

Opening a black box: Brokering agencies in the evolving market for live-in migrant care work in Austria and Germany

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Abstract

Background and objectives: In several European countries, employing live-in migrant care workers in private households has become an increasingly used individual response to growing long-term care needs. This paper comparatively analyses the new market for live-in migrant care work in Germany and Austria. We particularly focus on the role of brokering agencies as intermediary actors within this field, as their very functioning has been framed to be similar to a “black box” in the agency literature.

In both countries, migrant live-in care workers are almost exclusively from Central and Eastern EU member countries. Yet, even though the EU Single Market provides a common frame, the regulatory context for the employment of migrant care workers and for the activities of intermediaries varies largely between the two country cases. Most importantly, while the posted worker model dominates migrant care work in Germany, in Austria migrant care workers are almost exclusively self-employed. And, while Austria has seen a rather comprehensive national regulation and a formalisation of migrant care work, “grey economy” arrangements continue to persist in Germany. Thus, this case comparison allows analysing the interplay of horizontal and transnational interdependencies based on care migration between Eastern and Western EU member states, with vertical interdependencies between supranational and domestic policies in the sector. This context also influences the development and the role of the non-state intermediaries in the two countries.

Methods: The paper combines an online-survey among brokering agencies in Germany and Austria with semi-structured qualitative expert interviews. So far, quantitative data in this field is very rare. The survey was conducted in the context of the *Euro Agency Care* project funded by the German-Polish Science Foundation. The quantitative analysis is based on responses by 65 agencies in Germany (23.7% response rate), and by 78 intermediaries in Austria (17.9% response rate).

Expected Results: Overall, the data allows to describe the brokering sector as a fast growing sector in Germany and in Austria, both in its recent development and with a view to potential future developments. We underline that the sector is quite diverse in terms of company size, organizational forms, regional presence or legal models, based on distinct business models. Also, intermediaries differ largely in their relationship with established welfare organizations in long-term care, some of them are exclusively focusing on brokerage between care workers and users, while others cooperate with providers of other long-term care services or are even subsidiaries of such companies. Interestingly, despite different legal settings in the two countries and a higher legal uncertainty in Germany, certain malpractices at the household level seem to be constitutive for the brokering agency market in Germany as well as Austria.

1 Introduction

“So the market has been there for ages. And my head of company and his partner back then, both coming from personnel services, basically had the idea with the EU accession on 1st of May 2004, saying free movement of workers, services; one should now also find a legal way into this business.”

(Interview Agency 4, Germany; transl. VR)

How to manage support for elderly persons in need of care in times of demographic and societal change as well as altering labour market demands has become a central question for many European societies. Especially in countries like Austria and Germany, where the role of the family in care provision has traditionally been strong, where affordable professional care services are limited, and cash-for-care programmes aim to stimulate domestic care, employing live-in migrant care workers from Central and Eastern Europe has become an increasingly common solution to arising care gaps (e.g. Da Roit and Weicht 2013). Initially, such live-in care arrangements often developed via informal networks as a black market or ‘grey economy’ structure. Since EU Eastern enlargement, however, the free movement of workers and services opened up new opportunities for more ‘formalized’ forms of live-in care migration from East to West. In addition, countries’ care, migration or employment policies started to respond with some effort of regularization of stay, work or recruitment, e.g. like it was the case in Austria, where in 2006-07 a legislation was issued in order to address the particular question of live-in care. Other governments, like in Germany, rather show a tacit acceptance of newly developing (often still irregular) arrangements based on the framework of posting of workers (see section 4 below).

As the initial quotation underlines, these developments provided new business opportunities also for intermediary labour market actors such as brokering agencies for live-in migrant care work. Their main business aim is to match migrants from Eastern European EU Member states with households in need of care in the West. We argue in the paper, that these agencies have become new players in a Europeanized live-in care market with distinct business as well as political strategies, addressing the national as well as the EU level. While live-in care work in Germany and Austria is already rather well researched from different angles (for an overview of central research perspectives see Lutz and Palenga-Möllenbeck 2015), the role of agencies as intermediaries in the field is less so (see section 2). Especially quantitative data is very rarely available. Based on results of the

EuroAgencyCare project,¹ we seek to address this gap and open the black box of this evolving business by conducting qualitative research as well as a quantitative online-survey (see section 3). Our research questions are:

1. What is the current and potential role of brokering agencies in the deployment of migration into the care sector within EU member states?
2. What different economic as well as political strategies of these agencies can we observe in the EU multi-level system?
3. What difference does it make for the development of the sector, also with respect to questions of quality of care as well as of working conditions for migrant care workers, if markets are more (Austrian case) or less (German case) formalized?

The latter is also the reason, why we chose a comparative perspective between Austrian and Germany: Both conservative welfare states have similarities in their welfare and care systems, and in the way, how increasing care needs have led to the evolution of a new live-in care market. However, despite the common framework of the EU single market, the degree of formalization and the regulatory context at the national level is quite different in the two countries (see section 4).

The paper is structured as follows: In the next section, we will present a state-of-the-art analysis of the global literature on intermediaries in domestic work, as well as literature on live-in migrant care work in long-term care, and explain the research gap we address. In section 3, we illustrate the methods used. Section 4 provides background information on the two country cases studied, in order to prepare for section 5 where we present our empirical results. Finally, core results are summarized and discussed in section 6.

2 Agencies as Labour Market Intermediaries: A Black Box

An increasing international circulation of goods and services in the course of the so called *New Economy* comes with a greater need for intermediation; supply and demand sides are subjected to a bigger need for information and matching services. Over the last decade, more scholars thus became interested in the question of how (labour market) *intermediaries* are operating, given an apparent increase in the structural complexity of a reality which is closely intertwined with state legislations, (supra-)national regulations, cultural patterns and a more differentiated regional development due to various forms of migration and mobility (Autor 2008). We understand the notion ‘labour

¹ The project is funded by the German-Polish Research Foundation. It includes also a study of employment agencies in Poland, which is not presented in this paper. For further information see <https://www.uni-due.de/biwi/sozialpolitik/euroagencycare.php>. We are very grateful to our Polish colleagues from Warsaw University, Maciej Duszczyk and Kamil Matuszczyk, for their helpful comments on the topic. We would also like to thank our student research assistant, Larina Kleinitz, for her very helpful support.

market intermediaries' (LMIs) here in broad and economic terms with regard to the emergence of regional as well as transnational labour markets. Usually embedded in a context of the analysis of labour markets under increased volatility and flexibility in specific countries or regions, LMIs

“[...] are defined as independent, profit-maximizing economic agents mediating between two market sides in the presence of market imperfections. The source of their efficiency is a reduction in the costs of these transactions as compared to transactions without an intermediary” (Benner 2003, 625f).

Originating from economic theory, intermediaries and their role in the emergence, organisation and functioning of (labour) markets was set on the research agenda by economists, sociologists, geographers and political scientist alike, looking at labour markets and (labour) migration processes. Very often, however, the exact functioning of labour market intermediaries is not known, making these actors operating in a veritable *black box* (Lindquist, Xiang, and Yeoh 2012; McKeown 2012). Yet, some studies shed light into this box and will briefly be sketched out in this section.

With regard to the EU context, so far, there are no studies that try to link the EU multilevel governance system to the phenomenon of live-in care workers with regard to labour market intermediaries. In a study conducted for the European Parliament, Eichhorst et al. (2013) point to the fact that despite LMIs being a growing phenomenon, limited data and unresolved non-uniformity with regard to clear definitions hinder an encompassing assessment of their activities and according to various sectors. The difficulty would also lie in the fact that “[t]here is no autonomous EU definition for private employment agencies, nor is there a single paradigm or conceptual framework to deal with the phenomenon of employment agencies under EU law” (2013, 43). As holds true for Poland, which on this reading is defined to be an ‘emerging market’ (2013, 74), the use of contracts of work and labour (*Werkeverträge*) in contrast to conventional working contracts seems to be a common strategy to circumvent the more rigorous Polish Labour Law, thus eintailing a structurally ‘legal grey zone’ in this business field in general (2013, 81). However, these broad description still does not impart knowledge on the very role of LMIs with regard to live-in care work agencies. Therefore, a brief look into migration research proves helpful.

Migration research traditionally looks at the movement of population groups and tries to explain its emergence, patterns and persistence. In particular, and with regard to LMIs, the role of *ethnic networks* was studied, referring originally to migration network theory (cf. Castles et al. 2010, 39f). On this reading, using the example of intermediaries for unauthorized migrants that arrive and settle in their country of destination, the Italian scholar Maurizio Ambrosini demonstrates the multifaceted intermediating and support structures they depend on. Furthermore, he highlights the crucial role of *coethnics* and/or arising coethnic networks (Ambrosini 2017, 5ff) in building and maintaining information and support structures.

Referring to the example of Polish live-in care migration to Germany, Elrick and Lewandowska (2008) underline the central role of *agents* and migrant networks for the functioning of a regional, yet informal, labour market. In their view, agents are “knowledgeable brokers of scarce information about migration routes, job opportunities or means of integrating into the host society” (ibid., 722), and crucial players, since “[i]nformation in the domestic care work sector is highly valuable as employment opportunities are difficult to detect” (ibid., 723). They are important both for the (migrant) worker herself or himself, just as for the demand side. The question, who becomes such an agent, is answered twofold: either “successful migrants who themselves wish to gain from their experiences by becoming brokers” (ibid., 723f) or “non-migrants who have identified an economic niche” (ibid., 724). This holds true also for our field of interest, as will be shown later. However, a part of the sector we look at is much more professionalized and already left behind the threshold of an informal business based on personal contacts and phone calls.

Another study from Swiss geographers looks at the live-in care market in Switzerland and focuses on the *valorisation of ethnic and gendered patterns* in these arrangements (Schwiter, Berndt, and Schilling 2014). The authors emphasize the constitutive role of LMIs in the sense that they have a noticeable influence on the design and definition of working conditions and organisation, as in Switzerland the intermediary agencies also act as employers (ibid., 219): It relies on their market force to define moral standards and social norms within brokered working relationships.

Related to new public management reforms in neoliberal times Schwiter et al. (2015) describe the Swiss public health care system as a commercialized care market. Brokerage agencies for live-in care in Switzerland are part of this development and, despite the growing phenomenon, heavily under-researched. The authors therefore suggest a context sensitive approach as

“[t]he concrete performance of labour recruitment agencies in this respect strongly depends on the countries involved, with national-level state regulations playing a particularly important role” (2015, 10).

The author team interviewed 16 head of companies from this sector, to elaborate from this data a discursive structure pointing to the new market logics in field. Interestingly, Swiss agencies “position themselves as pioneers of a ‘social market’, as actors who offer services for the collective good” (ibid., 11). Whereas this article analyses the discourse structures that come along with an increasing commodification in the social care system, and in the live-in care sector in particular, it does not offer an encompassing overview of the market structure of live-in agencies as such. This perspective is still due, both for Switzerland, Austria, and Germany.

Finally, from a *workers’ rights’ perspective*, the International Labour Organization (ILO) has long been concerned with the rights of (migrant) workers and private employment agencies, publishing and introducing international conventions on the role and duties of *private employment agencies*. In this

context, they are defined as follows: Private employment agencies are providing “services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom” (ILO 2000). The notion of employment agencies is used in a very broad sense here, which Fudge & Hobden (2018) narrow down: The authors offer a conceptualisation of various *types of employment agencies* across the globe in the process of formalising domestic work, and they rightly state: “What remains in question is the impact these intermediaries may have on working conditions in the sector” (ibid., 2). To answer this question in the medium term, a thorough “mapping” of the landscape of live-in care agencies in Germany and Austria is still pending. Being EU member states and players in the EU single market, the two countries are strongly influenced by EU legislation and the regulatory context is thus not directly comparable to studies from either Switzerland, North America or Asia on this topic. So far, none of the cited studies does explicitly focus on the specific Western European situation, nor on the field of live-in care migration in the European Single Market – two aspects central to our study. Like in other sectors, also for the field of live-in care work, it holds true that LMIs are “understudied economic actors” (Autor 2008, 1). For this reason, the main intention of our study is to enhance availability of quantitative information, and to provide an overview of the current landscape of brokering companies for live-in care work in Austria and Germany based on an online survey with business executives in the sector. On the basis of this data, which is not so easy to generate in a partly still ‘grey’ sector with persisting irregularities, we aim to open the above mentioned ‘black box’ of intermediaries in the live-in care market in Europe at least a bit further. Thus, we offer a description of this emerging, particular sector of *labour market intermediaries* along several features of their economic structures, as well as political activities.

3 Methods

As quantitative data are so rare in this sensitive field, we have developed an online survey for agencies in Austria and Germany to explore their entrepreneurial characteristics and activities, their engagement in political associations, the legal (employment) models applied in the brokering process, and their expectations about the future in the field of live-in care (in total 40 items). Development involved iterative discussion at every stage of development as well as a pre-test procedure to optimize quality and feasibility. The questionnaires in both countries differ slightly from each other in order to adapt them to the country-specific terminology. To reach the addressed agencies, we used the fact that in Austria agencies are registered at the WKO (The Austrian Federal Economic Chamber), and thus at least the name is known. Suited by a follow-up research of e-mail

addresses and data cleaning, we were able to identify 435 agencies with e-mail contacts. In Germany, we had to choose a different approach as there is no central register of this sector. This is why an extensive structured web research strategy was pursued, identifying internet presences of 274 independent agencies.² The sample strategy in Germany, thus, involves a degree of uncertainty about the total number of actual agencies due to a lack of official registration data. All agencies identified, were invited by e-mail (the invitation contained a link to the online survey) to participate in the survey which was available online for about four weeks. In Germany, the agency association VHBP (*Verband für häusliche Betreuung und Pflege e.V.*) supported the study as a gatekeeper by explicitly inviting their approx. 35 member agencies to participate. A certain selection bias of agencies which, e.g. by their membership in such an association, actively seek to overcome informal “grey sector” arrangements, cannot be ruled out though.³

The online surveys were completed between November and December 2017; the start and end dates varied slightly between the two countries. After the first and third week, the agencies received a reminder by follow-up e-mails and, in Germany, additionally by phone. Overall, 78 of the invited agencies in Austria (response rate: 17.9%) and 65 in Germany (response rate: 23.7%) participated in the online survey. A limitation whether all agencies have been reached is possible due to errors that may have occurred in the e-mail delivery process (e.g. spam, no forwarding to the person in charge). All questions were analysed by basically using descriptive statistics in R.

Pursuing a mixed-methods approach, in a second step, and after a first analysis of the survey results, a sampling strategy for semi-structured qualitative expert interviews (Helfferich 2014) was developed for Germany in context of the EuroAgencyCare project. With the goal to cover a broad range of different company types, seven German heads of agencies were selected and interviewed. All interviews were audio recorded, verbatim transcribed and coded, using the software MaxQDA, and analysed according to the model of *framework analysis* (Dunger and Schnell 2018; Gale et al. 2013).

4 Brokering agencies for live-in migrant care work in Austria and Germany: institutional embeddedness at national and EU level

In *Austria*, until 2006, a continuously growing number of families were using live-in migrant care work. The arrangements were usually based on a bi- or more weekly rotation of two caregivers from Central Eastern Europe (above all from Slovakia and Romania). While individual search by

² In addition, the data set was compared to similar, mainly internet-based data sets gathered by other institutions interested in the field, who were so kind to share their knowledge.

³ However, 62 percent of the agencies in the German sample are not member of a business association.

users and word of mouth was important in the very early stages of the development, individuals and smaller agencies, placed either in Austria or in neighbouring countries, soon developed into the recruiting and placement business. Overall, it was a largely grey economy of care, but one that became widely known and in its illegality silently accepted. After a huge political debate about the illegality in the summer of 2006, a comprehensive regularisation took place in 2006-07 (Österle and Bauer 2016). This was driven by two objectives: live-in migrant care should become a legal option and it should remain an affordable option. This was achieved by a series of amendments to the law. Most importantly, the reform opened the opportunity of self-employment (alongside employment by users and employment by service providers). Only self-employment, now the dominant arrangement, allowed to continue with the original arrangements (24-hour care for two or more weekly shifts) while at the same keeping costs on a more moderate level than in an employer-employee relationship. Still, additional costs arise because of social security contributions (for health, accident and pensions insurance). To at least partly cover these costs, a new means-tested benefit was introduced. The benefit is linked to the use of a live-in care arrangement in case the user is in dependency level 3 or above, and to minimal qualification requirements for the caregiver (which can also be fulfilled through previous experience in caregiving).

As a self-employed live-in caregiver (*“Selbständige Personenbetreuer”*), one has to register with the WKO Austrian Chamber of Commerce, which acts as the statutory industry representative. Originally, those registered as live-in care workers also had the competence to recruit and place. Only from 2015-16 onwards, the two businesses – live-in care work and brokering – have been split.

In *Germany*, live-in care work based on Polish caregivers has been a very common and affordable option for private households to outsource time-consuming care tasks since the 1990s already. Back then, as a black market, informal arrangements promoted by word-of-mouth-recommendations in informal networks were predominant. Private contact persons acting as multipliers (comparable to the role of *agents* described in section 2), informants and sometimes mediators were the first ones that lay the ground for a subsequent professionalisation of the sector. In 2004, in the course of the EU accession of Poland and other Central and Eastern European (CEE) States, the picture began to diversify. Many more actors entered the scene, sensing a profitable business with the formalisation of the by then informal transnational live-in care migration. Former private persons set up a sole proprietorship, other entrepreneurs coming from e.g. personnel services or from business studies at universities invested money into a new business formation. Using EU legislation and the fundamental freedoms of the single market, the enterprises were based on the freedom of services and the posting of workers as regulatory channels to formalize the border transgression of the care workers, whereby a very high level of legal uncertainty remains, and practices of legal

infringement seem rather common (Rossow and Leiber 2017). The model is based on the assumption that responsibility for the workers' insurance and labour contracts remains in the home country. At the same time, and in contrast to the Austrian case, in Germany, there was no political interest to regulate live-in care work as such. In terms of the size of the market we are talking of, it proves difficult to provide reliable figures. To date, estimations indicate that at least 100.000-200.000 households make use of migrant live-in caregivers (Hielscher et al. (2017) even indicate that every 12th households with a registered care recipient make use of the live-in care model), and there are only very rough, unverified estimations of the share of agency brokered persons in that market.

The regulatory context in which this market evolution took place was the *EU multi-level system*. The EU Single Market project as an unparalleled example of regional development and economic integration, today, spans across 28 member states and is thus the biggest common market worldwide. Under the umbrella of an encompassing EU integration process, a variety of welfare regimes based on different levels of prosperity are meant to play by the same rules of market integration despite 'manifest collisions of interest' (Höpner 2013). These differences become quite obvious when looking at cross-border exchanges of capital, services, labour and goods in a notably heterogeneous economic zone.

Millions of people, citizens of the member states, are crossing borders daily, weekly, or bimonthly, to find work in another country. Thus, we are observing a considerable degree of regional mobility in emerging regional markets (cf. Dølvik and Eldring 2017). Intra-EU mobility thereby is a core feature of the four fundamental freedoms, touching upon a specific European 'trilemma', as the freedom of movement entails the challenge

“to managing the tensions inherent between the impetus for deeper economic integration as set out in the treaties, conserving member states' control over the design of the welfare state and initial large differences in income levels” (Barslund and Busse 2016, i).

Paradigmatic for this situation is the question of the interplay of labour market and labour mobility policies in the member states, in particular since the 2004 EU Eastern enlargement. Against the backdrop of large economic disparities between the old and the new member states, the labour market opening in the two Western countries, Germany and Austria, was partly seen as threat due to an expected overflow of their domestic labour markets with cheap labour force, and was thus postponed until 2011. During the subsequent transition period, however, relevant features of a future market have developed already due to a strategic positioning of actors who in this climate of incremental European marketization set their business goals:

“[...] market expansion proceeds not only in a 'top-down' fashion through deregulation drives and the establishment of market-enabling institutions, but also follows directly from the strategic choices of self-interested market participants” (Bernaciak 2014, 16).

This holds true for the live-in care (posting) industry as well, as will be illustrated later. During the transition period (2004-2011), and since then, two core regulative frames at EU level proved central for the sector: The *free movement of services* and the *Posting of Workers Directive* (96/71/EC) (PWD). Both channels are prominently used by the market actors to redirect formerly black market structures of live-in care work into a minimal regulatory channel for the official posting of workers abroad. Upon these framework conditions, a considerable *posting industry* evolved, claiming its legal functioning as social security contributions are paid, but complex and often intransparent working arrangements hinder a clear re-enactment of those – what opened doors for fraud. This is why critics of this form of organized labour mobility deplore: “The post-enlargement European market offered fertile ground for the evasion of social regulations”, Bernaciak (2014, 21) states. Furthermore, since there are none or rather weak enforcement policies coming into effect, social dumping and social fraud are widespread phenomena (cf. Cremers 2014; Cremers, Bosch, and Dølvik 2007). As far as Austria and Germany are concerned, there is a relevant difference in the use of ‘regulatory channels’ for live-in care workers since 2004: In Germany, the posting of workers has evolved as the core legal reference frame. By contrast, “Austria has not been affected to the same extent by the posting of foreign employees because of stronger labour market regulations” (Krings 2009, 57). In particular, after the legalisation of live-in care work in 2006-7, there is no need for an alternative legal embedding apart from the self-employment model any more (for further details see section 5.3 below). Whereas the new legislation brought about reassurance for the Austrian business sector in terms of legal certainty, the German sector is undergoing a significant degree of expansion under the “sword of Damocles”, because many agencies depend on the continuation of their practice of posting also after the revision of the PWD between 2016 and 2018. The live-in care sector in Germany finds itself in a constant situation of legal insecurity, legal evaluation and adjustment induced by the complex frame of the EU multi level system, intersections or conflicts of EU with domestic law, and – as regards the live-in sector – a lack of specific national regulation: “The particularity of the posting regulation points to a more complex blurring of previously fixed delineations of regulatory power confined to nation-states” (Wagner 2015, 1373).

To conclude this interim chapter, we should keep in mind the specific development of the live-in care sectors in Germany and Austria, which is closely linked to crucial steps in the EU enlargement process, but adopted differing institutional shapes, mirroring two distinct domestic approaches: legalisation in Austria versus non-legalisation, but tacit consent in Germany. Even though the countries took on different paths in terms of national regulation, they have in common a remarkable expansion of the live-in care sector via self-interested private market actors who create a ‘bottom-up marketization’ process.

5 Opening the black box: Empirical Results

5.1 The emergence of a new market

In mid August 2018, 846 brokers were registered in *Austria*. Before 2016, registration as intermediary was the same as for live-in care workers and did not allow to differentiate whether an individual was acting as care provider, as broker or as both. According to the survey, the number of newly established intermediaries has increased year by year over the past ten years (cf. **Figure 1**). This growth is also confirmed by earlier estimates. A survey undertaken in 2011 identified 133 intermediaries with an internet presence (Österle, Bauer, and Hasl 2013). Earlier studies mentioned 37 intermediaries for 2007 (Schmid 2009) and 52 for 2008 (Bachinger 2009). But intermediaries

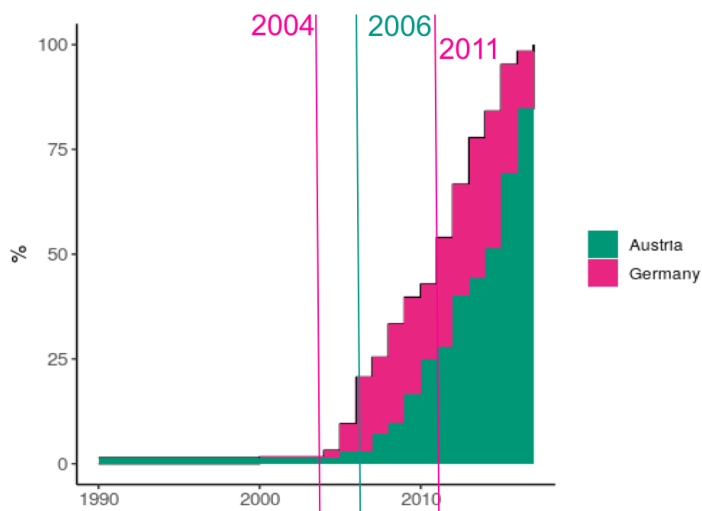


Figure 1 Foundation of agencies 1990 – 2017, Austria and Germany (in percent, cumulative)

were active before the regularisation. When 24-hour care started to emerge, it was often individual cross-border relationships that led to these arrangements, word-of-mouth was playing a role and users or their families searched for help via newspaper ads or via the internet. Later, individuals started to make a business with recruiting, working as individual brokers or by establishing corporations or associations, either in Austria in a neighbouring country (Bachinger 2009; Österle and Hammer 2007). However, given the irregularity of the “24-hour” care arrangement, the legality of the recruitment and placement and responsibility of these intermediaries was also in question. With the 2006-7 regularisation, brokerage also became a regular business. Brokerage for live-in care workers mostly started as a new business for brokers, many have been involved as family members of someone looking for live-in care, others have been migrant care workers themselves. Often they started alongside another profession. Most of the brokers have not been recruiters in other areas previously. And that seems still the case today. According to the survey, only 11% of the agencies are also or alternatively recruiting in other areas than live-in care work.

For *Germany*, although the size of the basic population is less clear due to the lack of administrative data on agencies, figure 1 also shows very well the expansion of the business field after the EU Eastern enlargement in 2004, in particular, when the transitory periods for the freedom of movement for workers had expired in 2011. For Polish people living in Germany, but also other private persons entering, brokering live-in care work became an attractive business option then. Like in Austria, most of the new businesses were very small, often ‘one-person operations’ or businesses with less than 10 employees, as this quote from an agency interview exemplarily shows:

“Yes, in 2011 my wife founded our company in the smallest form, as one can imagine, sitting at the kitchen table.” (Agency 2, Germany, transl. VR)

Already, as the accession was approaching, first market actors were positioning themselves to act, seeking a chance for a profitable business on a more formalized live-in care market. The pre-existing black market structures provided for the availability of live-in care workers and an implicit knowledge on the modus operandi of the carers and the households. One of the central players and to date one of the biggest market actor was founded at around the same time, ensuring the market to grow and formalize by implementing nation-wide branch banks which were from then on working under a unified frame, leading to a supply structure of about 800 branch offices (Interview with *Agency 5*, Germany). Many smaller companies were founded, either as such a branch⁴ or as independent standalone businesses, often linked to personal Polish-German relations, or experiences from an own case of elderly care within the family.

The more or less parallel growth in Austria and Germany is also displayed, when looking at the number of care workers the agencies had placed in households by October 1, 2013, compared to October 1, 2017 (figure 2). Most of the agencies in our sample had more ongoing placements at the cut-off date in 2017 than in 2013, even if the overall ‘small business character’ of the sector remains in place (see also section 5.2)

⁴ Several heads of these branches later went into business for themselves by using contacts and experiences gathered under the common umbrella before (Interview with *Agency 5*, Germany).

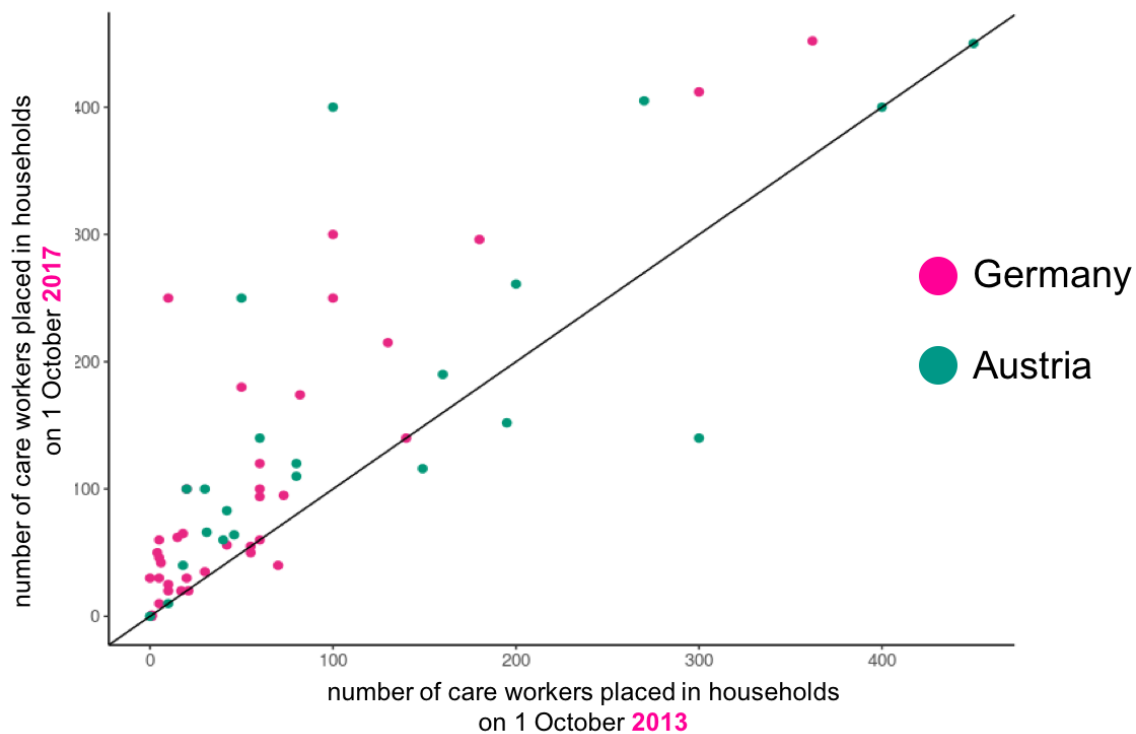


Figure 2: Placements per company, 1 October 2013 compared to 1 October 2017, Austria and Germany

5.2 Basic Characteristics of the Live-in Market in Germany and Austria

The live-in care work brokerage market *in Austria* is not dominated by few major agencies, but characterized by a large number of small businesses. More than 60% of intermediaries are sole traders (*Einzelunternehmer*). The second most important legal form is that of a private limited company (23%). Associations and non-profit limited companies each account for less than 4% of the intermediaries. The number of employees also points at the small business character of this market. The median for full-time, part-time and short part-time employees is 1 for each of these sub-categories. Three quarters of the sample have two or fewer full-time employees and just 3 or fewer part-time employees.

The small business character is also confirmed by other criteria. On October 1, 2017, those responding had between 0 and 750 live-in care workers currently active, with a median of 65. This is similar to the situation in 2013. On October 1 of that year, the number of active placements was between 0 and 550, with a median of 70. This confirms that overall the small size business character did not change much in that period. Finally, the small business character is confirmed by turnover volumes. Three quarters of those responding indicate an annual turnover volume of € 138,000 or less.

In *Germany* as well, small businesses as sole traders (*Einzelunternehmen*) prevail in the overall picture, registered merchant (*Eingetragener Kaufmann/-frau*) is the most common legal form (32 %); private limited companies have, however, a certain marked share (18 per cent). Three companies in the sample are part of a Franchise system; one designates itself as a part of the association-based corporatist German welfare system (*Freie Wohlfahrtspflege*). In terms of numbers of employees the median for full-time worker is 2, for part-time workers 1, and for short part-time workers 0,5. Three quarters of the sample have four employees or less in each category. The numbers of placements on October 1, 2017 ranges between 0 and 1186, with a median of 50. Two rather large enterprises in the sample deviate considerably from the rest of the field; in the qualitative field research it is confirmed as well that single outstanding ‘larger players’ exist. However, three quarters of the sample do not process more than 140 placements at a time. In 2013, the number of placements lay between 0 and 1200, with only one larger exemption, and a median of 36 placements. Thus, for *Germany*, a certain growth of the sector becomes visible here. Three quarters of the survey participants report on an annual turnover volume of € 360,000.

In terms of activities, an important share of the agencies focus exclusively on recruitment and placement for live-in care workers. Around 21% *in Austria*, and 40% *in Germany* are not active in any other recruitment or business areas. This confirms that intermediaries are not so much the result of a process of expansion of established recruitment agencies (although there are exceptions for a few players in *Germany*), but above all the result of individuals establishing their own business. Also, if additional services are provided, brokering agencies seem to closely focus those services related to live-in care. In *Austria*, the main additional services are the organisation of short term care provisions and care consultation, services that are close to the recruitment and placement activities. In *Germany*, care counselling is the core additional business activity (34% confirmation), as well. Around 27 % of the agencies, are however, also or alternatively active on “other kinds of brokering-services”.

In Austria, the major source countries for recruiting are Romania and Slovakia, followed by Hungary, Croatia and Bulgaria (*figure 3*). This distribution confirms the country background of live-in care workers in *Austria* (Österle 2018). In the case of Romania and Slovakia, a significant proportion of intermediaries is active only in these countries. The majority, however, is active in more than just one country. In the recruiting process, about half of the intermediaries are cooperating with agencies in these countries, but in general it is just one or two foreign partners. In *Germany*, Poland is by far the main recruiting country, and a large share of agencies (still) recruit from Poland as a single country. More than 83 % of the agencies co-operate with employment agencies in the

recruitment countries, with around 3 central cooperation partners on average (median of contract partners; 5; median of central contract partners: 3). The recruiting markets between Austria and Germany, thus, are to be divided to a certain degree. In both countries, however, processes of marked expansion towards later accession countries, like Bulgaria, Romania and Croatia, take place. As the demand for migrant care workers is constantly high, and the labour supply in countries from the first round of EU Eastern enlargement limited, new recruiting options are tried. Generally, the increasing difficulty of finding reliable work force is a recurring narrative in many interviews (“So, my impression is that the Polish market is pretty much saturated and that the other markets now are going to catch up” Agency 1, Germany). In Germany, this expansion strategy seems to include non-EU member states like the Ukraine, fostered also by the special relationship between Poland and Ukraine and EU visa arrangements with non-EU countries.

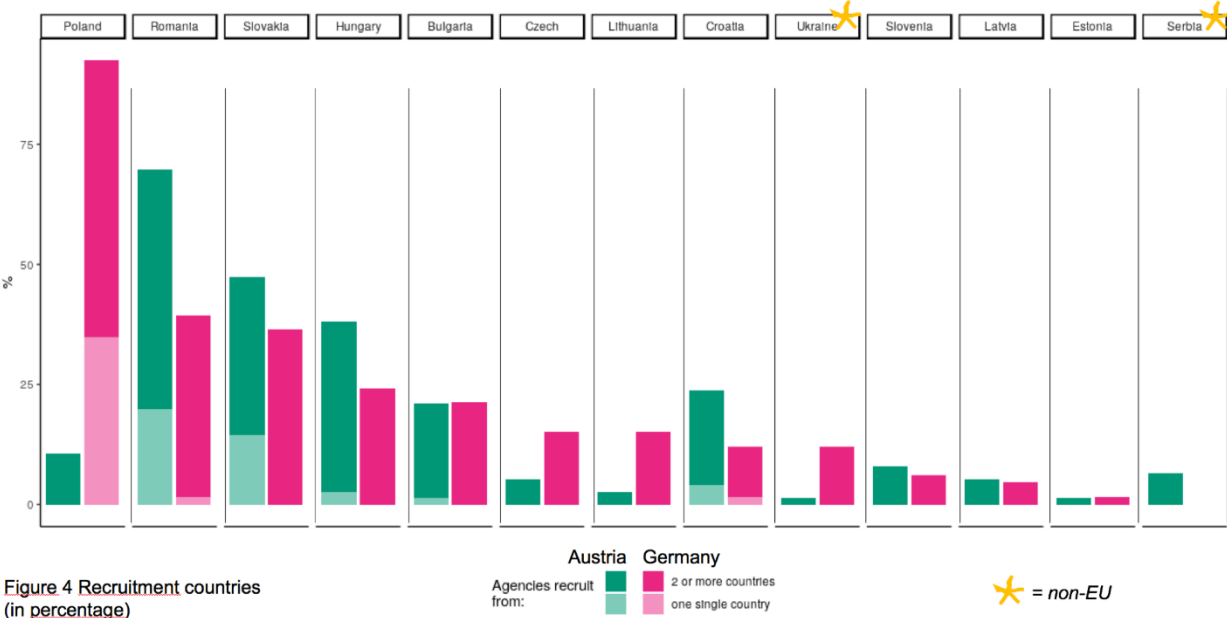


Figure 3: Recruiting countries (in %), Austria and Germany

In terms of service delivery by region (figure 3), both in Austria and in Germany, at least half of the companies surveyed would offer their services nationwide or in several regions. In Germany, only about 20% of the agencies offer their services solely in one region, making thus the regional proximity of the persons in need for care a precondition for a contract closing. In Austria, this share even adds up to around 35%. For Germany, we also ran a Mann-Whitney’s U-test to evaluate group differences in terms of number of brokered workers and employees. We found a significant difference: Companies operating nation-wide have more brokered workers in households (median: 62) compared to companies that operate regionally (median: 30, U = 508, p = .043), although with a small effect size (r=.26). On the other hand, we did not find significant difference in the number of employees. This aspect is crucial to the effect that it is worth discussing in how far a de facto

customer-oriented support and supervision of the working relationship is possible when the agency is based in another part of the country and thus not able to offer home visits as a standard feature. We can also ask, in how far it is possible for these larger nation-wide oriented agencies to sufficiently take care of their customers/ the migrant care workers with relatively few agency staff?

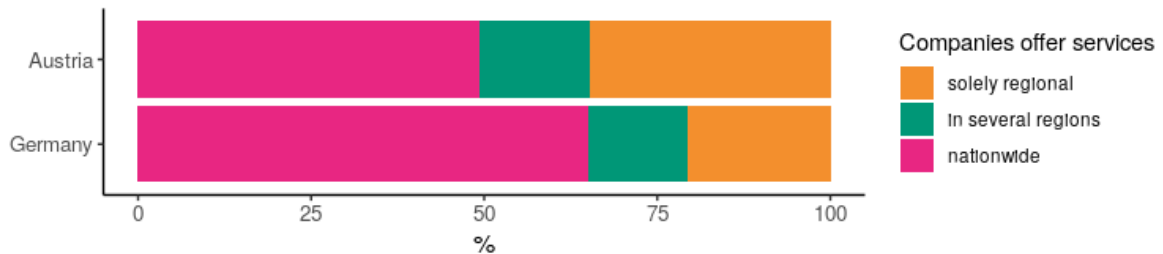


Figure 4: Regional distribution of service delivery, Austria and Germany

5.3 Legal settings and their use

In *Austria*, the self-employment mode is the almost exclusive arrangement that is used in practice. In most cases, it is via self-employment registration in Austria. Only very few agencies work with arrangements that are based on self-employment registered outside Austria and care workers employed by the agencies.

Information and support on the steps to be taken (in particular registration with the Chamber of Commerce), the contract between user and provider of care work and the intermediary as well as registration with social security institutions is provided by intermediaries and the Chamber of Commerce. Some intermediaries take over most of the administrative steps to be taken, which again questions the character of self-employment. Also, reports have shown that necessary steps have not been taken (e.g. registration with social security institutions) putting care workers at a particular risk. The Chamber of Commerce also supports their members (care workers and intermediaries). There is an online information tool available in German, English and in nine Central, Eastern and South-Eastern European languages. Also, it provides sample contracts in these eleven languages for contracts between care worker and client, between care worker and intermediary and between client and intermediary.

In contrast to Austria, where the self-employment model is statutory, the *German* picture looks different. First and foremost, and in sharp contrast to the Austrian case, there was no legal attempt at all from the side of a German government to legalize this form of domestic care work, leaving considerably leeway for the private market actors to fill this regulatory gap (Leiber and Rossow 2016, 2017). As described above, the posting of workers model (“posting of employees under foreign labour law”, *umowa o’prace*) gained acceptance with the peculiarity of posting within Polish Civil Law contracts (*umowa zlecenie*) as shown in the graphic as well (“posting employees using Polish

civil law”). Juridically, the latter one is an intermediate form between a German working and a self-employment relationship, thus providing a minimum of social security, but far less than regular employments. At the same time, these contractual arrangements are much faster to conclude and to terminate. Only few of the agencies surveyed indicated that they would make use of either the model of “employment of care workers as employees by the household of the care receiver” or even by themselves. Those two types of contractual relationship are by far the most complex ones, creating both a lot of work effort and a higher degree of mutual commitment.

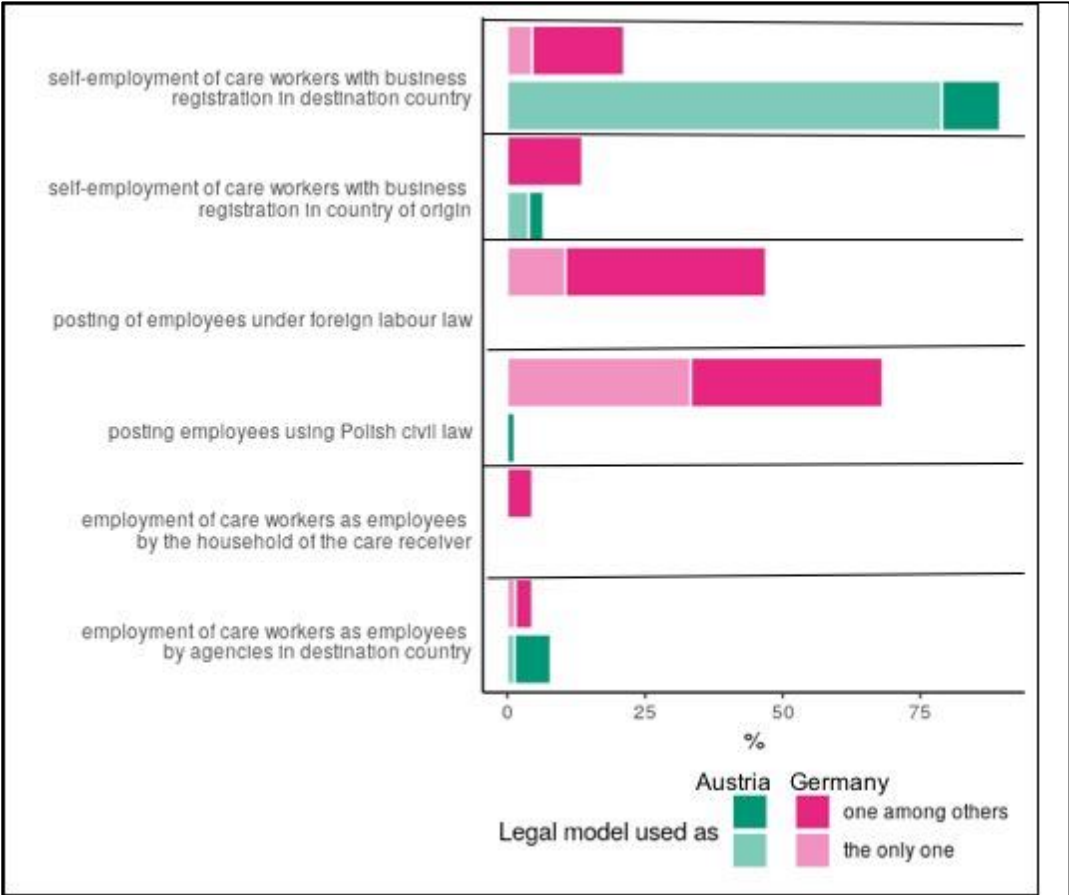


Figure 5: Legal models used (in percent), Austria and Germany

However, the underlying question of the legality of all of those contractual models remains unresolved: Proceeding from the market boom in the years after 2004, a variety of live-in care work service providers entered the scene, literally experimenting with various legal pathways to offer live-in services in Germany under conditions almost detached from control and prosecution, which still poses a challenge due to the specific legal settings: the sheer presence of an employed live-in care worker in a German household *per se* cannot be covered by the German Working Time Act (ArbZG) due to vague or lacking definitions of working time in contrast to on-call duty (Scheiwe and Schwach 2013). Likewise, questions of employers’ managerial authority in self-employment settings are unanswered, fundamental legal questions yet to be resolved (cf. Böning 2015) – and often effectively a cause for case law. Furthermore, the blurring of lines between household and

other care tasks, the clear definition of responsibilities and transparent payroll accounting are other corner points of a lacking job specification that is basically built upon structural precariousness (see e.g. for the EU context in general European Union Agency for Fundamental Rights 2015; PICUM 2016).

Against this backdrop, certain segments of the live-in care agency market work against the stigmatized picture of their market by a ‘quality’ foray; this means that they are offering a ‘legal’ alternative to an entirely illegitimate arrangement brokered on the black market. Making use of the EU regulation of the PWD (and to a lesser degree of self-employment with registration in the home country or in the country of destination), live-in care workers are nowadays and increasingly being *posted* to Germany. That implies that the workers themselves are officially employed in the home country at a company and sent abroad. Their social insurance contributions are being paid in their home country, too which is proven by the A1 form theoretically accessible by all parties involved.

Critics of this form of service provision point to the questionable use of the PWD which in their opinion should not serve as makeshift solution for a precarious low-wage sector based on foreign labour force, and for that reason should be referred to as ‘bogus posting’ (Interview, *European Parliament*). This is also one of the reasons why the agencies’ associations officially aim at the adoption of the Austrian model of self-employment.

5.4 Brokering Agencies and established welfare providers

The potential link between brokering agencies and established welfare providers in *Austria* is twofold, namely cooperating with welfare providers for certain services or welfare providers starting themselves with brokerage. Firstly, intermediaries might cooperate with established welfare providers. According to the survey, 45% of the agencies refer to cooperation with home care providers. The character of these cooperation varies largely and ranges from informal contacts with other professions involved (e.g. family doctor, nurse) to more systematic approaches of quality assurance. Secondly, after the legalisation of so called “24-hour care”, established welfare providers started to launch their own intermediaries, usually as sub-companies. This development, however, was a controversial step, given that it was mostly these welfare providers that have been very critical with the previous illegal “24-hour care”-arrangement, and are still very critical with the low level of regulations in terms of qualification requirements, quality assurance and integration into the overall care system. However, starting to act as an intermediary was also seen as an opportunity to set standards and to better integrate that service with existing long-term care provisions. E.g., in these cases, placement of migrant care workers is linked with regular visits by other professionals. And, estab-

lished welfare providers and their brokering agencies have become quite active in keeping the public debate about live-in care going, in pointing repeatedly at the aforementioned risks and problems and in developing approaches to fight these risks.

Also in *Germany*, the traditional welfare organisations have started to engage in the live-in field along the two lines, own brokerage and co-operation, – but to a more limited degree than in *Austria*. Apart from the profit-driven enterprises referred to in this article so far, there are two main welfare organisations, *Caritas* and *Diakonie*, acting as live-in migrant care brokers. As the project names indicate, the main aim of *Carifair* and *FairCare* is to organize live-in migrant care work under comparably fair and legally sound conditions. Both initiatives are using the employer-employee model and support the customers with the brokerage of a live-in, the organisation, just as correct accounting and give tax consultancy as well. Paired with the respective partner organisation of *Caritas* or *Diakonie* in CEE countries, their labour force pool is limited to this channel, and given the growing share of competitors in the market, there is presumably no significant market growth to be expected.

Another important contact point of welfare organisations with live-in care work in *Germany* concerns – more or less formal – forms cooperation between private brokering agencies and traditional local welfare provides for professional home care. From an open question on forms of cooperation of the agencies surveyed with other care-providers, we can conclude: the collaboration between established home care nursing services and live-in care agencies seems to be more established than previously assumed. Collaboration examples range from “recommendation management”⁵ to activities such as informal training of live-in care workers by the nursing services in terms of techniques, and generally, knowledge transfer. In addition, answers to the open question of our online-survey point to the fact that in the households professional nursing services and the live-in would actually often work closely together; be it when monitoring the customer in health issues, the organisation of medication delivery, or when the mobile carer gives professional advices to the live-in carer with regard to specialized knowledge. Instead of direct competition, thus, this evidence rather points to an evolving complementary role of agencies and traditional providers with a veritable division of tasks, but without interfering too much into the other party’s business.

⁵ The term indicates that mobile nursing services are recommending the offers of live-in brokering firms to their customers, and are being recommended by them in return, e.g. as complementary services to unburden the live-in care worker.

5.5 The political role of Brokering Agencies and their Associations

In *Austria* the Chamber of Commerce is the statutory representative of live-in care workers and of intermediaries. Their role is mainly given in terms of support and consultation (as via the above mentioned online services). The feedback on these activities is mixed, some are very satisfied, others are more critical (even if in very different directions).

Otherwise, there are no broad associations of brokering agencies. However, five major Austrian welfare providers are cooperating in an umbrella organisation. Via this network, they attempt to promote common social policy agendas and to work as a representative of the interests of private non-profit social service providers. As such they are also promoting improvements in “24-hour care”. They have, e.g., published a handbook and a curriculum for “24-hour care” workers.

While the market for live-in care work grew bigger in *Germany*, there is quite some degree of heterogeneity to be observed, resulting from and leading to a dynamic environment where established and new service providers compete with each other. The most relevant and apparent evidence of this dynamisation is the foundation of political associations representing a small share of service providers politically: They were founded with the goal to both change the negative image of the sector and to advocate for legal of the live-in care work in Germany.⁶ In our survey, 38% of the participating companies were organized in one of the two advocacy groups.⁷ Association members (median: 177) seem to have more brokered workers placed in households compared to non-members (median: 35)⁸ Members (median: 4) also have more employees than other companies (median: 1),⁹ and they seem to have higher annual sales. All in all, association members tend to be companies that are more established in the market.

These associations are characterized by self-imposed conditions of admission for each member company to fulfil. The two associations work similarly in this matter, yet they are characterized by a different degree of activity, visibility and pro-active networking. Part of those conditions of admission can be a certain duty to disclose sensitive business data, at least of the cooperation and service contracts, so that their legal compliance may be examined. Other conditions refer to the exact implementation of requirements stemming from law cases from the Federal Social Court of

⁶ We talk of the two associations *BHSB* (Bundesverband Haushaltshilfe und Seniorenbetreuung e.V., founded 2006) and *VHBP* (Verband für häusliche Betreuung und Pflege e.V., founded in 2014). The latter is also part of the transnational lobby association *LMI* (Labour Mobility Initiative; a Cracow-based Think Tank for the representation of companies using the Posting of Workers Directive, founded in 2013).

⁷ The two associations have in total 39 members (28.08.2018). Out of our basic population taken for our survey (n=274), this share adds up to about 14% of ‘the market’ (which we, for methodological reasons have to equal with the result of our internet research). If we expand the basic population by those agencies which are branch offices only, the share of those organized in one of the associations would decrease further. Our sample thus is strongly shaped by the good will and the strategy of transparency of the participating companies.

⁸ Mann-Whitney’s U-Test, U = 144,5, p < .001.

⁹ Mann-Whitney’s U-Test, U = 230, p < 0.01.

Germany, and the commitment to take part in mandatory quality evaluation and quality-improvement activities developed by the executive board and the members (Interview with *Association 1*). In general, the associations also serve as information exchange forum in a highly politicized transnational market segment which tries to establish itself despite a considerable degree of prevailing legal uncertainty. The necessity to organize in such political associations with the declared goal to urge for legal clarity points to the tense situation the companies find themselves in: sound prospects of a continued economic growth in the future rests on shaky grounds because of the unsecure legal context with uncertain success.

5.6 Perceived problems of the sector from the perspectives of the agencies

Reliable quantitative data on what really happens “on the grounds“ in terms of legal application or legal breaches and straining in the live-in (agency) business does not exist, and is not obtainable via an agency online-survey like the one we present. What we did in the survey, however, was to ask for core problems the agencies perceive, on the one hand on the part of the German/ Austrian households, and on the other hand on the part of the migrant care workers. In their answers, more than 50 % of the Austrian and more than 40 % of the German agencies state that a “lack of relaxation time for the migrant care worker” is a problem “frequently noticed” in the households they look after. Also “imprecise needs assessments by the customers”, “general overload” and “overload of the care workers with tasks they are not qualified for” were often confirmed in both countries. As regards problems on the part of the migrant care workers, in both countries the lack of language skills is most frequently noticed (58 % of the agencies in Germany, 76 % of the agencies in Austrian confirm that). In addition, alcohol problems, wrong job expectations, dissatisfaction with the basic conditions on-site, and wishes of the migrant care workers to change to clients easier to handle, receive considerable confirmations as well. Thus, despite the different degrees of formalisation of the sector in Austrian and Germany, the problems perceived from the perspective of the agencies are quite remarkable in both countries, and country differences appear less pronounced than we might have expected.

5.7 Future challenges and perspectives

In general, intermediaries in *Austria* and *Germany* are quite optimistic in terms of future business. They expect a growing demand for so called “24-hour care” and they expect that their own business in brokerage will grow. 23 % of the German sample plans to expand activities to additional business fields besides live-in brokering in the future. A particular future field of interest see to be dwelling forms (*besondere Wohnformen*) for elderly.

But intermediaries also articulate various challenges. These refer to the legal arrangements and the overall development of the market. In terms of the legal arrangements, intermediaries in *Austria* obviously have different views. There are those who argue for less bureaucracy, for further deregulation and more public financial subsidization of “24-hour care”. Others instead articulate a need for more regulation in terms of, e.g., quality assurance and qualification requirements on the side of care workers and on the side of intermediaries.

In *Germany*, despite the different institutional setting, the picture is quite similar: the field seems strategically divided into a “low price” and a “high quality” segment, with respective wishes for future (political) developments. In addition, the head of companies mainly stated that one of the core future threats for the sector would be the revision of the PWD. Another 50% stated that the given “legal uncertainty in the sector” has the potential to hamper market development. Both the German government just as the EU legal apparatus are seen as being too inactive both in domestic legislation intentions and on the EU level with regard to the revision of the PWD.

In terms of market development, while generally optimistic, two core challenges are stressed in both countries. First, many intermediaries expect growing difficulties to recruit qualified care workers. Secondly, the report growing expectations from the side of care workers. One solution mentioned in the comments of the intermediaries in *Austria* is to open markets for recruitment outside the EU, such as *Ukraine*.

6 Discussion and outlook

The paper started with the claim of opening the black box of the evolving market for intermediary agencies brokering live-in migrant care work in *Austria* and *Germany* at least a bit further by presenting innovative and comparative data from an online-survey with agency representatives, complemented also by certain qualitative insights into the field. When summing up our results according to our three initial research questions, we find that:

Obviously triggered by EU Eastern enlargement – and in *Austria* additionally complemented by national legislation explicitly legalising and encouraging the use of the live-in migrant care model – the agency sector in *Germany* as well *Austria* has considerably expanded. A future market growth is expected by most of the agencies. In both countries, market expansion strategies towards new recruiting countries could be observed.

Nevertheless, although a few larger payers are important particularly in *Germany*, the overall picture is dominated by the ‘small business character’ of the field. The market development in both countries can be described as a process in which many actors involved in pre-existing black market structures have used the opportunity structure of EU enlargement to establish a more formalized

business. This is particularly the case in Austria, where the regularization of the 2006-07 reform provided for legal security. But also in Germany at least a part of the sector, which has started to organize in (international) political associations, and has developed rather cooperative than competitive links with established welfare providers, is eager to become part of the established system of long-term care provision on the long run.

For sure, there is an important difference between the two countries in terms of agencies' political goals and interrelations with established welfare associations. This is because Austria stands where German agencies would like Germany to head for. Austria is seen and proclaimed as a role model by German agency associations. The Austrian model combines for them the advantages of legal certainty with an access to public funds of the long-term care system with the legal option to organize "24 hour care" via a flexible (in terms of working conditions and working time standards) self-employment model.

Interestingly, in terms of problems of migrants and families at the household level (perceived through the lens of the agencies during brokering and counselling processes), differences between the two countries in our data were not so high. This goes in hand with earlier critical reflections on the Austrian model, claiming that legal certainty does not automatically go in hand with an improvement of working conditions (e.g. Österle 2018).

The future of the live-in brokering market surely depends on future political activity in the field on national as well as EU level. In *Austria* a certain stability seems to have been reached, and a grand reform of the 2006-07 reform is not yet in sight. *Ceteris paribus* and due to constantly high demand on the part of Austrian families, the business will probably expand further in terms of numbers of placements and recruiting countries. Whether the enterprises really start to leave their particular, Austrian focussed niche for smaller businesses, and expand also to other markets in Europe or other fields of social service provision, seems less likely though. However, it might still be the case that single agencies active in border regions extend their activities across regional borders, that agencies merge within the specific sector or that a few agencies link-up or become member of international networks of agencies.

Also in *Germany*, if the current political neglect of the live-in topic continues, the market is likely expand in the future. And although political instruments like the PWD, and the high degree of legal uncertainty are bewailed by the agencies as high business risks, at least some sections of the market have shown a considerable degree of adaptability to varying legal conditions and risks. It seems likely that these flexible actors who position themselves as a quality segment persist and further expand. And they might even manage to further crowd out some smaller competitors that do not have the resources to keep up with certain (legal) developments. At the same time, these companies aim at a closing of ranks to the LTC scheme with established welfare providers. First collaborative

model projects with them are initiated in order to gain further legitimacy. As long as the German government remains inactive, this sector is likely to continue to find ways to develop and to interpret the given legal frame according to their interests. The consequence will be that a considerable transnational labour market will flourish even more, undisturbed by institutions of labour regulation. Despite the agency associations' political ambitions to foster quality also by higher labour standards, there are signs that the overall potential of raising those, driven solely by the activities of for-profit actors, are of limited success without further framing by a neutral actor as the state. Further research in the *Euro.AgencyCare* project based on qualitative fieldwork seeks to study the 'quality potential' and approaches for 'self-regulation' of the agency sector more in-depth (Leiber, Rossow, Matuszczyk forthcoming). Also the potential to (self-)organize the interests of migrant care workers, e.g. with the support of labour unions, seem so far rather limited in Germany and Austria, although further systematic and comparative research would be helpful in this field, as well.

From the perspectives of the migrant care workers such a political stalemate means that a significant improvement of their working conditions, and a considerable change of the balance of power between agencies, households, and migrant care workers, compared to the current situation, is not yet in sight.

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