a senior needs care. Many candidate caregivers deliberately and consciously choose to work in the black because they consider it to be the most advantageous option. Others are convinced of a genuine legal job offer. Like any other internet

scam this one looks very plausible.

A **letterbox company** – a business activity established in the sending Member State solely for the purpose of creating the illusion of legal employment. They do not provide any services in the country of formal establishment, because they serve only as a façade of the enterprise.

They are usually controlled by managers from the receiving Member State, although their formal owners may be their family members or hired fake owners with the right of establishment.

Experts claim that the owners of these two types of sham business initially plan to employ TCN caregivers legally, but over time they realize that they will not be able to meet the conditions required by EU law and by the legislation of the receiving Member State and that genuine legal posting of a TCN caregiver is too complicated. Gradually, step by step, they begin to go beyond the framework of the law, which is facilitated by a great sense of impunity. At the beginning, they stop applying for PDs–A1 forms, which allow you to pay social security contributions of employees posted to sending Member State social insurance funds, and finally they stop declaring posted TCNs to social security and stop paying contributions at all. Such change is difficult to detect by a caregiver, who may be convinced of his or her legitimate employment and social security. Until recently forgery of PD–A1 was so much easier than applying for a genuine one. Digitalisation of social security coordination by introduction of the ESSI (European Social Security Information Exchange System) and gradual access of competent institutions to this system will make the forgery easier to detect.

As of 1 April 2022 Polish social security institution (ZUS) has introduced fully digital application procedure combined with a open access to application checking the validity of a PD–A1. A caregiver, a customs officer, labour inspector may enter the unique number of PD–A1 in question and digitally verify its validity. It is much harder to forge a digital PD–A1. The problem may be in the poor access to internet by control institutions of receiving Member States, especially when control is done on–site. And naturally, this digital solution does not solve the problem of limited possibility to enter private home of a senior.

Unfortunately, letterbox companies are not effectively detected. Control institutions do not have effective tools that would allow this. Undeclared live–in TCN caregivers are “invisible” to control institutions. As a result, letterbox companies are growing. In order to make themselves credible among the candidates, they resemble legally operating companies – they have colourful websites that give the impression of their proficiency and legal status. In fact, their registered offices are registered at fictitious addresses and their activities are limited only to recruiting and transmitting candidates’ data to the headquarters in the receiving Member State, whose legitimate business there is to search for customers.

**Bogus self–employment** is a convenient and cheaper alternative to unregistered

employment. However it is reserved almost exclusively for EU citizens, as only they enjoy freedom of establishment and freedom to provide services. It is very important group of actors in the live-in care sector, so they must be mentioned here. However not in the context of TCNs. Registration of a business may be either in the sending Member State and then the service provider and a caregiver in the same person goes temporarily to provide service in another Member State. Genuine self-employment would require a normal activity in the sending Member State, which in case of caregivers is very seldom. Another form of bogus self-employment is based on a business activity registered formally in the receiving Member State, but with a strong support of a business facilitating company which recruits a caregiver, shadows the registration procedure, tax declarations, social security, accounting and all other administrative formalities, then provides clients, dictating the place and duration of live-in care service. This type of bogus self-employment is hard to detect, because it is virtually impossible to prove that a caregiver is dependent on her business partner intermediary to the same extent as a subordinate employee to her employer.

Temporary protection granted to war displaced Ukrainians opens access not only to employment but to economic activity as self-employed. So the second of the above described forms of bogus self-employment is expected to be accessible to TCNs with temporary protection granted in the Member State of a senior's residence.

### 3.5. Genuine service providers

This is slowly growing but marginal fraction of the live-in care service providers market. They are companies established in Poland, Slovenia and other Central and Eastern EU Member States not represented in this project, which recruit, train, employ, and post caregivers. They take full responsibility for compliance with law on entry and stay for TCNs, working and living conditions of caregivers, and most importantly – the quality and continuity of the service. Not only do they recruit and employ caregivers but provide professional training for them and match their skills with individual needs of a senior. They often cooperate with institutional care of the receiving Member State realising that their service is complementary to health care and elderly care system. In order to limit the staff fluctuation they take care of its staff by offering substantive support in everyday work and professional development. They are usually medium size businesses. Small service providers cannot afford legal support to assure full compliance. In case of TCNs there are additional formalities related with their employment, legal residency and with posting them to other Member States in the framework of service provision. These complex legal issues are explained in the next chapter.

Another type of a genuine company through which hiring and posting a TCN caregiver is possible is **temporary work agency**. As has been explained, their business however is not care service but recruitment, lease of workers and payroll. Their client becomes user employer and becomes responsible for the care quality.

### 3.6. Intermediaries

These companies know the market and are responsible for finding clients, for informing them on the conditions of living required by live-in caregivers, for matching them with a foreign service provider. Despite the fact their substantial service ends when the service begins, they are often remunerated throughout entire time of the service provision. A common argument in the public debate is present that the service providing company from another Member State and the local intermediary take to high a commission compared. To support this argument an oversimplified comparison of what senior pays and what a caregiver receives is presented. Some authors claim that the commission is 50%. At the same time the service providing companies and intermediaries declare only 5–7% taxable profits and support their argument of low margin with the fact that these services are underinvested and not attractive for big global investors.

### 3.7. Social partners

Trade unions became interested in the posting of workers only after 2004 EU extension. Posted workers are underrepresented by the trade unions. With the exception of construction services, posted workers are not in the unions. The main reason for this is that posted workers are atomised in their assignments.

This is especially true in live-in care services, where the work is never performed collectively. The only two occasions when caregivers meet and have a chance to exchange opinions on working conditions is training and when they are on the bus returning from or heading to another assignment. Internet forums and social media virtual groups play important role in filling this information gap, but they are not sufficient to spark trade union movement. There is also a reason why they are not interested in joining unions in the receiving Member State. They do not want to participate in the organisation associated with their competitor workers from the receiving Member State. At the same time trade unions from the receiving Member States are not hiding their protectionism intentions. They aim at protecting their own members' jobs against posted workers who are accused since Rush Portuguesa case of "taking local jobs", "displacement" of local workers, "social dumping" and "ride to the bottom". It is only very recently when information to posted workers on their own rights is widely provided to non-members by trade unions in the receiving Member States.

A note on the margin. Our POSTCARE project seems to confirm the above diagnosis – trade unions being partners in this project represent nurses in institutional care. This is not to say they are not deeply engaged in the posting of TCN live-in care services, but mostly because they loose professional qualified nurses who for economic reasons take jobs as unqualified caregivers. So far there is no trade union organisation for live-in caregivers, not mentioning TCN caregivers.

The situation looks only a little bit better on the side employers. The genuine service providers who aim at full legal compliance are so few on the market

that their power to represent this sector is limited. There are two organisations representing intermediaries in Germany. In Poland the only representation is for temporary work agencies, which, as has been noted before, do not provide care service but the leasing of care personnel.

The potential role of social partners is invaluable. It is only them who could force policy makers to lift institutional barriers and to regulate the cross border provision of live-in care services with the involvement of TCN caregivers. Also social partners are the best source of quality standards and employment standards for this service. European Labour Mobility Institute is strongly advocating for establishment of social partners in the live-in care services.

### 3.8. Policy makers

Ageing of population will continue to cause rapid growth of demand for care services. So far it was observed in highly developed economies, but since Eastern and Central EU Member States are catching up in the ageing of population speed, their economies can no longer provide sufficient number of caregivers. Relatively better labour market situation in the latter countries combined with closing of the economic gap between high wage and low wage Member States also contributes to shrinking employment resources from these countries. It was only a matter of time before these labour shortages turn into a strong impulse for third country nationals.

Policy makers have all the tools and resources to facilitate TCNs employment in the live-in care. Unfortunately, just like in the case of cross-border service provision they seem to be content with the status quo. Live-in care services provided in the black market constitute the least costly solution for a growing demand for care. The policy makers will happily blame illegal workers and foreign facilitator of their presence in the households of their own senior citizens. Applying equal employment conditions, equal gross remuneration and equal allowances and benefits would require strong financial support from the state.

And indeed public debate on care on the EU level revolves around institutional care and the right of seniors to a place in a care house. Live-in care is a forgotten and neglected service in which a blind eye is turned on inappropriate working conditions, activities of sham intermediaries, bogus selfemployment and most of all unregistered work of TCNs.

4

## The Law. Legal framework for posting of TCNs in the live-in care services

Posting of workers is a form of temporary work mobility based on the freedom to provide services, and not on the free movement of persons (workers). Posting of workers, which is increasingly becoming a source of live-in caregivers, is

a hybrid type of intra-EU labour mobility based on the free movement of services, which has experienced a strong upward evolution during the last fifteen years<sup>10</sup>. Based on the provisions of Art. 56 et seq. of the TFEU, it is to be differentiated from another important form of labour mobility: migration to another EU Member State under the free movement of workers (persons) (Art. 45 et seq. TFEU). Posted workers are employees who are sent by their employer to carry out a service in another EU Member State on a temporary basis<sup>11</sup>. Free movement of services, allows businesses and self-employed persons to deliver services on a non-discriminatory basis in other Member States than their country of establishment.

Rather than moving to other countries independently (as ‘migrant workers’, relying on their rights under Art. 45 et seq. TFEU), posted workers, including also third-country nationals, are sent (or ‘post themselves’) as part of a cross-border service provided by their employer (or by themselves). Therefore, the situation of posted workers is ‘split’ – even though they carry out work in the receiving (‘host’) Member State, their residence is (generally speaking) not shifted to the host country, as they, by and large, stay connected with the sending Member State, which for the EU citizens is usually also a home country, given that they retain their agreement concerning employment (e.g. contract of employment or a civil law contract in case of Poland) throughout entire duration of their stay abroad. They generally remain continue to be subject of the social security legislation of their home country (sending Member State), while they become subject to certain areas of the labour and employment legislation of the host country<sup>12</sup>. Most of them are also fully taxed in the Member State where their employer is established, when their posting missions last less than 183 days per 12-month period<sup>13</sup>.

Given the above complex legal framework, posting of workers is far from unambiguous and it gets more complicated when posted workers are third-country nationals. The logical legal framework derived from the freedom to provide services stems from jurisprudence of the Court of Justice of the European Union. In simple terms

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<sup>10</sup> F. De Wispelaere, L. De Smedt, J. Pacolet, Posting of workers. Report on A1 Portable Documents issued in 2019, Luxembourg: Publications Office of the European Union, 2021, p. 9. See also E. Fries-Tersch, M. Jones & L. Siöland (2021), 2020 Annual Report on intra-Eu Labour Mobility, Network Statistics FMSSFE. European Commission; S. Giubboni, Dopo Viking, Laval e Rüffert: in cerca di un nuovo equilibrio tra diritti sociali e mercato, [in:] Libertà economiche e diritti sociali nell’Unione Europea. Dopo le sentenze Laval, Viking, Rüffert e Lussemburgo, a cura di A. Andreoni e B. Veneziani, Roma 2009, p. 124 et seq.

<sup>11</sup>Cf. C. Barnard, The Substantive Law of the EU. The Four Freedoms, Oxford 2013, p. 365.

<sup>12</sup>See D. Lens, N. Mussche, I. Marx, The different faces of international posting: Why do companies use posting of workers, European Journal of Industrial Relations 2021, p. 2–3.

<sup>13</sup>G. Davies & D. Kramer, The Posting of Workers [in:] R. Schütze, T. Tridimas (eds.), Oxford Principles of European Union Law Vol. 2: The Internal Market, Oxford (manuscript submitted for publication): [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3939196](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3939196), p. 5 et seq.



if an EU established service provider hires legally a TCN, whose legal stay and legal employment in the sending Member State are unquestionable, this worker may be posted to another Member State just like other workers (EU-citizens) without any additional requirements.

The logic behind this is that the authorities of one Member State have already allowed for stay and for access to its labour market. Any requirements from other Member States would constitute a barrier to provide services by posting workers who are already employed by the service provider.

The starting point is legal stay (residence) and legal employment of a posted TCN in the sending Member State prior to posting and throughout the period of posting. Once these two conditions are fulfilled TCNs may be posted to another Member State within the freedom to provide services without applying for additional work permit in the Member State where the service is provided (receiving Member State). In the landmark judgement ‘Van der Elst’<sup>14</sup>, the European Court of Justice determined that a work permit requirement for posted TCNs in a EU Member State who, in the context of intra-community provision of services, temporarily carry out their work on the territory of another Member State and legally reside and work on the territory of the EEA service provider, constitutes an unjustified obstacle to the free movement of services. Restrictions on the free Movement of services may only be justified under strict conditions (proportional measures to protect public interest, for example to avoid disruptions of the labour market). When posted workers are temporarily working in another Member State this cannot be considered a distortion of the labour market as posted workers do not compete for job places in the host Member State and return to the Sending Member State after completing the job within the service contract of their employer<sup>15</sup>. Thus they are not part of the labour market of the receiving Member State.

Subsequently, the European Court of Justice ruled in the Essent Judgement<sup>16</sup> that for the posting of so-called third country nationals and a reliance on the freedom to provide services, it is not required that the employer and the employee reside in the same country, or are established or active in the same country. This view was reaffirmed in the Danieli judgement<sup>17</sup> on 14 November 2018. According to the Court, imposing a work permit requirement is not an appropriate means of control. Alternative measures such as prior notification, whether or not in combination with the provision of certain information, could be justified according to the Court.

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<sup>14</sup>See the judgement of CJEU C-43/93 “Raymond Vander Elst”

<sup>15</sup>See the judgement of CJEU C-113/89 Rush Portuguesa

<sup>16</sup>See the judgement of CJEU C-91/13 “Essent”

<sup>17</sup>See the judgement of the CJEU in C-18/17 Danieli & C. Officine Meccaniche SpA

In the field of social security the Parliament and Council have adopted Regulation 1231/2010/EU which extends the principles of coordination of social security systems on those third country nationals who would not benefit from it only because of their nationality. Denmark, UK and Ireland made some reservations to this extension, but in all other Member States the coordination principles apply to posted TCNs. Thus a special rule on continued application of social security legislation of the sending Member State covers also TCNs.

Also for TCNs who work in more than one Member State a special rule for highly mobile workers applies. It has been confirmed by the jurisprudence of the Court of Justice of the European Union ('CJUE'). In its judgment in C-477/17 Balandin<sup>18</sup>, the Court held that third-country nationals, who temporarily reside and work in different Member States in the service of an employer established in a Member State, may rely on the coordination rules laid down by Regulations Nos 883/2004 and 987/2009 in order to determine the social security legislation to which they are subject, provided that they are legally staying and working in the territory of the Member States. Therefore, legal stay and work in a sending Member State (in our case – Poland) is a precondition to being able to legally post them abroad<sup>19</sup>.

Since the Vander Elst judgement it is clear that demanding a work permit in the country where service is provided is against the Treaty. But what about the stay (residence) permit or visa requirement? First, it was not an issue in the Vander Elst case because Mr. Vader Els – a Belgium established service provider has applied for French visas for his Moroccan employees. The law on stay in the EU is based on the Schengen acquis and visa code. As a general rule each Member State has the right to control and to limit access of TCNs to its territory. This freedom is limited by common rules on mobility within the Schengen zone. The Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement aims at full harmonization in the rules on crossing the external borders of the EU. In principle, if a TCN legally entered the territory of one Member State he/she is considered to legally resident in free to move in the entire Schengen zone. However Art. 6 (3) allows Member States to make an exception from the exemption, i.e. reintroduce visa requirement on its territory if a TCN enjoying visa free mobility intends to engage in a gainful activity. Germany

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<sup>18</sup>See the judgment of the CJEU in C-477/17 Balandin [ECLI:EU:C:2019:60], para. 47-48.

<sup>19</sup>Please note that given the dimension of our Report, it has been impossible to provide for the full picture of titles of legal stay and work in Poland. In this cf. e.g. Outline of Polish Labour Law System (edited by K. W. Baran), Warszawa 2016; Z. Hajn, L. Mitrus, Labour Law in Poland, Warszawa 2018; see also M. Kiełbasa, M. Szaraniec, M. Młdrala, M. Benio, Posting of Workers from and to Poland. Facts and Figures, Posting.STAT, Leuven, July 2022, retrievable at: <https://hiva.kuleuven.be/en/news/newsitems/posting-stat-enhancing-collection-and-analysis-national-data-on-intra-eu-posting>



has introduced this exception and requires visa from TCNs who want to work in Germany. This requirement applies also to TCNs posted from another Member State where they legally work and reside.

There is one exception from the exception from the exemption i.e. posted workers are free from visa requirement if they are long term residents in another Member State. In order to enjoy long term resident status, a TCN must legally reside in a Member State for at least 5 years.

As a result if an Ukrainian caregiver lives in Poland for less than 5 years, she needs a visa to be legally posted to Germany within free movement of services as a live-in caregiver.

If applied to TCNs within their visa free mobility period (90 days within 180 days) this requirement of German legislation goes against the freedom to provide services. It cannot be justified by protection of the labour market, because posted workers do not attempt access to German labour market. It cannot be justified by the protection of public order as they are exempt from visa requirement and the exception from this exemption may be made only when they intend to work. According to CJEU jurisprudence it could not be considered proportional. Such conclusions can be drawn from the CJEU jurisprudence in at least two judgements *Commission vs. Germany*<sup>20</sup> and *Commission vs. Austria*<sup>21</sup>. The conflict of visa requirement for posted TCNs with the Treaty requires deeper analysis which goes beyond the scope of this report. Until Germany does not withdraw this visa obligation or until the CJEU rules the practical advice for service providers is to apply for German visa in a simplified “Vadnder Elst” procedure<sup>22</sup>.

## 5 Research

### 5.1. Methodology

The authors of country reports who contributed to this research have agreed on the research aims of the project, which has made comparative study possible. However due to a huge discrepancies in the characteristics of the countries in questions they have been given only general instructions as to the methodology and a full authority on how to approach the research questions. The desk research, interviews with experts and stakeholders have been carried out in all the countries,

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<sup>20</sup>See the judgement of CJEU 244/04 *Com vs. Germany*

<sup>21</sup>See the judgement of CJEU 168/04 *Com vs. Austria*

<sup>22</sup>*Visum Handbuch* 2021, p. 519 et sqe

while interviews and/or questionnaires with caregivers only where it was both relevant and possible. Overall the following research methods had been used to draw the conclusions and policy recommendations: desk analysis, esp. of legal sources and literature, analysis of the existing quantitative data, questionnaires and surveys with caregivers, external expert interviews, focus group meetings with experts and stakeholders and a foresight meeting of the experts involved directly with the POSTCARE project.

## 5.2. The aims of the research

### 5.2.1. Understanding 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<sup>23</sup>. 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 respectively and posted to Germany or Austria as caregivers. However even this tendency is already somewhat outdated and new other nationalities from far East Asia are considered both by the clients and service providers. The surveys have also been aimed at verifying if this tendency is driven by lower costs of employment or lower expectations as to employment conditions of third country nationals. To this end we have asked EU-citizens and third country nationals caregivers if they would take more tasks (another person to take care of) or longer hours for additional remuneration. The answers were rather surprising, as both reference group and third country nationals were reluctant to take up extra tasks even for a higher remuneration.

It must be stressed, that the response to the questionnaires has been too low to draw definite conclusions. The results must therefore be treated as a pilot study only. This is why the researchers have decided to use other research methods which would complement the survey.

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F. Höpflinger, J. Van Wezemaal (2014), Age Report III Wohnen im höheren Lebensalter Grundlagen und Trends, Zürich / Genf, [https://www.seismoverlag.ch/site/assets/files/6022/oa\\_9783037771433.pdf](https://www.seismoverlag.ch/site/assets/files/6022/oa_9783037771433.pdf)

Two of them have proven to be especially fruitful: country expert interviews and the foresight workshop during which scenarios for the future were drawn. We have verified both hypothesis growing demand and lower wage expectations of TCNs. Then we have looked 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.

### 5.2.2. 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 caregiver's skills to the specific care-seeker's needs. Whenever 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, at times, leads to modern slavery.

**The second aim of the research phase was 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 community, 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 periods of time,
- economies and labour market of the country of origin
- policy makers,
- social partners,
- NGO's

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

The third aim of the research has been 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 from 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.

### 5.2.5. The aggression of Russia in Ukraine as a new factor in the employment and posting of third country nationals in the in-house care services

The military aggression of Russia in Ukraine has influenced the situation of Ukrainian citizens fleeing from war to the EU and had indirect effect on the labour markets of the EU Member States, including the in-house care service. The Council Decision of 4 March declaring a massive inflow of war displaced persons has opened a legal possibility to grant temporary protection to persons from Ukraine. More than 4 million women and children have entered the EU and asked for temporary protection. At the same time significant number of Ukrainian male workers have left their jobs in the EU and rushed back to defend their country. Both trends of mobility had impact on the labour market. Male dominated sectors (construction, transport) have faced sudden shortage of skills.

At the same time female dominated sectors (production and indeed in-house care services) have been supplemented with additional potential workers. However, despite legal stay, lifted barriers in the access to the labour market, social benefits, education and housing, the situation of the war displaced persons is far from full labour market integration. After 4 months only 18% of adult Ukrainian women have actually found a job. The reasons are manifold: low communication and language skills, redundant professions skills, difficulties with skill recognition on one hand, lack of social and education infrastructure for the dependents of skilled Ukrainian

women and deep conviction of temporary nature of their visit in the EU due to a quick forthcoming defeat of the Russian aggressor.

### 5.3. 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.

### 5.4. Hypothesis and research questions

**5.4.1. The growing number of third country nationals is primarily the result of scarce labour resources in the sending Member States**

**5.4.2. 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?

**5.4.3. 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?

**5.4.4. 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?

### 5.5. State of the art – the legal framework

This phase of the research was 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.

### 5.6. 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. 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.

### 5.7. Individual interviews

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

### 5.8. 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.

### 5.9. The stages of the research

The desk research has resulted 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 have been included. Potential country specific problems are described as a result of the survey and interviews phase of the research. The results have brought answers to the specific research questions and have been incorporated in the final versions of the country reports, where applicable. The interviews and focus group interviews were aimed at formulating the policy recommendation.

The Partners have been encouraged to submit partial results of the research – contributing to the country reports – in scientific journals. The policy recommendations have been presented at the final conference and submitted for dissemination in the form of academic publication.

## 6 Scenarios for the future – Foresight

The last part of the project was devoted to scenarios for the future posting of TCNs in the live-in care services. To facilitate the discussion among the partners of the project and their experts, a two days foresight seminar has been structured around six problem areas:

1. Will the **demand** for care services grow at what pace? Will it stay the same/decrease? Why – what are determinants and indicators of these changes?
2. Will **direct employment** of TCNs in the care services overtake posting them from other (CEE) countries? Determinants, indicators to support this scenarios?
3. Will the **undeclared work** among TCN caregivers in comparison with EU citizens prevail/grow/decrease? Why? – Indicators, determinants.
4. Will the **quality** of care services improve/ decrease? Why? – Indicators, determinants.
5. Will the **working conditions** of TCN caregivers improve/decrease? Why? – Indicators, determinants.
6. How will **financing** of the care services change/evolve in the future?

Here are the main problems diagnosed by the partners and experts and some policy recommendations resulting from the foresight seminar, which conclude the project.

### 6.1. Problems

- Third-country nationals are discriminated by the authorities, and this is institutional discrimination – Frequent deportations of duly posted TCN

caregivers who legally resided in the sending Member State but had no Vander Elst visa is the most striking example of institutional exclusion of TCNs in this sector.

- In some receiving EU Member States there is a specific exemption from the registration of posted live-in caregivers. Although we generally agree that less red tape makes cross border services easier to deliver, in this case it is a proof of turning the blind eye to undeclared work.
- Labour inspectors are not allowed to inspect the working conditions at private homes.
- Many EU citizens are reluctant to work for a low wage or when the conditions are not to their liking. Third-country nationals often accept more duties for the same remuneration. However the reason for their employment in the live-in care sector is shrinking resources of EU caregivers.
- Worse employment conditions and lower pay may affect the quality of the Services provided. It is in the interest of a senior to obey the rules on minimum remuneration.
- Caregivers' work quality may be degraded if they also have to do extra home activities, such as cleaning or cooking. And it does not matter if they are additionally remunerated or not for additional work.
- Training for carers should be regulated and set from the top. They could be paid for by the state or the Employer, or in half.
- Language and communication skills are lower among TCN caregivers than among EU citizens caregivers. Training prior to being posted is a necessity.
- Professional training and further language training could also take place during the posting, through the state system – community nurses, family doctors who could provide recommendations to the patient. Training and skill development including online learning is too rare among caregivers.

## 6.2. Recommendations

- Posted workers must have access to transparent and clear information about their rights
- Workers must be informed of the minimum wages and benefits and possible remedies against the employer or client
- Awareness should be raised to prevent potential exploitation
- Cooperation between supervisory authorities and between supervisory authorities and social security providers in third countries, countries of posting and posting needs to be improved to prevent fraudulent referrals and to assist exploited workers



- Procedures related to intra-EU mobility of third-country nationals need to be simplified and improved. If Vander Elst visa is against EU law, simple notification should replace it. If it is required it must be easily accessible with online application procedure.
- Changed conditions for obtaining a work permit in countries such as Slovenia may allow greater independence of the employee from the employer. Changing employers should not require a new work permit.
- Direct employment in the countries where TCNs want to work gives migrants legal protection and ensures their inclusion in the social protection system.
- Direct employment addresses some of the weaknesses of the referral system, especially in the case of long chains of subcontractors. Long chains of subcontractors rarely takes place in the live-in care services, but when it does the employer is untraceable.
- Ensuring the possibility of integrating foreigners even as part of pre-integration activities
- Greater support for the activities of non-governmental organizations and associations which, with partial support from public funds and European funds, deal with the employment and work of migrants (counselling, information, direct assistance to migrants);
- Ensuring a sufficient number of workers and their more balanced gender representation in long-term care (migration and activation of older people)
- Tax credits for people who employ caregivers legally
- Simplified rules on the recognition of medical university diplomas and other medical qualifications, esp. nurses,
- Direct employment of TCNs may strengthen workers' safety and help counteract undeclared employment, but it will result in much higher costs of care
- State subsidy for caring for an elderly person for a family member and state subsidy to social security contributions ensures affordable service and future retirement rights for caregiver
- Training people to care for the elderly. Especially for TCNs. Basic foreign language training needed to communicate with a senior in need of care.
- Training caregivers in first aid organised by NGOs, co-financed by the state.
- Every incoming care worker should receive a basic information package regarding the country in which they will provide care services (such as do and don'ts)

- People employed in the care services in a country other than their home country should be able to count on specialist support from psychologists.
- Audit of the care provided at least once every 6 months in the senior's home by community nurses or other medical workers with similar qualifications
- Legalization of stay and work in EU countries should be made easier for third-country nationals wishing to work in the care sector
- Monitoring the quality of services / employment standards
- Increasing control over the payments of care allowances, so that they do not end up with families employing undeclared caregivers.

### 6.3. Conclusions

Two issues concerned the researchers the most and are common for all the country reports –

1. the growing undeclared work in the live-in sector and
2. falling quality of the service.

Posting of TCN caregivers in the live-in services is legally possible but very complicated.

This complexity and extremely high cost of compliance coincides with poor efficiency of inspections, which are denied the right to enter a private home of a senior. Care allowances paid in the form of cash in hand on equal terms to those who use services of legitimate law compliant companies and those who hire in black makes legal posting of TCN economically unprofitable. In order to reduce unregistered employment of TCN caregivers, their legal stay and work as posted workers must be made easier. The financing of care service must be supported with state sources of financing – either in the form of tax exemption or care benefit vouchers, or direct subsidy to the family or the senior. In any case the care allowance beneficiary must be accountable for employing a registered service provider. To this end an voluntary register of live-in care service providers must be installed in both sending and receiving countries. In the care sector there should be no discrimination of TCNs at all, as they do not constitute any threat to local labour market.

We believe however that TCNs in the live-in sector will be institutionally excluded from the crossborder service provision and if they stay in the formal economy (which is unlikely scenario) they will be employed directly in the country of residence of a senior in need and not as a part of cross border provision of services. This is already the case in Spain and to a large extend in Italy. Expected amendments in the German legislation should also propel direct employment and/or selfemployment of TCN caregivers.

Last but not least, the Russian war in Ukraine has caused a massive influx of

Ukrainian women to EU, the largest group to Poland. By granting them temporary protection their residence and work in Poland is legal. However they encounter problems when being posted to Germany where they are often expelled with a ban on entry for not having a separate German visa which allows them to work. It is a hidden work permit for posted workers and as such must be questioned for in compliance with the freedom to deliver services. This was the most serious institutional barrier to TCN posting in live-in care services.

Different characteristics of TCN caregivers situation in all the countries represented in this project and detailed description of legal conditions resulting from national legislation can be found in the country reports prepared within the framework of the POSTCARE project. This report should be read together with the country reports.





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