

Posted workers

La condizione dei lavoratori in distacco transnazionale in Europa

a cura di Rossana Cillo e Fabio Perocco

Romanian Workers Posted to Germany

Precarious Working Conditions

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Abstract Drawing on participatory and non-participatory observation and on interviews with workers, union representatives and migrant advisors, this chapter focuses on the working conditions of Romanians posted in the construction and meat industry sectors in Germany. More precisely, it addresses their income level, housing and health, as well as union approaches towards workers in this type of employment. Both because the regulatory framework in force in 2015-16, when this research was carried out, did not grant wages above the minimum standards in Germany for posted workers, and as a result of informal agreements or unlawful practices of employers, respondents were often paid below the wages they were entitled to. Their accommodation ranged from shared apartments inside towns to living-containers at the construction site or, in extreme cases, to illegal housing in tool-containers. At the same time, even if as a result of intense work rhythm and poor work safety, posted workers are more vulnerable to health issues and accidents than regular employees, their social health protection is low. On the other hand, the constraints of the outdated regulatory framework and their limited resources are among the factors that determined unions to support advisory offices for posted workers, instead of recruiting them within their structures. In this context, posted workers have an unbalanced position in regards to that of their employers, with few who were able to enforce their rights through collective action.

Keywords Posted workers. Atypical employment. Germany. Health. Housing.

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1 Introduction

Working in a meat factory means that you don't have a life anymore, you forget yourself, you erase yourself as a person and start thinking that you are a slave. You don't do this because you like it; you do it because you have to, because otherwise you have no money to return home, you have no money to pay your rent.

In this quote, which stems from an interview carried out in 2016, Elena, a meat industry worker describes her first experience in posted employment in Germany. In order to obtain the job, she had to pay the posting company a fee of 700 euro (in two instalments) and, once abroad, even if against regulations, she faced wage deductions for transport, tools and accommodation.

Based on a research carried out between December 2015 and December 2016 in Berlin, Baden-Württemberg and Lower Saxony, this article will focus on the working and living conditions of Romanians posted in the construction and meat-industry sectors in Germany. The text is based on interviews with 32 workers, with union representatives and work advisers and on participatory and non-participatory observation. I chose these two economic sectors in Germany because both hired a high number of de facto posted workers. Moreover, of around 58,000 workers posted from Romania in 2014, the year previous to my research, 43.6% worked in Germany (De Wispelaere, Pacolet 2015).

In 2015-16, posting to Germany was governed by the Posting of Workers Directive 96/71/EC, the Posting of Workers Act (*Arbeitnehmer-Entsendegesetz*) – which is the German correspondent of the Directive 96/71/EC –, and a series of decisions of the Court of Justice of the European Union that provided workers with minimum standards in the country of destination. However, in practice posted workers were not even always able to enforce their rights derived from this inequitable framework. Respondents were often hired for the specific purpose of being posted and often had short-term contracts abroad. Similarly, in some cases, they dealt with informal fees, long working hours and poor work safety.

As this regulatory framework which led to precarity, was widely criticised, over time, steps were made to improve regulations. Through the introduction of the Directive (EU) 2018/957, migrants in posted employment will be entitled to remuneration, allowances for transport, food and accommodation and the recognition of collective agreements – which will finally grant them equal pay, at least at an official level.

At the same time, the COVID-19 pandemic shed once again light on the actual working and living conditions of workers hired by subcontractors from Romania, as in the spring and summer of 2020, at least

1,500 workers were tested positive in meat-factories in Birkenfeld, Pforzheim, Cosfeld and Rheda-Wiedenbrück (Maurin 2020, Klawitter 2020). Subsequently, the ban of subcontractors from large meat factories starting with 2021 is being discussed in Germany.

2 Posted Work. Dynamics Between Companies, Workers and Unions

A body of the literature on posted work shows that the European regulatory framework on posting is the main factor to determine an unbalanced power relationship between workers and companies (Berntsen, Lillie 2014, 2015; Wagner, Lillie 2014). While posted workers are bound to the national-based framework, main contractors are able to benefit from “an array of regulatory contexts defined only partially and imperfectly by geographical contingency, between which they can choose and strategize” (Wagner, Lillie 2014, 416). Against this background, German meat producers have a high bargaining power and are able to set contracts in ways that put pressure on subcontractors to reduce labour costs as the only possibility to make profit (Mense-Petermann 2018). Similarly, companies in the construction sector have the capacity to influence the regulatory framework at an informal level (Wagner 2015).

On the other side, several factors prevent workers from unionising. First of all, especially in the construction sector, workers are highly mobile: they move between cities or even countries every few months. This often hinders them to initiate and remain in contact with unions which most of the times act within a national-based framework (Lillie, Sippola 2011). The only significant initiative to develop transnational cooperation among unions in several European countries proved to be ineffective in the long term (Greer et al. 2013). However, as shown by Lillie and Greer (2007), the capacity of main contractors to weaken collective bargaining depends on union responses and on how the domestic labour market is organised. Similarly, in some cases, favourable outcomes are brought by unconventional alliances developed between unions and NGOs (Berntsen 2015; Wagner 2015).

The studies that address the perspective of workers towards this type of employment (Berntsen 2016; Caro et al. 2015; Lillie 2016; Thörnqvist, Bernhardsson 2015; Wagner 2015) show that, against this regulatory framework, very often posted workers have difficulties in enforcing their rights.

3 Data and Methods

This chapter is based on qualitative research carried out between December 2015 and December 2016. I interviewed 19 construction workers and 13 meat-industry workers, aged 23-51 years old (only two of the respondents were women). The interviews, which gather information on posted workers' entire labour trajectories, focused, among others, on their working conditions and on the particularities of their contracts.

I recruited my sample through local branches of the construction union, through Facebook groups of Romanian migrants and through personal contacts. I used the snowballing method to find new respondents. The interviews were conducted with migrants who, at any moment in time, had been in posted employment. However, most of them had held several such positions.

In order to triangulate, data were collected from other sources too. I interviewed other actors in the field: two Romanian construction engineers, two migrant advisers and representatives at the European level of the Trade Union for Building-Agriculture-Environment (IG BAU) and The German Trade Union Confederation (DGB). I also carried participatory and non-participatory observation. I visited one construction site each Saturday during working hours, interviewed migrants at their workplaces and accommodation and translated for a local office of IG BAU during their attempts to organise Romanian migrants.

4 Income Level, Health and Housing Conditions of Posted Workers

4.1 Income Level

In Germany, the wage level of posted workers was determined by the affiliation of their industry to the Posting of Workers Act (*Arbeitnehmer-Entsendegesetz*). As the construction was among the six economic sectors initially part of the agreement, posted workers occupied in this activity that were entitled to the minimum wage in Germany since 1996. On the other hand, before 2015, when a minimum wage was introduced in the meat-industry, following the inclusion of the sector in the Posting of Workers Act, the workers could be paid at their home country level wages.

As mentioned previously, a consequence of the outdated regulatory framework was that posted workers were paid less than workers in standard employment for the same job at the same place. The minimum hourly wage in the construction sector varied between 14.40 and 14.45 euros gross, depending on the area, and it was set at 8.60 in the meat-industry. The minimum hourly wage in Romania

was set at around 1.9 euros. In 2020, the minimum hourly wage in the construction sector varied between 15.25 and 15.40 per hour and reached 8.75 in the meat industry. The minimum hourly wage in Romania was set at around 2.90 euro.

The consistent wage differential between Romania and Germany is what determined most workers to engage in posted work (Voivozeanu 2019). However, at destination the amounts of money received were, in many cases, below the standards. Some agreed with their employer on a fixed monthly salary, lower than stipulated in the official documents. Others experienced wage theft on different levels. For example, some worked more hours than declared, therefore even if on paper they received the minimum wage, the remuneration per hour was lower. Others experienced deductions for accommodation, transport and equipment costs. Ana, a respondent who was employed in several meat factories in Germany describes such an experience in the next quote.

R: Were you paid the minimum wage?

A: 8.80 [euro]. But they take care to cut off as much as they want to. They ask you to pay for the accommodation, the employer is in charge of all houses and will ask you to pay for a share of 250, 200, plus the insurance. After that, [you will have to pay for] work materials, boots, hand gloves, tools, transport fees and you'll get around 6 euro per hours. Any business... even if the German state increases the gross salary per hour, they will make sure to add as much as they want to.

When it comes to posted employment, abusive practices are established on the German labour market, therefore even if the newly introduced regulation entitles posted workers to equal pay, it remains to be seen if their situation will largely improve. At the same time, once the new regulatory framework is enforced, some practices that allow the circumvention of the minimum wage could become more widespread. For example, some companies ask their de facto employees to register as self-employed, which permits workers to set tariffs below the minimum salary (this practice is called 'bogus self-employed').

4.2 Housing

The employers have the obligation to organise the entire migration process of posted workers, including accommodation. All of my interviewees lived in shared rooms with their Romanian colleagues. Their housing arrangements varied from living-containers placed at their work sites, to houses in remote/cheap areas or shared-flats inside towns and, as already mentioned previously, even if against regulations, they were often charged for accommodation.

During my fieldwork I had the opportunity to see and experience the atmosphere of some the places where posted workers lived during their stays abroad. I visited the kitchen of a living container late in the evening. Around twenty men would take turns at frying meat and potatoes on the two available gas cookers. They would have dinner - in small groups or alone - sitting on benches at the rough wooden table placed in the middle of the room. After, some would drink, and smoke and play cards before going to bed in one of the shared container bedrooms. In another case - the most extreme I encountered on the field, I witnessed up to three workers sleeping in a six metres square tool-container on a construction site which was worth more than 27 million euro. In a winter month, their only heating source was a radiator, which they also used for cooking.

All these places seemed improvised and temporary, which through their location and the fact the workers live only with team-mates, separated them from the society of the country of destination (Caro et al. 2015). In such accommodation, they were often under the eyes of their supervisors unable to separate their work and private lives. At the same time, as housing was arranged by their employers, they were more reluctant to face them on work-related issues, as they after a conflict they could lose both their jobs and their accommodation abroad.

4.3 Health

Most of my respondents managed a high volume of work and long working hours, with serious consequences on their health condition. For some of them, health issues are directly linked to their work environments, especially in the meat industry, where work is carried at low temperatures. The case of a worker who was advised by her doctor to quit her job is illustrative in this sense:

I could not handle it anymore. I got very sick, I had problems with my lungs, it was two degrees inside [...] and the doctor told me that I should either change my job or take a three-month break. [...] both tiredness and stress and I was smoking a lot.

Similarly, the combination of low levels of work security, exhaustion and repetitive work might lead to accidents. In such cases, posted workers are not always provided social health protection. Ioan, a meat industry worker recalls the accident of a coworker who, in lack of a health insurance, was sent home without any compensation:

I had a colleague who cut off his eye, he split his eye in two, he was left without his eye, and as he did not have an insurance, he was sent back home.

Since the social security payments are due in Romania, in case of an accident, workers receive considerably lower compensations than in their country of destination, as it happened for Matei. He was cleaning the basement of a block of flats, when a two-tones cement staircase fell over him. He lied in a coma for a week and needed 18 operations and one and a half years of rehabilitation therapy to partially recover. Following the accident, he receives a pension of around 150 euro monthly.

Even if, due to their working conditions and their highly intensive jobs, posted workers are more vulnerable to health issues and accidents, their social protection is limited. Few, who do not have an insurance, receive no nursing or compensation, while others obtain significantly lower benefits than workers under standard contracts in the country of destination.

5 On the Interaction Between Workers and Unions

Besides the unfavourable regulatory framework in force at the time of my research, which made it almost impossible to negotiate collective agreements for posted workers, German trade unions have limited personnel, are often unfamiliar with particularities of non-standard contracts and encounter language barriers in their exchanges with Eastern European workers. This are some of the reasons for which, instead of focusing on recruiting posted workers, German unions from the two economic sectors count on a service-providing approach. The Confederation of German Trade Unions has set up Fair Mobility (*Faire-Mobilität*), an organisation with offices in several cities in Germany that provides advice on labour related issues in Romanian, Bulgarian or Hungarian. Other counselling structures offer similar services for posted workers, however, in opposition with unions, these initiatives are not able to represent them in court.

Most workers address advisory offices when they encounter pressing issues. The largest number of requests concern the lack of wage payment (sometimes for months), while other inquiries refer to unfounded dismissals, issues related to their contracts or lack of holidays pay. The workers' insufficient knowledge of the legal framework of posting, their poor German skills or their lack of trust in authorities are among the factors that make workers less likely to contact official institutions concerning work-related issues. The workers lack of trust in public authorities, which rather focus on combating fraud than on addressing labour abuses, is acknowledged by a representative of the German Confederation of Trade Unions:

I think it is understandable that workers are very hesitant when looking for help or when it comes to filling official complaints. It is,

perhaps, also about the injustices committed by the Police or other organisations but... the official authorities, the public authorities have not proved in recent years that they are on their side.

On the other hand, actions against employers require material and time, resources that are simply unavailable to posted workers or that are unbalanced in comparison to that of their employers.

The limited union resources in engaging with mobile workers and the above presented barriers experienced by workers contribute to maintaining the existing state of affairs, in which very few posted workers are able to resort to or rely on union support to enforce their rights.

6 Levels of Precarity in Posted Employment

Romanian workers in posted employment are determined to leave their country of origin by insecure jobs and poor working condition (Voivozeanu 2019). While most respondents had unstable jobs and experienced labour abuses in Germany, some managed to find better arrangements. Therefore, drawing on the issue of time (Anderson 2007), more specifically on the length of time spent by workers in one job, I previously distinguished between three different levels of precarity experienced by posted workers in the country of destination (Voivozeanu 2019, 94-6).

1. De facto posted workers: workers in this category are under contract with their companies before being posted. In the periods of time when they are not abroad, they carry out work for the same employer in the country of origin.
2. Workers who have long-term agreements with the same employer: due to breaches in regulations they carry out their work in Germany for longer periods of time than permitted by regulations. They are content with this type of arrangement as they often manage to remain in a relatively stable employment relationship for longer periods of time.
3. Workers who are posted with different companies: some of them work abroad during the short periods of time when they would like to supplement their income in the country or origin, while others would prefer long term employment abroad but as a result of limited opportunities, they chose to be posted with companies in Germany or other countries in the European Union. Part of the workers in this category encounter no serious work-related issue. Others suffer a number of moderate labour violation. Some end up in extremely abusive employment relationship.

Comparing these categories, one can conclude that workers who gain posted employment with different companies (only for the period of time when they are abroad) are in a more precarious situation than *de facto* posted workers and workers who have long-term agreements with their employers (Voivozeanu 2019).

7 Conclusion

Several studies showed that, due to the loopholes of the regulatory framework in force at the time when this research was carried out, posted jobs are characterised by low remuneration and low social protection (Lillie, Wagner 2015; Wagner, Hassel 2016). Another body of research discussed workers' perspective on their precarious working conditions (Berntsen 2016; Caro et al. 2015; Thörnqvist, Bernhardsson 2015; Wagner 2015).

Similarly, the aim of this chapter, based on a research carried out between December 2015 and December 2016 in Berlin, Baden-Württemberg and Lower Saxony, was to offer an insight on the working conditions of Romanian workers posted to Germany. More precisely, it focused on the income level, housing and health of posted workers, as well as on the union approaches towards workers in this type of employment.

The outdated regulatory framework on posting did not grant wages above the minimum standards in Germany for posted workers. Moreover, as a result of informal agreements with their employers or the unlawful practices the latter resort to, respondents were in many cases paid even below the minimum standards in Germany. Through its location and the fact that workers were only living with their Romanian colleagues, their accommodation – which ranged from shared apartments inside towns to living-containers at the construction site or, in extreme cases, to illegal housing in tool-containers – isolated them from the society of the country of destination (Caro et al. 2015). At the same time, since housing is organised by employers, posted workers would often avoid confronting them on work-related issues: after a conflict they could lose both their jobs and accommodation in Germany. Similarly, even if due to their intense work rhythm and poor safety measures, they are more vulnerable to health issues and accidents, their social health protection is low. On the other hand, the constraints of the outdated regulatory framework and their limited resources were among the factors that determined unions to support advisory offices for posted workers, instead of recruiting them within their structures. In this context, posted workers have an unbalanced position in regards to that of their employers, with few who are able to enforce their rights by means of collective action.

However, as I explained previously, even if most posted workers carry out their work in insecure context with substandard conditions, they experience precarity on different levels: de facto posted workers and workers who have long-term agreements with their employers are less precarious than workers who gain posted employment with different companies (Voivozeanu 2019). The recently introduced Directive (EU) 2018/957 entitles posted workers to remuneration, allowances and collective agreements - in other words to equal pay (in relation to workers in standard employment in the country of destination). Even if the official regulations improved, it is clear that abusive practices established in the two sectors will not disappear, therefore it remains to be seen what will be the real impact of legal changes on the wages and working conditions of posted workers.

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