

**Self-regulation in a Europeanized ‘grey market’?**  
**The role of brokering agencies in the (informal) care market between  
Germany and Poland**

Simone Leiber, Verena Rossow

University of Applied Sciences Düsseldorf, Germany

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Contact:

simone.leiber@hs-duesseldorf.de

verena.rossow@hs-duesseldorf.de

**Abstract**

This paper looks at cross border care migration between Poland and Germany resulting in so-called *live in* arrangements. This field is highly influenced by EU regulation and Single Market integration. Since EU Eastern enlargement, in Germany (as well as Austria and Switzerland), private brokering agencies placing Polish care workers in German households have spread considerably. They have become new players in the European care market and – first steps in this direction are observable – in European politics. Europeanisation literature points to the fact that negative integration (market making) and legal uncertainties create opportunity structures inviting actors to pursue their interests. Our argument in the paper is that also in the field of care migration regulation gaps of the multilevel system, legal uncertainty and a lack of European and national enforcement (capacity) have created new opportunity structures for market actors such as the above mentioned brokering agencies. While many of these agencies are prone to ‘strain’ the law, resulting at times in severe violations of minimum standards for decent work and human rights, certain agencies seem to have recognized the importance of quality and legitimacy for their competitive advantage. Particularly in Germany, associations of brokering agencies have emerged, working on the enhancement of the still rather unethical image of that sector, building on voluntary commitments to (both care and work) quality standards for their members. Interestingly, at least in parts of the sector, under-regulation by public authorities seems to be answered by self-regulation of the private market actors. These developments may be seen as an example of how transnational actors develop new regulatory mechanisms beyond the nation state. Understanding in-depth the functioning of such mechanisms of Europeanisation is the core aim of this paper.

## 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’. 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>1</sup> Who cares for elderly people, when women 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 oscillating labour 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 (for an overview of central literature see e.g. Krawietz 2014, pp. 14-21; Lutz/Palenga-Möllenbeck 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’d 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 (cf. the official statements of the Federal Government on this issue: Deutscher Bundestag, 2012). However, there are estimations rattling around that speak about a margin of 100 000 – 200 000 live-in migrant care workers in Germany in total (e.g. Emunds 2016, 12).<sup>2</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.<sup>3</sup> It has to be taken into account, however, that some agencies seem to use several dif-

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<sup>1</sup> In Germany, the country case we look at more closely in this paper, this share today is, e.g. at 71 % (Statistisches Bundesamt 2015).

<sup>2</sup> These estimations refer to the entire workforce, meaning that these numbers include those being temporarily in their home country.

<sup>3</sup> For Poland, the ‘other side of the coin’ in the brokering arrangement, because Germany brokering agencies often collaborate with Polish employment agencies (s. also section 3), Elrick and Lewandowska (2008; similarly Krawietz

ferent 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). These estimations may underline the financial importance of the field as a new business area for brokering agencies.

*A research gap: brokering agencies acting in a Europeanized welfare-market*

With regard to transnational care chains, brokering agencies all over the world occupy a central position within the recruitment schemes:

”The employment agencies, which recruit and place domestic workers across national boundaries, are crucial actors in the construction, maintenance and reproduction of global care chains, in which women from the South migrate to the North in order to provide domestic work.“ (Fudge & Parrott, 2014, p. 70f)

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 looks from an discursive angle at transnational brokering agencies and argues: Because of successful discursive marketing strategies framing a “caring care market” (Schwiter, Berndt, & Schilling, 2014), market actors are able to answer an urgent societal need with an optimal business strategy. Thereby, they build on gendered and ethnicized subjectivation strategies that in the end consolidated 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-marketized care landscape, creating and shaping new provider-client-relations (Österle, Hasl, and Bauer 2013). The authors provide 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 improve 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 want to 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 ser-

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2014, p. 43) 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 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)”.

vice 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).

Finally, 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 analyzes 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 influence of working contracts; in contrast, appearances of personal affection are made use of to replace contractual relationship.

Also this paper is concerned with the emergence of brokering agencies for so called ‘24-hour-care’ from a ‘German perspective’. We seek to link Europeanisation literature with welfare state research on the marketization of social welfare. The purpose of the paper is twofold: First, by drawing on conceptions of “welfare markets” and “Europeanisation” (section 2), we would like to show for field of care migration how gaps in the multilevel system, legal uncertainty and a lack of European and national enforcement (capacity) have created new opportunity structures for market actors such as the above mentioned brokering agencies (section 3). Second (section 4), we seek to address how in Germany, these new opportunity structures are being used by the brokering agencies. In particular, we’d like to draw attention to attempts of some agencies and their recently founded associations, to get rid of their illegitimate role in the ‘grey market’, i.e. attempted self-regulation, in particular as a means to become politically accepted actors of the established welfare market (connected to monetary funds of the German long-term care insurance). Thus, starting off from a European regulation and enforcement gap we look at how transnational actors develop new regulatory mechanisms beyond the nation-state and seek to understand the rationales behind that. We conclude (section 5) with an outlook on future research.

## **2. ‘Welfare marketization meets Europeanization’ in the field of elderly care**

In theoretical terms, the topic of this paper is placed 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; Bartlett et al., 1998; Taylor-Gooby, 1999). In the German debate (e.g. Bode, 2008; Nullmeier, 2002) the notion of “*welfare markets*” is usually connected to markets linked with one of the 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-marketization (Bode, 2008; Bode, Gardin, & Nyssens, 2011), 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 certain a dynamization since 2008, the LTC state benefits lost in real value since then. This is what makes additional 'choice options' from the low-cost 'grey' market based on migrant care work so attractive.

These trends towards a marketization of national welfare provision take place in context of the EU multi-level system, and are, thus, superposed by processes of *Europeanization*. To date, it is still contested what is actually meant by Europeanization. Research on this topic embraces a wide range of approaches and concepts (for an overview, cf. e.g. Olsen, 2002, Radaelli, 2003). Here, we will use the notion Europeanization as a conceptual tool in order to analyse how EU integration impacts on public (welfare) policies.<sup>4</sup>

Following Radaelli (2003, p. 41), there are *vertical* and *horizontal* mechanisms of Europeanization. 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 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 Europeanization, thus, may be embedded in processes of so called *negative integration* or *positive integration*:

„While positive integration aims at developing social policies to tackle the negative results of market forces, negative integration is concerned with removing the barriers to the market related to the single market project" (Theobald, 2009, p. 11)

Both dimensions are relevant for the Europeanized market of migrant 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). The legal formalization of the posting of workers within the EU could thus be framed as a new regulative form of *organisational* labour migration (Pries & Shinozaki, 2015, p. 375).

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:

"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)

The next section seeks to analyse these opportunity structures for brokering agencies in the Europeanized market for migrant care work more closely.

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<sup>4</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.

### 3. Live-in care migration: Regulatory and enforcement gaps in the multilevel system

Regulation and enforcement as two conditional, necessarily linked political strategies must refer to *three different realms* central to the phenomenon of transnational care migration: the crossing of borders (as a migratory act), the action of working abroad (as a mainly labour rights' issue), and the provision of domestic care work (either at the boundaries, or more or less embedded into the national care system<sup>5</sup>). Thus, we need to take into account the intersection of these *different legal* (migratory, labour market and care) *regimes* (cf. also Williams, 2010; Wagner, 2015) in *at least two countries* (e.g. Germany and Poland), and we deal with *different governance levels* (international, EU, national, corporate, domestic). In addition, domestic work takes place in the *private domain of the family*, which is particularly protected from state intervention and control (cf. Fudge, 2011). Without an adequate control and enforcement, however, working conditions in private households are prone for abuse of law.

Considering the given variety of regulatory attempts concerning migrant domestic workers at different levels, it is striking in how far they are not able to *de facto* intervene into domestic working arrangements. This is due to the fact that, as Fudge (2011, 242) puts it:

“Paid domestic work transgresses a number of boundaries that law both defines and reflects, and it is this transgression, historically, that has made protecting this important activity difficult.”

Looking at existing regulatory efforts or attempts, the following graph illustrates the various regulatory benchmarks within a multi-level political system (Figure 1). In the following, the different levels and their (limited) regulatory influence on live-in migrant care work in Germany will be outlined.

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<sup>5</sup> In Germany, e.g., migrant workers may be legally employed for household support ‘only’, not, however, for more encompassing care tasks (see below). In contrast, in Austria, since 2006 migrant care workers are a formalized and state subsidized part of the national care regime (for details cf. Bachinger, 2016)

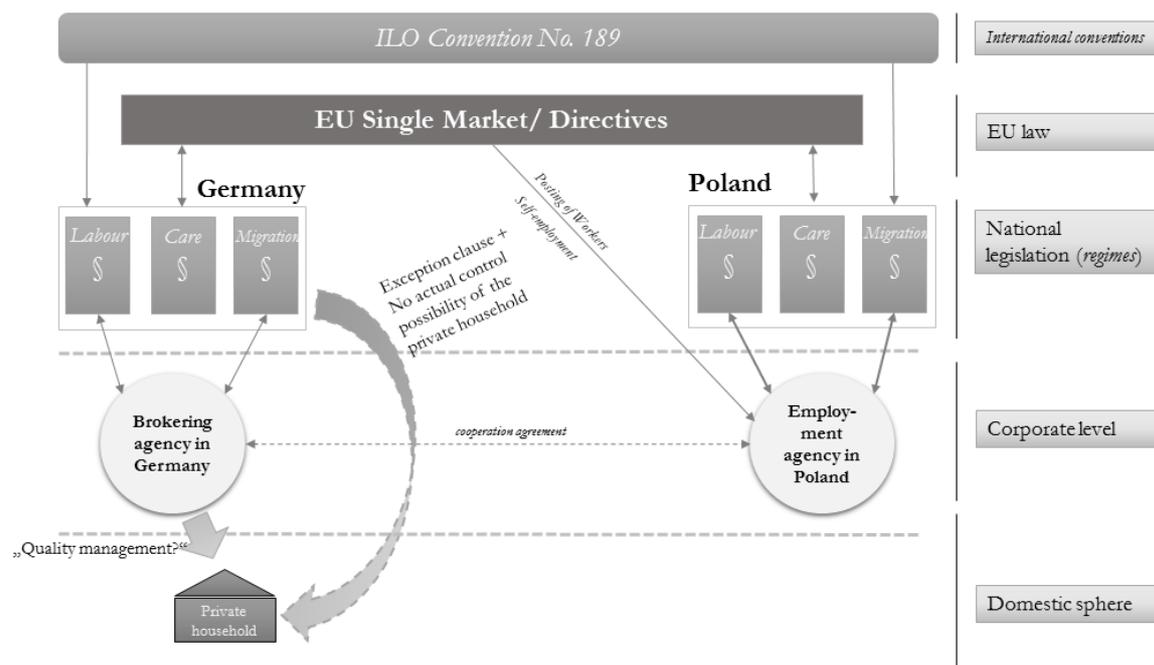


Figure 1 The Role of Employment and Brokering Agencies in the Multi Level System

#### International conventions

On 20 September 2013, Germany ratified ILO Convention No. 189 on the effective protection for domestic workers, but used the exception rule in Art. 2 II C189 to exclude the group of persons subject to § 18 I Nr. 3 ArbZG<sup>6</sup> from the scope of this convention (Scheiwe & Schwach, 2013). This step was being justified with the allegedly impossibility for those employees to keep apart hours of work and hours of recreation. This derogation application has an immediate consequence for the applicability of German labour law within the domestic sphere and for migrant domestic care workers alike, as they are subject to this loophole. The German Federal Government is aware of this situation, but acts very cautiously in this respect and simply refers to the responsibility of EU law in this case (Deutscher Bundestag, 2012).

#### EU regulation via the Posted Workers Directive

Indeed, the legal frame for the engagement of Central and Easter European (CEE) migrant domestic care worker in Germany is much determined by European regulation, as well. On EU level, the issue of posting of workers is on the agenda since two decades at least. 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 labour standards for posted workers. However, this directive remained pretty general in its regulatory ambitions on labour standards, merely

<sup>6</sup> ‘Employees that share a common household with those entrusted to their care and whom they rear and care for autonomously’ – a section being assigned for the occupational profile of SOS Children’s Villages’ foster parents.

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.

This rather vague regulatory framework, combined with the EU principles of a free movement of services, constitutes the background for a *'posting-based brokering model'*, which German brokering agencies often rely on recently. The main attractiveness for German households to make use of brokering agencies at all (as opposed to using informal ways of the black market, or becoming formal employers themselves) lies 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 to establish a sustainable system of steady labour supply. Foreign employment agencies recruit labour force in their country of origin, and, for a defined time frame, post them abroad. 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 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 relationship with the foreign agency. At least theoretically, German labour health and safety standards just as the minimum wage have to apply (Böning & Steffen, 2014). This, however, is very hard to enforce in the domestic sphere.

Even less regulated and more difficult to control in terms pseudo self-employment or standards for decent work and protection, is also another frequently used brokering path, the *'self-employed placement model'*. This is a model where German brokering agencies in cooperation with, e.g. Polish, employment agencies place self-employed migrant care workers in German households on the basis of the EU Single Market's freedom of establishment. In these cases, the agencies help to prepare service-contracts between the migrant care workers and the clients, and minimum employment protection standards do not apply at all.

### *EU enforcement regulation*

In the meantime, the Posted Workers directive has been complemented by the Directive 2014/67/EU on the enforcement of Directive 96/71/EC<sup>7</sup> (European Parliament & European Council, 2014) in March 2012, which was approved in spring 2014 and is about to be implemented at national level. In Article 23 on the transposition of the directive, the EU parliament and council schedule the member states' response on their enforcement efforts on 18 June 2016.<sup>8</sup>

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<sup>7</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).

<sup>8</sup> „No later than 18 June 2019, the Commission shall present a report on its application and implementation to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments and modifications“ (Art. 24, (1)).

In the 2014 enforcement directive, the issue of regulating the posting of workers already reads much more precise, verbatim:

“(7) In order to prevent, avoid and combat abuse and circumvention of the applicable rules by undertakings taking improper or fraudulent advantage of the freedom to provide services enshrined in the TFEU and/or of the application of Directive 96/71/EC, the implementation and monitoring of the notion of posting should be improved and more uniform elements, facilitating a common interpretation, should be introduced at Union level. (European Parliament & European Council, 2014).

Furthermore, these areas are being addressed as well: combating bogus self-employment effectively (10); the important role of labour inspectorates and the social partners (16 and 30); access to information (18), administrative cooperation and mutual assistance between the member states should comply (22), effective monitoring (31); and the introduction of effective complaint mechanisms (34).

However, a big issue remains the EU member states’ heterogeneity with regard to the particularities of their individual welfare and administrative systems. Thus, this very aspect that shall become subject to transnational regulation turns out to be an impediment in itself – and with reference to the superior aim of the internal market project, too:

“(39) The disparities between the systems of the Member States for enforcing imposed administrative penalties and/or fines in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.”

Obviously, the above cited directives and their enforcement attempts address a large spectrum of labour market sectors, the domestic care sector being only one amongst others. The domesticity poses specific problems both in the regulation and statistical measurement of the labour mobility. Apart from a general assessment of growing numbers of posted workers in the domestic care sector, no reliable data is available (B. Wagner & Hassel, 2015, p. 40), pointing at the general lack of this sector’s managerial or control possibilities in the EU context.<sup>9</sup>

Only recently, in March 2016, the European Commission has proposed to revise the Posted Workers Directive, the process still being under negotiation. In April 2016, the European Economic and Social Committee hosted a public hearing on the ‘rights of live-in carers’ (European Economic and Social Committee, 2016b) ahead of the adoption of the opinion on “Fairer Labour Mobility within the EU” (European Economic and Social Committee, 2016a) by the European Parliament three days later (European Parliament, 2016). These very recent events demonstrate that the question of how to deal with domestic care workers is on the agenda of various EU institutions. However, it remains to be seen if this year’s time schedule for the member states’ reports on their envisaged enforcement efforts on this issue will have noticeable consequences – for the countries’ administrations, recruitment agencies, and for the private households all together.

#### *National regulation attempts: the case of Germany*

In the course of the 20<sup>th</sup> century, in Europe, personal and household services (PHS) had nearly disappeared, yet, caught up during the past about 15 years, as a significant “boom” took place

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<sup>9</sup> As opposed to Canada, for instance, where a relatively elaborated immigration scheme provides for transparency and steering capacity on the government’s level (Fudge, 2011).

(Morel & Carbonnier, 2015, p. 1). As it is the case for Germany, but also for other European countries, regulation attempts have been introduced to control domestic work arrangements with care workers, “[...] being encouraged and structured through specific political and economic strategies, which have been actively promoted by national governments, but also by the European Commission since the 1990s” (Morel & Carbonnier, 2015, p. 2). The fostering of the domestic economy has been discussed as a means to further women’s employment possibilities, to reduce unemployment rates, and to respond to new social needs, as, for instance, related to population ageing. In 2006, in Germany, a tax reform introduced tax credits for elderly care services that go hand in hand with the “wish to promote a private care market” (ibid., p. 15).

One particular recruitment scheme in Germany addresses both national as well as foreign workers: Administered by the *Zentrale Auslands- und Fachvermittlung (ZAV)*, the employment of a *Hausaltshilfe (household aid)* is a *legal option* to employ a helper in your household, often within elderly care homes. This path is also being pursued by few regional welfare organisations in Germany, acting as brokers for migrant care workers, at the same time promoting *fair* labour contracts and standards (cf. FairCare, 2014). However, the actual use of this model is still rather rare.

Back in the early 2000s, recruitment agreements were signed with the accession countries Poland, Slovenia, Hungary, Slovakian Republic, and Czech Republic, Bulgaria and Romania to satisfy the local demand for domestic helpers. However, also

”[...] this regulation turned out to be of limited success, as only a small number of employers and migrant domestic workers have opted for regularization of the work relationship by using the channel of formal recruitment. For the migrant women, the reason for opting for irregular employment is that the regularization is related to a reduction of net income, as taxes and insurance contributions have to be paid“ (Kontos, Haferburg, & Sacaliuc, 2006, p. 6).

For the German families as well, this option is not very attractive, as it is intensive in terms of administration and, thus, deters clients who’d rather rely on the services of brokering agencies, promoting simple and affordable ‘solutions’.

## 5. Self-regulation attempts and strategies of political legitimization in Germany

After having described the legal opportunity structures for brokering agencies in the EU multi-level system, we’d now like to draw the attention to a particular way these opportunities are used in the German context. No doubt, that this complex legal framework with its’ regulation and enforcement gaps, complemented by legal uncertainties, provokes abusive practices and exploitation, as has already been shown by different studies (cf. Emunds, 2016; Böning & Steffen, 2014 with further references).

However, for the Canadian context, Fudge (2011, p. 264) has pointed out:

“Not all employment agencies involved in global care chains engage in abusive practices. There is evidence that employment agencies can help to structure and formalize the migration process, weeding out unscrupulous players.”

Having this in mind, we observe for Germany, that recently about 30 brokering agencies<sup>10</sup> placing Central and Eastern European migrant workers into German private households have consorted

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<sup>10</sup> Out of a very roughly (as described in section 1) estimated 200 brokering agencies in this sector operating in Germany.

with each other in the VHBP – *Verband für häusliche Betreuung und Pflege e.V.* (registered association for domestic care). The designated aim of this association is to legalise this form of domestic care and create legal security in the field, to fight undeclared work, to foster quality and labour standards, and 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 16 member companies (in 2016) 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>11</sup> term “*Betreuung in häuslicher Gemeinschaft*”<sup>12</sup>, for financial support from the public LTC 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. Whether they turn out to be rather *symbolic regulation* attempts, needs further investigation in the future. 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 *labour market regime*. The final aim, at least for some of them,<sup>13</sup> however, is to become also formal part of the German *longterm care regime*. In order to achieve this goal, the agencies and their associations need to convince their political counterparts of seriousness and respectability in this business segment. First steps have been already 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 stigmatised as being part of the black market.<sup>14</sup> And it is important to note, that in the latest reform of the German LTC scheme (*Pflegestärkungsgesetz II*), the brokering agencies – although, as yet, only when it comes to eligibility for certain pilot projects – are now actually mentioned in the Social Insurance Code (§ 45c 8(3) *Sozialgesetzbuch XI*).<sup>15</sup> Further reforms which might concern migrant care work as well, in context of the *Pflegestärkungsgesetz III*, are right now (July 2016) under negotiation. This may be interpreted as first, small but successful step towards becoming officially recognized and legitimized players in the formal care market of the German LTC scheme. We’d assume that the attempts of self-regulation in terms of quality enhancement have been part of a strategy to achieve exactly that. Further research is, however, needed to show this in depth.

## 7. Outlook and future research

At the intersection of welfare marketization and Europeanization research, this paper has illustrated the emergence of a Europeanized market for migrant care work. We have argued that regulation and enforcement gaps in the multi-level system as well as legal uncertainties of this

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<sup>11</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>12</sup> It seems hard to translate this into English, probably something like “domestic community care”.

<sup>13</sup> It is important to note that so far, we refer here to only a smaller sub-segment of the overall market of (posted) migrant care workers.

<sup>14</sup> Information from first explorative expert interviews and informal talks we have had in the field.

<sup>15</sup> This paragraph says: “Als grundsätzlich förderungsfähige niedrigschwellige Betreuungsangebote kommen insbesondere in Betracht Betreuungsgruppen für Demenzzranke, Helferinnenkreise zur stundenweisen Entlastung pflegender Angehöriger im häuslichen Bereich, die Tagesbetreuung in Kleingruppen oder Einzelbetreuung durch anerkannte Helfer, **Agenturen zur Vermittlung von Betreuungsleistungen für Pflegebedürftige** mit mindestens Pflegestufe I sowie für Versicherte ohne Pflegestufe, die wegen erheblich eingeschränkter Alltagskompetenz die Voraussetzungen des § 45a erfüllen, sowie Familienentlastende Dienste.“ (emphasis added).

'grey' market provide new opportunity structure for an enhancement of business activities of brokering agencies for migrant care workers 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, which we carefully interpret as attempts for self-regulation of private market actors in order to get rid of the sectors prior stigmatization.

Obviously, further research is needed go deeper into that. This concerns not only the German perspective, but also the foreign – in our case Polish – counter part 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 a research project funded by the German-Polish research foundation, the regulatory developments and mechanisms of this form of organisational labour migration within the EU single market should be investigated more deeply in the future. In the course of this undertaking, a differentiation of the brokering market and its underlying corporate as well as political strategies are one envisaged objective. 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.

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