

**Transnationally Acting Brokering Agencies:  
Improving Working Conditions for Live-in Migrant Care Workers  
in a Europeanized Welfare Market?**

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## Abstract

Transnational care workers from Eastern European countries (so called *live-ins*) perform valuable care work in Western European households. Increasingly brokered via private actors, i.e. transnationally acting employment and brokering agencies, this phenomenon constitutes a relatively new form of *organisational labour migration* within Europe, and will be analysed in our paper.

These employment and brokering agencies (relying i.a. on EU posting of workers regulation) are particularly mushrooming in Germany and Poland, skimming off considerable profit and gain from the regulatory lack of legal clarity that prevails at the national as well as EU level. In particular, working conditions are not being controlled and, therefore, remain largely a private matter of the involved parties; the private household and the migrant worker, often resulting in abusive conditions of work. A thorough regulation of this form of domestic work in Germany is still missing. However, there is some motion in this privatised field of transnational care supply: Within the last few years, a relatively small share of German brokering agencies have associated with each other in order to legalise live-in migrant care work, and to counter the hitherto ‘shadow existence’ and dodgy image of this ‘grey’ market with intensive political lobbying – and quality improvement strategies.

In this paper, we discuss preliminary results of the German-Polish research project *EuroAgencyCare*. We look at the influence of those new private actors (agencies) in an emerging care market between Eastern (Poland) and Western (Germany) EU-Member states. We investigate the macro-level of political regulation in this new field, and ask: How do these agencies operate in the legal frame of the EU multilevel system, and to what extent are they suited to shape domestic working conditions for migrant care work?

At the theoretical level, this paper combines two approaches: Taking place within the EU multilevel governance system, this form of organisational labour migration displays how care arrangements in Germany are increasingly being *Europeanised* and *marketised* at the same time. While the Europeanisation of care arrangements points to the fact that transnational work force is stabilising another state’s national long-term care system, marketization manifests itself via new private stakeholders drawing benefits from opportunity structures provided by the EU multilevel system.

Based on a literature review and qualitative interview data, the paper shows how legal uncertainty and a lack of transparency of cross-border brokering arrangements are being used by the agencies and their associations for their corporate and political aims. Enhancing quality standards is an important strategic issue for them in this respect, and there is certain potential in self-committed quality improvement. Their actual influence on improving working conditions for live-in migrant care workers is, however, clearly limited.

## 1. Introduction: Private brokering agencies for migrant care workers – new players in the European Single Market

Demographic change and societal ageing challenge EU member states in East and West regarding solutions for the ‘care question’.<sup>1</sup> This particularly concerns countries where the family traditionally was central for care provision, and a large share of elderly care dependents are still being cared for in their own homes and by their relatives.<sup>2</sup> Who cares for elderly people, when woman increasingly participate on the labour market, and working environments have become much demanding in terms of availability, and regional as well as time flexibility? Due to gaps in national public care systems, cross border care migration based on live-in arrangements in private households is a more and more frequently used solution to this problem. This phenomenon, however, does not only concern Western countries (e.g. live-in care migration from Poland to Germany), but also Eastern member states (e.g. migration from third countries like Ukraine to Poland). Since EU Eastern enlargement, the legal framework for this particular kind of rotational labor mobility between East and West is much determined by the European Single Market setting.

The phenomenon of live-in care work by migrants, resulting also in transnational “care chains” (Hochschild, 2000), is not new and well researched from different sociological angles at the macro, meso and the micro level (Krawietz, 2014, pp. 14–21; Lutz and Palenga-Möllnbeck, 2010, 2015). What is new, however, is the mushrooming of private brokering agencies in this field since EU Eastern enlargement. In particular in Germany, these agencies have spread considerably and have become, as we argue in the paper, new players in the Europeanized care market.

### *A booming sector*

Though in Germany, concrete indices on the number of migrants are nearly impossible to get, due to the informal character of the work and the lack of any central registration unit, as it is the case in Austria, for instance. However, there are estimations rattling around that speak about a margin of at least 100 000 - 200 000 live-in migrant care workers in Germany in (Emunds, 2016, p. 12).<sup>3</sup> In terms of financial volume, a showcase calculation on the financial transfers between two linked states, Germany and Poland, illustrate the extent of transnational migrant care work in remittances: Calculating a six months employment per year at a monthly revenue of 800€ and 100.000 (Polish) migrant care workers in Germany, the annual remittances from Germany to Poland may add up to 480 Mio. €. Taking a scenario of a monthly revenue of 1.500€ as a basis and leaving the number of migrant care workers at the same level, remittances might even add up to 900 Mio. €.

Also in terms of numbers of brokering agencies there is no reliable information available. Analyses based on screenings of agency websites, already in 2008 found approximately 70 agencies in Germany, back then it was about the same number in Poland.<sup>4</sup> It has to be taken into

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<sup>1</sup> Parts of the analysis, at an earlier stage, have already been presented to the Third ISA Forum of Sociology, Vienna, July 10-14, 2016. We would like to thank all participants of the RC02 Economy and Society session for their very helpful comments.

<sup>2</sup> In Germany, the country case we look at more closely in this paper, this share today is, e.g. at 73 % (Statistisches Bundesamt, 2017).

<sup>3</sup> These estimations refer to the entire workforce, meaning that these numbers include those being temporarily in their home country.

<sup>4</sup> Elrick and Lewandowska (2008, p. 727) highlight the dynamic over time as follows: ”The number of mediating services in the elderly care work sector in the Polish-German and Polish-Italian migration spaces has increased over

account, however, that some agencies seem to use several different websites in order to attract their customers (for details cf. Krawietz 2014, pp. 41-47). Nevertheless, in the meantime, the number of agencies is very likely to have further grown, and brokering fees, as far as they are made transparent, are on average around 1.000 Euro per year (Emunds 2016, p. 43). A recent analysis of *Stiftung Warentest*, a German non-profit consumer organisation, has identified 266 agencies via internet search for one of its test reports (Stiftung Warentest, 2017). These estimations may underline the financial importance of the field as a new business area for brokering agencies.

### *Methods*

We are presenting preliminary results of the German-Polish research project *EuroAgencyCare* funded by the German-Polish Research Foundation.<sup>5</sup> The project pursues a mixed methods approach combining quantitative (online-survey) data on employment agencies with qualitative expert interviews with selected representatives of the agencies and their associations, with decisive political stakeholders, as well as with other union or civil society representatives at the European and national level. The semi-structured interviews will be transcribed and analysed via thematic coding (cf. also Hopf and Schmidt, 1993; Kuckartz, 2010; Schmidt, 2012) with MAXQDA software. So far, a systematic literature review and document analyses (looking, e.g., at official statements of the agency associations and other political stakeholders at German and EU level), and four semi-structured interviews with agency owners and association members, as well as with one union representative, have been carried out.<sup>6</sup>

In the following sections, we would first like to present an overview of existing studies on agencies brokering live-in migrant care workers and explain our own analytical approach linking perspectives on “welfare markets” and “Europeanization” (section 2). In section 3, we would like to show for the field of care migration how the EU multilevel system has created new opportunity structures for market actors such as the above mentioned brokering agencies. We also seek to address how in Germany, these new opportunity structures are being used by the brokering agencies. In particular, we would like to draw attention to attempts of some agencies and their recently founded associations<sup>7</sup>, to get rid of their illegitimate role in the ‘grey market’ as a means to become politically accepted actors of the established welfare market (connected to monetary funds of the German long-term care insurance). We would like to highlight some of the corporate (section 3.1) as well as political (sections 3.2) strategies of *agencies in this particular market segment*. In section 4, we would like to discuss chances as well as limitations for an improvement of working conditions for live-in migrant care workers resulting from these recent developments. In section 5 we give an outlook on future research.

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recent years, as official figures for Poland show. After EU enlargement in May 2004, labour recruitment agencies mushroomed all over Poland. The longer history of migration in the province of Opolskie seems to have accounted for a drastic increase in registered agencies, from 29 (2004) to 83 (2005)”. The number and diversity of Polish sending companies will be investigated in the course of our research project.

<sup>5</sup> For further information see <https://soz-kult.hs-duesseldorf.de/forschung/forschungsaktivitaeten/forschungsprojekte/euroagencycare/Seiten/euroagencycare.aspx> (access 7 June 2017). We are grateful to our Polish colleagues from Warsaw University, Maciej Duszczyk and Kamil Matuszczyk, for their support in analysing the Polish state-of-the-art on the topic.

<sup>6</sup> In order to preserve anonymity we speak of them as interviews 1 to 4.

<sup>7</sup> The associations in focus here are the Bundesverband häusliche Seniorenbetreuung e.V. (BHSB; founded in 2007; 18 member companies) and the Verband für häusliche Betreuung und Pflege e.V. (founded in 2014; 34 member companies).

## 2. A Research Gap: Brokering Agencies Acting in a Europeanised Welfare-market

Looking at the European context, the emerging transnational ‘brokering market’ between Eastern and Western Member states has only been tentatively researched so far, and if so, mainly from an Austrian or Swiss point of view. A Swiss based study from 2014 looks from an discursive angle at transnational brokering agencies and argues: Because of successful discursive marketing strategies framing a “caring care market” (Schwiter et al., 2014), market actors are able to answer an urgent societal need with an optimal business strategy. Thereby, they build on gendered and ethnicised subjectivation strategies that in the end would consolidate asymmetrical power positions and neoliberal structural principles.

Other important studies dealing with the emerging phenomenon of transnational brokering agencies and the growing associated market, refer to the Austrian context: In a study from 2010, in the aftermath of Austrian legalization attempts of the ‘grey migrant care sector’, brokering agencies are displayed as newcomers in a quasi-marketised care landscape, creating and shaping new provider-client-relations (Österle et al., 2013). The authors provide an overview of the main characteristics of the agencies. They conclude that the market for migrant carers brokered via agencies is a growing one, that prices vary considerably, that a transparent cost policy is practiced in only few cases, and that the regulation opens doors for an influx of low-skilled care workers, thus, levelling down both wages and quality standards.

Schmidt et al. (2015) analyse in how far regulation endeavours in Austria have led to improved quality standards in domestic care work of transnational migrant workers. Assuming positive spill-over effects “of the reforms, resulting from improvements in terms of basic quality standards and in the relations between 24-hour carers, agencies and users” (ibid., p. 3), the authors investigate in how far the regulation affects coordination problems of (illegal) markets. Valuation, competition, and co-operation are the three central coordination problems of the market. In the Austrian case, the authors find that “some quality assurance mechanisms were introduced, yet no comprehensive mechanisms for monitoring were set up to ensure certain quality standards for users and transparency on service quality of all agencies” (ibid., p. 12). In the end, the sector remains ‘grey’, characterised by a “vast under-regulation” of the agencies’ work (ibid., p. 17).

Bachinger (2016) evaluates effects of international norms in this sector, using the example of Austria. The author states that in the course of the the regulation via the national *Hausbetreuungsgesetz*, labour rights of the caregivers were only secondary. Also, recruitment and brokering agencies operated outside any regulatory frame, making it easy for some actors to rely on unfair business practices in order to skim off profit to the disadvantage of caregivers and care recipients (ibid., p. 44). In sum, the author clearly criticises the ‘Austrian way’ of regulating the live-in care work sector by stating that its current shape would be a recipe for exploitative practices – publicly tolerated.

Looking at agencies brokering care migrants between Poland and Germany, Krawietz (2014) asks what kinds of working relationships are installed, and in how far these placements are institutionalised. Relying on approaches of transnationality, the author analyses both the Polish and the German side of the institutional interrelation. The author depicts how German agencies as market-structuring entities keep up the appearance of acting out of charity, thus, hiding their profit interest. A shift of legal responsibility in the field towards the EU level finds its expression in the absence of control and quality standards (concerning both, care and working conditions),

and a total blurring of the agencies' market interests. In addition, the author bases her argument on a very low significance of working contracts; in contrast, appearances of personal affection are made use of to replace a contractual relationship.

Finally, Katherine Jones' (2014) study deals with the role of agencies in brokering professional migrant workers from different sectors between Poland and the UK. The author describes the employment agencies' strategies in the context of "making-markets", also pointing out that acquisition of Polish workers for jobs found by agencies is easy when they are presented to UK employers as "ideal-type 'flexible' workers" quickly to move. Her study highlights the role of agencies as "intermediaries between employers and workers" (ibid., p. 105), and this particular intermediary position – in our case between live-in migrant care workers and the families in need of care in Germany – is also of interest in our paper.

Our paper places the topic at the intersection between conceptions of emerging "welfare markets" discussed in (comparative) welfare state research and the discussion of mechanisms of Europeanization in European integrations studies.

In different European welfare states during the past decade the trend towards a marketization of welfare provision was observed (e.g. Le Grand, 1991; Taylor-Gooby, 1999). In the German debate (e.g. Bode, 2008; Nullmeier, 2004) the notion of "*welfare markets*" is usually connected to markets linked with one of the classical social insurance schemes. These markets aim to fulfil a social function; as Blank (2011, p. 12) stresses, they are regulated by the state, not only concerning the supply side, but also on the demand side – e.g., by cash-for-care subsidies (Ungerson, 2004), steering the demand. The German Long-term Care (LTC) Scheme is one of the core examples of an emerged "welfare market" in this literature. Since the commencement of the public LTC Scheme in 1995, the overall institutional structure of the same is shaped by what is also called *quasi-marketisation* (Bode, 2008; Bode et al., 2011; Le Grand, 1991), making out of care dependents care customers. Subsidised by a mix of cash-for-care subsidies, and the choice between publicly and privately provided professional homecare services, care recipients are given certain choice options. Being deliberately set up only as a partial covering insurance, the LTC insurance scheme is, however, based upon personal assets from the beginning (Geyer, 2015). Therefore, one prominent question in the individual care arrangements' set-up is the financial sustainability of any preferred option. Despite a certain dynamisation since 2008, the LTC state benefits lost in real value since then. This context is what makes additional 'choice options' from the low-cost 'grey' market based on migrant care work so attractive.

The trend towards a marketisation of national welfare provision takes place in context of the EU multi-level system, and is, thus, superposed by processes of *Europeanization*. To date, it is still contested what is actually meant by Europeanisation. Research on this topic embraces a wide range of approaches and concepts (for an overview, cf. e.g. Olsen, 2002, p. 944). Here, we will use the notion Europeanisation as a conceptual tool in order to analyse how EU integration impacts on public (welfare) policies.<sup>8</sup> Following Radaelli (2003, p. 41), there are *vertical* and *horizontal* mechanisms of Europeanisation. Vertical mechanisms describe explicit stimuli from one level (EU) to another (domestic), mostly in the form of clear targets, guidelines or laws, which have to be implemented nationally (according to what is often also called top-down Europeanisation, cf. e.g. Ladrech, 1994). With respect to horizontal mechanisms it lacks the very

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<sup>8</sup> This implies that we will only refer to the political entity of the European Union (EU) – and not to the geographical scope of a vague notion of 'Europe', unless otherwise stated.

distinct vertically exerted pressure. In contrast, the latter is a “process, triggered by the market and the choice of the consumer or by the diffusion of ideas and discourses about the notion of good policy and best practice” (Radaelli, 2003, p. 41).

Vertical as well as horizontal Europeanisation may be embedded in processes of so called *negative integration* or *positive integration* (Scharpf, 1999). Negative integration is used to describe the removing of market barriers related to the European Single Market project, positive integration aims at (social) policies mitigating negative results of such a market-making process.

Both dimensions are relevant for the Europeanised market of migrant live-in care work. This market is based on the freedom of movement for workers as well as the right of establishment and freedom of service provision in the EU Single Market (negative integration). However, also certain minimum standards (positive integration) concerning, e.g., regulation and enforcement of the posting of workers apply (see also section 3 below). In addition, as Schmidt (2008) pointed out, *legal uncertainty* (a core feature also for the ‘grey’ market for migrant care work) may be decisive for Europeanization effects related to negative integration:

“Domestic actors interested in changing domestic policies find an opportunity structure in legal uncertainty. In the case of negative integration, therefore, Europeanization effects are less determined top-down by the need to implement specific obligations of European secondary law, as is often analyzed in Europeanization studies. Rather, much depends on domestic actors’ interests and features of the polity.” (Schmidt, 2008, p. 306)

As Schmidt’s and Blauberger’s (2017; cf. also Schmidt, 2015) work has also shown, this makes case law an important political issue, and *juridical actors*, like e.g. the European Court of Justice (ECJ), may become *central players in politics*. As we will show below, similar patterns also apply to our field of study.

### **3. Sending and brokering agencies in the EU Multilevel system**

Since many years, migrant care workers in Germany support people in need for care with domestic and care work. Before the EU Eastern enlargement, this was, however, a rather invisible phenomenon mostly organized via private contacts and the black labour market. With EU accession of Central and Eastern European (CEE) countries, this situation has changed. Stepwise, with certain transitory periods, the free movement of workers and freedom of services for employees or self-employed persons from CEE countries was implemented in Germany.

With EU accession, also the legal framework of posting of workers was applied to CEE countries. In the mid-1990s, *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services* (henceforth Posted Workers Directive; European Parliament & European Council, 1996) was introduced, explicitly addressing the issue for the first time, and with the aim to foster minimal labor standards for posted workers. This directive remained pretty general in its regulatory ambitions on labor standards, merely pointing at a general level of political desirability, omitting questions of enforcement. There also is no specific indication of how to deal with the particularities of the domestic sphere relevant for our field of interest. This rather vague regulatory framework, combined with the EU principles of a free movement of services, constitutes the current background for a *‘posting-based brokering model’* (for details see section 3.1), which German brokering agencies often rely on. This has significantly triggered the booming of the agency sector described in section 1.

The main attractiveness for German households to make use of brokering agencies in the elderly care field at all (as opposed to using informal ways of the black market, or becoming formal employers themselves) lies above all in the low extent of time and effort for the customers, and a remarkable fast and flexible provision of domestic workers under a presumed legal frame. In this model, German agencies rely on foreign partner companies, e.g. in Poland, to establish a sustainable system of steady labor supply. Foreign employment agencies recruit labor force in their country of origin, and, for a defined time frame, post them abroad, either based on labor contracts or service agreements. Social insurance contributions are paid in the country of origin (for the first 24 months), just as the wage is paid there as well. Usually, the social insurance contribution is much lower there than in the destination country. It is this very wage difference (deriving from the *country of origin principle*) that makes the posting of workers interesting and profitable for the sending employers (Wagner, 2015, p. 339). As regards the contract design, the migrant care worker and the client(s) family, are not linked to each other contractually. The German household in this model orders a domestic service brokered via the Germany agency that cooperates with a foreign agency. As a result of the brokering process, the German family signs a service contract with the foreign employment agency. The migrant care worker in turn, enters an employment or service relationship with the foreign agency.

Recently, the Posted Workers Directive (PWD) has been complemented by the Directive 2014/67/EU on the enforcement of Directive 96/71/EC<sup>9</sup> (European Parliament and European Council, 2014), which was approved in spring 2014 and is about to be implemented at national level. In addition, in March 2016, the European Commission has proposed to revise the Posted Workers Directive, willing to further the principle of ‘equal pay for equal work’ (European Parliament, 2016a); the process still being under negotiation. In April 2016, the European Economic and Social Committee hosted a public hearing especially on the ‘rights of live-in carers’ (European Economic and Social Committee, 2016a) ahead of the adoption of the opinion on “Fairer Labour Mobility within the EU” (European Economic and Social Committee, 2016b) by the European Parliament three days later (European Parliament, 2016b). These events demonstrate that the question of how to deal with posted workers, domestic care workers, and even, although to a more limited degree, live-in carers is on the agenda of EU institutions. The future EU level developments remain to be seen. Experience has shown that far reaching steps towards positive integration in EU labor regulation standards are not easy to achieve when the interests among the member states are so diverse.

So far, the Posted Workers Directive is still the only directive that tries to define minimum conditions for a fair compensation for the different social standards of the member states. By doing so, there are at least basic labor security standards to be fulfilled, making the PWD the only legal regulatory approach that focuses on labor mobility within the European Union. However, the European Commission tried to shift the reading of this directive towards a market liberal interpretation, as numerous infringement procedures of the same indicate. In the same vein and with the paradigmatic law cases *Viking*, *Laval*, and *Riiffert* the European Court of Justice (ECJ) decided: protections standards of the labor force might be eroded in favor of the liberal market and competition, forcing back achievements such as right to strike and free collective bargaining

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<sup>9</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’).

(Erdmenger et al., 2009, p. 4). Thus, legal uncertainty in primary EU law on minimum social rights makes jurisdiction a crucial political issue also in this field.

In addition, at the national level in Germany there is total lack of explicit regulation in the field (s. also section 3.2 below). So far, political stakeholders in Germany have been rather reluctant to address the ethically sensitive issue of migrant care work. Administered by the *Zentrale Auslands- und Fachvermittlung (ZAV)*, the employment of a *Hausbaltshilfe* (household aid) is a legal option to employ a helper in the private household, often within elderly care homes. In addition, tax credits for elderly care services were introduced in 2006. This path is also being pursued by few regional welfare organizations in Germany, acting as brokers for live-in care workers, at the same time promoting *fair* labor contracts and standards (cf. FairCare, 2014). However, the actual use of this model is still rather rare, because it is a complex bureaucratic procedure for the families to become an employer, and “24-hour care” is still not legally possible this way. Therefore, many clients rather rely on the services of brokering agencies, promoting simple, affordable and – with reference to the EU-posting model presumably legal ‘solutions’, promising some kind of ‘convenient all-in-one package’. Migrant live-in care workers informally close the care provision gaps of the long-term care system in a way that is cost efficient for the state.

The Posted Workers Directive may, therefore, be considered the most important legal base for the agency sector we are interested in. It allows the agencies to construct – and advertise – a presumably legal reference frame, although in reality even the emerging “quality segment” of the market (see section 3.1) has problems to in practice actually implement their employment and sending models in a legal way. A recent study of the German consumer organisation *Stiftung Warentest* (2017) states that *none* of the 13 selected agencies tested could provide contracts without violating existing legal standards. Furthermore, which minimum legal standards apply (in particular as regards the question of on-call duty, and questions of evaluating bogus self-employment) is not always clearly defined. There is important case law, especially on self-employment (see also section 3.1), but no legal assurance that administrative actors of the legal enforcement system act in the sense of these complex juridical frames. This may entail high “existential” risks for the generally rather small agency enterprises (interview 2).

To conclude, on the one hand legal uncertainty and non-transparency of the complex transnational brokering model in the EU multi-level system has enabled this new business field. On the other hand, these uncertainties partly also endanger evolving business models, and the involved entrepreneurs seek to preserve their increasingly professionalising firms by using different corporate and political strategies. These will be described in the following section.

### **3.1 Corporate Strategies of German agencies**

#### *Self-placement as ‘quality segment’*

The phenomenon of agency brokered care work by Polish workers in Germany is a relatively young one and its emergence is closely intertwined with the stages of the European Integration process, in particular with the EU Eastern Enlargement 2004. Already during the transition period, Polish care workers were more and more demanded by German households and this informal system of domestic elderly care evolved, without any legal correspondence (commonly referred to as ‘black market’). This large scale migratory movement and the undeclared work that has since then been carried out by hundreds of thousands Polish care workers is still market-

dominating today. The agencies more closely investigated in this paper have explicitly turned away from this model and try to establish a legal alternative. According to interview 3, the years 2007-2010 may be characterised by its “chaotic” nature – the market sorts itself – followed by a period of abundant growth (the household demand in Germany is unabated), making it easy for new providers to enter the market<sup>10</sup>. At the same time, there was a professionalisation foray of about 5-10% of the providers (interview 1 and 3), representing almost exclusively those companies that today form the sector associations, designating themselves as the “quality segment” (interview 1; 2; 3) of the market. As interviewee 2 puts it; their goal is to change the “downward competition into upward competition” (authors’ translation) – via quality standards. What this self-definition consists of and which strategies are behind will be addressed in this section.

*Facing and dealing with legal uncertainty*

Amongst the most relevant business goals – nearly too trivial to even list – is the fundamental goal of corporate *self-preservation* which in this sector is still worth mentioning given the ongoing condition of *legal uncertainty* companies have to deal with. Our qualitative interview data allows us to distinguish different business models within such a context instead of assuming, agencies in this sector are ‘all the same’. This sheds light on various business strategies that are being developed in reaction to the lack of legal clarity while trying to preserve the company’s continuation and assuring market expansion at the same time.

The circumstance that this sector is still being dominated by informal labor arrangements (no contractual basis; which according to interviews 1 and 2 amount to about 90% of all live-in care arrangements), accounts for the effective image problem of those companies that promote their *lawfulness* and *quality orientation* explicitly. This leads to the foremost business goal to best possibly make use of given legal frameworks to reduce the general business risk of not acting in conformity with the law. To date, three possible model options exist: employer-employee, posting, self-employment (Tab. 1).

*Tab. 1 Legal Models for Agency Brokered Polish Care Workers in Germany*

	<b>Model No. 1 Employer-Employee</b>	<b>Model No. 2 Posting</b>	<b>Model No. 3 Self-Employment</b>
<b>Contract type</b>	Labor contract	a) Labor contract b) Service agreement	Service agreement*
<b>Contract parties</b>	Care worker – German family	a) Sending company – Care worker; b) Sending company – German family	Care worker – German family
<b>Legislative basis</b>	German labor law	EU Posted Workers Directive; EU Enforcement Directive; Polish Labor Law; Minimum requirements of German Labour Law	German labour law
<b>EU legal framework</b>	Freedom of movement for workers in the European Union (Article 45 TFEU)	Posted Workers Directive 96/71/EC; Enforcement Directive on Posted Workers 2014/67/EU	Citizens’ Rights Directive 2004/38/EC

<sup>10</sup> Own research shows that in the beginning of 2017 there are about 250-300 independent service providers in this sector, not including every small franchise subsidiaries.

<b>Business advantage</b>	The most substantive contractual design	‘Country of origin principle’; A1 social insurance form serves as evidence of legality	Business risk relocated to the individual service provider
<b>Business risk</b>	On-call time unresolved.	On-call time unresolved.	Charge of bogus-self-employment: image threat for the whole sector
<b>Relevant laws and court decisions***</b>	<i>De jure</i> : working time protection acc. to § 618 II BGB must apply; exception rule of (ILO) Art. 2 II C189 highly contested: person groups of § 18 I Nr. 3 ArbZG are not necessarily live-ins****	‘Laval case’, European Court of Justice: Minimum protection standards are meant to be <i>maximum</i> protection standards**	Case Law OLG Frankfurt 1. Strafsenat: 1 Ws 179/13: Live-in care work <i>in principle</i> may be performed in an employment or self-employment relationship.

\* *Business registration in Germany.*

\*\* *European Parliament (2010)*

\*\*\* *We assume a relative importance of judiciary interpretation (cf. Schmidt, 2015)*

\*\*\*\* *Scheive and Schwach (2013)*

In a nutshell, these models vary according to the contract design and applicability of national law: Whereas the first model, the *Employer-employee-relationship* clearly corresponds to the German legal landscape (in terms of social security contributions, employer’s managerial authority, comprehensive application of Germany labor law), it also lacks comprehensive legal clarity as, for instance, on-call -time is not being clearly defined, just as a general notion of the tasks and duties of such a “24 hours-care-worker”. The second model *Posting* only came into being because of the regulatory frame of the Posted Workers Directive. In this context, Polish (care) workers are being employed by Polish enterprises according to local labor law standards (reflected in the specific contract configuration with regards to social security contributions, dismissal protection, and so on), and *posted* abroad to fulfil a defined task within a given time frame. This specificity opens doors to a systemic and intentional lowering of social security contributions via the local framing of the posting itself, e.g. as ‘duty travel’ (cf. for a comprehensive synopsis Böning and Steffen, 2014). As one interviewee puts it, these “creative” business practices by foreign cooperation partners (sending companies) are clearly part of the complex business model pursued. The third model, *Self-employment*, is based on the freedom of establishment, allowing Polish persons to offer their services in Germany, being registered in the country of destination as well. Here, the crucial point lies in the potential charge of bogus-self-employment which in theory may apply to every care arrangement under this umbrella, as, so far, there are only court decisions on individual cases (most recently cf. Higher Regional Court Frankfurt, 1. Criminal Division, verdict file no. 1 Ws 179/13)<sup>11</sup>, but there is no general legislative clarification.

In terms of popularity of these legal options, the posted-workers-model is by far the most popular one applied by the companies, but as our interviewees explained, business strategies include the off and on examination of the practicability of each of the models, being basically receptive to changing between different legal pathways provided by both German, EU and Polish legislation. Changing jurisdiction, thus, additionally fuels the necessity to always be up to date in terms of legal changes. As interviewee 1 said about a prominent court decision against the possibility of self-employment in 2008, this had consequences for numerous actors, deciding:

<sup>11</sup> Nevertheless, this verdict states: „In principal, this activity may be carried out both in a dependent employment relationship just as in the context of a self-employment“ (authors’ translation), thus giving green light to any business plan building upon this option.

“Now, we bank on posting” (authors’ translation) and another interviewee (No. 3) described that within the last decade there was a change from the self-employment model to the posting model.

As we see, corporate strategies of the German brokering agencies build upon the given heterogeneity of the European Union and its political economies, substantiated in most cases in the business model of *posting of workers* in this sector. Using the location factor of cheap labour force in Eastern European member states, coupled with the country of origin principle and other national differences, local companies benefit from the legal framework provided by the PWD, being reminiscent of the so called ‘*regime shopping*’ in industrial relations research. On this reading, the (potential and factual) adaptation of business models via the adoption or dropping of legal models, appears to be some kind of ‘*legal (s)hopping*.’

#### *‘Black Box Cooperation Partner’ and Implementing Regulatory Changes*

Despite the explicit goal of achieving legal clarity articulated by the associated companies (cf. 3.2), the given structure of legal uncertainty also plays into the companies’ hands. As it is the specificity of a *sending* state and the related *country of origin principle*, the local jurisdiction applies in terms of contract design and the handling of social security contributions. According to interview 1, “at the end of the day, I cannot control how they [the Polish partner companies, *authors*] pursue their daily business.” (authors’ translation) This points to a business policy of some parts of the sector that builds upon a certain strategic lack of knowledge on the side of the German operators, accepting the structural condition that leaves the legal set-up of the partner company a ‘black box.’ Yet, this black box at the same time also constitutes a significant risk for the actors involved, making the whole (and legally fragile) business strategy dependent on the non-verifiable integrity of the cooperation partner.

Apart from the overall business strategy to build on a certain legal model, the implementation of important *regulatory changes* (e.g. adaptations to the Enforcement Directive on Posted Workers 2014/67/EU), just as the provision of the A1 form and the compliance with minimum wage standards are being pursued as well. These reforms entail a targeted communication and coordination between both companies and administration in the country of origin and in the destination country which seems to be one critical point with some practical problems (interview 2).

#### *High demand for migrant care workers puts pressure on improved working conditions*

The seemingly inexhaustible demand for live-ins in Germany and a market expansion towards the East has consequences for the supply of caregivers on the German market. As pointed out in interview 3, the Polish market is already ‘grazed’, not providing enough labour force to meet the demand. This was explained by a relative unattractiveness of this kind of work on the side of the younger generation, and recently rather positive economic developments in Poland. This situation puts care workers from Poland into the position of being able to critically choose those places of work that correspond to their personal requirements (interview 2 and 3). Agencies have to react to this growing self-confidence of the work force, thus, increasingly working on the enhancement of their satisfaction. Also, agencies do react differently to this labour supply shortage: some stick to the already established recruitment partners and tend to place every person they can still get, however inappropriate for the task they might be. Others bank on market expansion towards new countries like, e.g. Bulgaria and Romania, thereby well applying

,quality standards', using an elaborated progressive selection procedure. The latter aims at a market stabilisation via a very high customer and labour force satisfaction.

### *Empowerment via Networking: The Transnational Posting Sector and the Transfer of Knowledge*

In this sector, those companies having the resources to constantly trace the latest jurisdiction do clearly have an advantage over those companies that do not pursue this strategy – with the prospective reward of reducing the business risk of non-conformity with the law. The collectivisation of this endeavor is partly goal of the associations where recent legal changes are intensely being discussed. Another international forum constitutes the *Labour Mobility Congress* (Labour Mobility Initiative, 2017) gathering the *who is who* of the posting sector on business, political and legal levels.

In how far the agencies and their associations pursue political strategies will be unveiled in the following section.

### **3.2 Political strategies of German agencies**

In Germany we observe, that recently about 30 brokering agencies<sup>12</sup> placing Central and Eastern European migrant workers into German private households have consorted with each other in the VHBP – *Verband für häusliche Betreuung und Pflege e.V.* (registered association for domestic care). There are three central aims of this association: (1) to legalize this form of domestic care and create legal security in the field, (2) to fight undeclared work, (3) to foster quality and labour standards in order to make live-in care work an accepted part of the national care system (VHBP, 2015). The association, BHSB – *Bundesverband häusliche SeniorenBetreuung e.V.*, with another around 18 member companies (in 2017) from the field, pursues similar objectives (BHSB, 2016). Eligibility of this kind of work, which is deliberately circumscribed on the VHBP's website by the positively connoted<sup>13</sup> term "*Betreuung in häuslicher Gemeinschaft*"<sup>14</sup>, for financial support from the public LCT insurance scheme, is also a core political aim of the VHBP (VHBP, 2016).

Of course, these voluntary commitments to furthering quality (control) have a strategic background. Nevertheless, these developments are from our point worth noticing and worth to follow up on.

So far, the brokering agencies are already part of the German *labor market regime*. The final aim, at least for a small segment of them, however, is to become also formal part of the German *long-term care regime* (interview 2 and 3). In order to achieve this goal, the agencies and their associations need to convince the political counterparts of their seriousness and respectability in this business segment. First steps have already been made by the VHBP to establish contacts with representatives of the federal government to promote this form of domestic work, as in Germany it is still widely stigmatized as being part of the black market (interview 2 and 3). The aim is to establish a legal framework in Germany quite similar to the Austrian Model (e.g. Österle and Bauer, 2016) which is mainly based on a self-employment model.

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<sup>12</sup> Out of a very roughly (as described above) estimated 250-300 brokering agencies in this sector operating in Germany.

<sup>13</sup> On the other hand, the VHBP association advises their members to use the unethical and misleading term "24-hour care" as little as possible, and where unavoidable, always in quotation marks (information from personal talks with association members).

<sup>14</sup> It seems hard to translate this into English, probably something like "domestic community care".

It is important to note, that in a recent reform of the German LTC scheme (*Pflegestärkungsgesetz II*), the brokering agencies – although by then, only when it comes to eligibility for certain pilot projects – were actually mentioned in the Social Insurance Code (§ 45c 8(3) *Sozialgesetzbuch XI*, valid until End of 2016). Further reforms in context of the *Pflegestärkungsgesetz III* may provide options that, under certain conditions (details depend on additional regulation at the level of the *Bundesländer*), funds of the long-term care system for so called “support in everyday live” (*Angebote zur Unterstützung im Alltag* according to § 45a SGB XI) may be used to finance (agency brokered) migrant care workers in individual households. Interestingly, one of the current parties in the governmental coalition, the Social Democratic Party, has just included statements on the sector into its election manifesto, aiming to address the issue of legal uncertainty in the field with legal initiatives (SPD, 2017). These developments can be interpreted as first, although small steps towards becoming officially recognized and legitimized players in the formal care market of the German LTC scheme.

#### 4. Discussion

Coming back to the question asked at the beginning, *Are those agencies as “intermediaries” between the migrant care workers and the German families suited to improve labor conditions for Polish live-in care workers?*, we will come straight to the sensitive point: We do not aim and will not be able to give a groundbreaking answer to this question, as this subject touches upon a considerable number of influencing factors, not to mention the morally delicate discourse lead by various interest groups on disparate legal and political levels. Governing live-in care work in a multi-level system requires categorical preliminary decisions at different political levels whether this kind of work is politically wanted or not – only then the challenging process of weighing regulation options might begin. In Germany, only very hesitant political ambitions are perceived in this regard, as described above. At the same time, the broadening of the public discourse which to date often is either ignoring or fundamentally objecting the issue, seems to be a necessary prerequisite, and in-depth information on the field is still rather rare. In this sense, the following considerations should be discussed:

##### *Approaches and Limitations of Corporate Action*

The recent development of the formation of associations of brokering agencies in Germany may be seen as a prerequisite for any concerted corporate action towards the improvement of quality standards in general in this sector. As this move was already made, the concrete actions of the associations just as of various agencies towards furthering quality needs to be scrutinised in-depth. This was not yet possible for this paper. However, after our first explorations in the field, quite a variety of ‘quality approaches’ appear. In the following, they are listed according to the organisational level:

- a) On the *associations’ level*, there are:
  - *self-commitment to self-developed quality standards* (e.g. customer satisfaction via professional service in processing, close support of the customer-caregiver arrangement during the contract phase, permanent accessibility; but also quality in terms of business

management; and in terms of the satisfaction of the live-in care workers as well, which is a, rather airy, stated aim)

- *transparency* towards business numbers and operating procedures
  - self-imposed commitment to collective mechanisms of *sanctions* (right up to expulsion proceedings from the association, which have actually been used)
- b) On the *corporate level*, one may find (occasionally):
- comprehensive *selection procedures* both on the side of the care workers and on the families' side (needs assessment, similar to the instrument used by mobile nursing services)
  - confidence building via rigorous adherence to the *ex ante* information of both sides (*reliability*)
  - *mediation* offers for conflicts; just as *blacklisting* and *banning* inapt households and care workers (who negatively stood out. Mentioned was alcoholism, inadequate equipment of the refuge of the worker, crossing frontiers in various configurations, and more)
  - combined with the goal of an increased *loyalty of the work force* to their sending company, the vague objective of *employee satisfaction* might at least pose a certain gateway for the improvement of working conditions<sup>15</sup>

What makes the endeavor of an all-embracing quality foray difficult, is the paramount individuality of valuation, the 'black box' constellation (see above), just as a perceived shift to the legal model of self-employment in this sector (interview 3) which would again lead to the danger of a further individualisation of risks. But looking at the reference model Austria and the political regulation of the *Personenbetreuer* there, it shows that a structural improvement in quality standards in terms of working conditions for live-ins are not to be found (Schmidt et al., 2015). This is the argument Bachinger (2016, p. 44) makes when concluding that the legalised self-employment model in Austria did not bring any significant change in the improvement of quality standards via working conditions.

We shall not forget: The segment of agencies we highlighted in the paper is still very small. And quality improvement appear as a corporate strategy to consolidate the corporate positions in the market – at least of those companies that are part of the associations – and to assure the future of the corporate model. Quality, thus, serves as a means to an end which has nothing to do with a fight for labor rights, and should not be compared to and much less confounded with that. However, corporate commitment to fair social, environmental, or labour standards are elsewhere common practice and the possibility that in this field a comparable development occurs should at least be examined.

## 5. Outlook and future research

At the intersection of welfare marketisation and Europeanisation research, this paper has illustrated the emergence of a Europeanised market for migrant live-in care work. We have argued that opportunity structures in the multi-level system as well as legal uncertainties of this 'grey' market have fostered new business activities of brokering agencies for migrant care workers

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<sup>15</sup> As an example of a corporate business strategy tells us: One company – offensively promoting quality standards – since 2015 has been interviewing both customer households just as live-in care workers on a regular basis in order to approach their 'needs and wishes'. As regards the caregivers, the company would tell the foreign partner companies „new perspectives and insights about the needs of the caregivers and thus essentially contributing to the improvement of working conditions“ (Linara GmbH, 2017, p. 7, authors' translation).

between Germany and CEE countries. These agencies are new players in the field. In Germany, via recently founded associations, they aim to become a societally and politically accepted part of the LTC insurance system. In order to achieve this goal, they build on voluntary commitment to quality standards, and we have started to discuss chances and limitations in respect to improving working conditions for migrant care works.

Obviously, further research is needed to go deeper into that. This concerns not only the German perspective, but also the foreign – in our case Polish – counterpart of this regulatory framework. Thus, the role of, e.g., the Polish social insurance institution ZUS (*Zakład Ubezpieczeń Społecznych*) needs to be included, as well the Polish association of employment agencies (SAO) with its goals and means, just to name the most prominent ones. Within the project *EuroAgencyCare*, the regulatory developments and mechanisms of this form of organisational labor migration within the EU single market should be investigated more deeply in the future. In the course of this undertaking, a further differentiation of the brokering market and its underlying corporate as well as political strategies are one envisaged objective.

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