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**POOSH – Occupational Safety and Health of Posted Workers: Depicting the existing and future challenges in assuring decent working conditions and wellbeing of workers in hazardous sectors
(Project number VS/2016/0224; 2017 – 2018)**

Work Package 4 COMPARATIVE RESEARCH STUDY

POOSH Country Report in Germany

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Abbreviations

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|------------|--|
| AEntG | Posted Workers Act |
| ArbSchG | Working Conditions Act |
| ASiG | Occupational Safety Law |
| ASMK | Conference of Ministers for Labour and Social Affairs |
| BAuA | Federal Institute for Occupational Safety and Health |
| BMAS | Federal Ministry of Labour and Social Affairs |
| BVA | Federal Office of Administration |
| DGB | German Trade Union Confederation |
| DGUV | German Social Accident Insurance |
| FSK | Financial Control of Undeclared Employment |
| GDA | Joint German Occupational Safety and Health Strategy |
| IG Bau | Industrial Trade Union Building Agriculture Environment |
| IG Metall | Industrial Metal Union |
| LASI | Federal Commission for Occupational Safety and Security Technology |
| NOSHC | National Occupational Safety and Health Conference |
| OSH | Occupational Safety and Health |
| SchwarARbG | Illicit Work Law |
| SGB | Social Security Statute Book |
| Ver.di | Unified Service Sector Union |

Executive Summary

The project POOSH – *Occupational Safety and Health of Posted Workers: Depicting the existing and future challenges in assuring decent working conditions and wellbeing of workers in hazardous sectors* elucidates posting in an almost completely unexplored perspective. In particular, POOSH looks at the occupational health and safety (OSH) of posted workers from both perspectives. On the one hand, information has been collected on how to deal with foreign-posted workers working in the home country of the researchers, and on the other hand, research has been conducted into how domestic posted workers, who are sent abroad, are informed about their rights and obligations.

In order to be able to answer these questions in more detail, the project work has been carried out in two steps. Initially, a literature review was carried out in the first half of 2017, which was intended to reveal how far research has already progressed in this field. Both scientific and grey literature were analysed and the results compiled in a report. After this first step, it became clear that the field is almost unexplored. This may be related, for example, to the interdisciplinary character of the topic, which has points of overlap with different areas of science such as work science, migration research etc. At some points in this country report, reference is also made to the literature review. Subsequently, empirical research was carried out in a second step. In addition, all project partners received standardised guidelines for oral interviews with various stakeholders regarding the OSH of posted workers. On one hand, different competent bodies, authorities and other actors were interviewed; on the other hand, posted workers themselves reported on their experiences.

Access to the field proved to be laborious and tough. The second half of 2017 was used to make first contacts. Due to the fact that there is no central institution in Germany responsible for posting and the associated OSH, different actors needed to be contacted in parallel. Finally, interviews were conducted with the Federal Ministry of Labour and Social Affairs (BMAS), trade unions, union-related advisory centres and German posted workers who worked in other European countries. Unfortunately, it was not possible to get hold of all involved actors for an interview. In particular, the customs authority was not available. It was also significant that there was a reputable uncertainty among those contacted, if they were even able to answer the researchers' questions, because the field of research was very specific. But during the interviews, it usually turned out that many questions could be answered extensively.

Basically, in Germany almost everything is regulated by law. But just because it is regulated, it does not mean that those responsible adhere to it. The main problem that Germany has is the fact that there is too little control by the authorities. In particular, it became clear that the distinction between 'legal posted workers', 'multiple employees' or 'pseudo-posted workers' is often very difficult, and there is no competent body that constantly and comprehensively reviews this. Ambiguous employment is often accompanied by inadequate and non-existent health insurance status. Unfortunately, the interviews have shown that posting is often used as a tool to evade social security contributions. It has often become clear to interviewees that the employers that are responsible for the posted workers often do not want to assume their responsibilities as such, and in some cases act deliberately and accept violation of OSH. Here it would be appropriate to make employers more responsible and to make it clear to them how important it is to invest extensively in the OSH of posted workers too. If employers were more committed to OSH, then it would not be necessary to have more controls.

Furthermore, the interviews revealed that it is imperative to educate posted workers themselves much more before their posting assignment and bring them together with unions or works councils so that they can be informed about their rights and obligations. Here, the researchers' recommendation would be to consider posting not only as "sending a job," but to consider the employee's stay abroad much more as a qualification process. During this time, both technical and social skills will be learned, which could be made transparent by means of certificates. Similar to the *Europass* in vocational education, which documents periods spent abroad as a qualification of trainees, there could be similar forms that record the learning gains of posted workers abroad. In order to enable the widest possible increase in knowledge and competence abroad, the posted workers should be offered language, cultural and work-related training by way of preparation.

With the help of the first interviews, which were carried out by the German project partner, first tendencies could be identified. The interest in the research results is high and the interviewees' desire to bring together the participants in order to facilitate an exchange is clear. Although the researchers were initially sceptical about the research field, because OSH in Germany is a very sensitive topic, after the initial uncertainty it became clear that the willingness to pass on existing information to neutral researchers was very much wanted and was identified as profitable. In order to be able to draw an even clearer image of posting and OSH of posted workers, this research needs to be continued and interviews should be conducted with all involved authorities.

1. Introduction

1.1. A Quick Overview of OSH and Posted Work in the Country

The literature review revealed that there is no reliable data on posting in Germany. Also related to OSH in particular on posted workers, there are no meaningful statistics. Posted workers are not listed separately with regard to OSH because the same rights apply to all workers in Germany, whether domestic, migrant or posted worker. This is still due to the lack of a central responsible office in Germany for posting and OSH of posted workers. Occasionally there are statistics that can show tendencies separately. However, when these statistics are compared with each other, there are clear differences that raise issues of comparability, informative value and the basis of assessment. Nevertheless, some data on posting and OSH will be outlined below.

In 2015, Germany sent a total of 240,862 workers abroad and received 418,908 posted workers. According to these statistics, Germany is the main receiving country, followed by France and Belgium. In terms of sending posted workers, the only country with more sent posted workers than Germany is Poland. The proportion of posted workers in the working population of Germany is about 0.6%. Germany sends its workers mainly to Switzerland, Austria, the Netherlands, France and Belgium. Posted workers to Germany mainly come from Poland and Slovenia as well as Hungary, Austria and Croatia (see European Commission, 2015). The main sector that has an important role in posting is the construction industry. The number of workers posted to Germany has risen steadily in the construction industry since 2009. In total, there were 102,106 posted workers in this sector in 2017. About a quarter of these posted workers came from Poland, while the new EEA countries (Estonia, Latvia, Lithuania, Croatia, the Czech Republic, Slovakia, Slovenia, Hungary, Bulgaria and Romania) account for almost 44% (see Die deutsche Bauindustrie, 2017).

In 2016, 877,071 workplace accidents were reported in Germany. This number was on average similar in the years before. Overall, compared to the beginning of the 1990s, when more than 1,800, 000 work accidents were reported, occupational accidents decreased (see Statista, 2018a). From a sectoral perspective, most accidents at work were reported in the woodworking and metalworking sectors, followed by railways, glass and ceramics, followed by the construction industry (see Statista, 2018b). In Germany, a total of 735 fatal occupational accidents were reported in 2016, with no distinction made between the countries of origin (see DGUV, 2017).

The German Social Accident Insurance (DGUV) provided the following figures in the context of the country report:

Case numbers of domestic payments (occupational accidents, commuting accidents)

Accidents of persons sent to Germany and insured abroad (2017).

| | light | Medium | heavy | Total |
|------|--------|--------|-------|--------|
| 2014 | 10,959 | 9,515 | 223 | 20,697 |
| 2015 | 11,988 | 8,596 | 259 | 20,843 |
| 2016 | 12,159 | 8,689 | 222 | 21,070 |

Source: DGUV, 2017.

Case numbers of payments abroad (occupational accidents, commuting accidents)

Accidents of persons insured in Germany and posted abroad (2017).

| | light | Medium | heavy | Total |
|------|-------|--------|-------|-------|
| 2014 | 270 | 53 | 5 | 328 |
| 2015 | 318 | 42 | 4 | 364 |
| 2016 | 279 | 43 | 3 | 325 |

Source: DGUV, 2017.

1.2. Main Findings

OSH-related vulnerabilities of migrant and posted workers

- Unfortunately, bogus self-employment is often misused to evade social security contributions. When posted workers are posted as bogus self-employed workers, they are not subject to the same OSH standards as employed workers.
- There are many difficulties with the accommodation. Partially, posted workers live in shelters provided by the employer, creating dependencies. In some cases, the accommodation is not well equipped and sometimes it is simply too expensive for posted workers. In the latter case, in the worst-case scenario, this results in posted workers not being able to take up job offers.
- Due to tight deadlines and work pressure, posted workers are exposed to a higher risk at work. In addition, unlike the permanent employees, they do not have routines and comprehensive knowledge of the workplace, its hazards and accident risks.
- The interviews have shown that posted workers often do not carry any documents or do not have an A1 certificate. Furthermore, there is often insufficient insurance: only travel or tourist insurance.
- Through socialisation at work, workers adapt to different safety cultures. The divergent understanding of OSH in the workplace of different nationalities poses a challenge for the receiving employer. The safety awareness of posted workers can vary greatly and plays a crucial role in the execution of work and in workplace collaboration.
- Most of the posted workers are in such difficult circumstances that they are even afraid of losing the precarious work they are doing. This leads to them renouncing the exercise of their rights. In order to be able to assert their legal claims, they first need confidence in the success of assertion.
- Due to their short duration of employment, posted workers usually do not get in touch with works councils or company doctors to find out about their rights. They are frequently not affiliated with a trade union and therefore have great difficulty enforcing their rights.

OSH institutional framework

- Data protection is a big topic in Germany and partly leads to the fact that necessary sensitive/personal data may not be exchanged among the authorities, as a result of which a case cannot be processed smoothly.
- Even if the collaboration of the German authorities with each other is in need of improvement, there are already some positive examples of cross-border cooperation with, for example, Polish rehabilitation clinics. Cross-border cooperation is predominantly bilateral.

OSH in practice in transnational workplaces

- The federal states in Germany, which are responsible for the supervision of the enterprises, have withdrawn almost completely from the supervision; only a small proportion of all companies are monitored annually.
- 70% of all companies do not carry out any legally required risk assessment. The absence of preventive measures that should be included in such a risk assessment increases the risk of accidents at work.
- Protective clothing is usually supplied by larger companies more strictly than by small and medium-sized enterprises. Whether posted workers received access to further education could not be elaborated during the interviews.
- Mostly, there is neither preparatory nor regular occupational safety training. Standardised and approved certificates or other evidence of relevant qualifications in the area of OSH do not even exist. The intensity of training depends, on the one hand, on the size of the company and, on the other hand, on the duration of employment.
- It was confirmed that usually no guidelines, manuals, flyers, instructions for use or posters were provided to posted workers to educate them about their health and safety at work.
- It sometimes happens that the employers charge the posted workers for the cost of the gear or deduct it from the salary, or that protective clothes are not even provided.
- The coordination of information exchange is still not working well, even if digitisation is being used here. Although a variety of information materials have been developed specifically for posted workers, they are often unknown to posted workers and are not accessible to them.
- One difficulty regarding legal health care mechanisms is caused by the interpretation of national law. As the legal situation in the other countries differs from the situation in Germany, the enforcement of claims can sometimes be very difficult across borders.
- There are sometimes difficulties in accessing health services as some physicians are very sceptical about the European health insurance card and do not know correctly how to deal with it.
- Neither managers nor corporate executives have the requisite understanding of what OSH should be. This is often a trade-off between costs, benefits and a sense of responsibility.

Language and cultural barriers in transnational workplaces

- The majority of the interviewees indicated that the language barrier is one of the biggest challenges related to posting and OSH, which has received little or no attention in practice so far.
- For the posted workers who participated in the survey, posting in a team represents increased safety and makes posting more attractive. This could reduce linguistic and cultural barriers.

Policy implications and recommendations

- It is necessary to implement and consolidate a structured, consistent and permanent quantitative survey of A1 certificates (number and frequency of posting) as well as occupational accidents of posted workers, in order better to define the field of research. Further research is necessary here.
- Unions in Germany are requesting a central labour inspectorate to be responsible for all aspects of health and safety at work, minimum wage controls and social security contributions at the national level.

- The interviewees attach a lot of recommendations and suggestions at different levels (workplace, industry, national, international). Most of them are placed at the national level.
- One of the many ideas involves a work-safety-specific app that can assist in various areas of OSH, such as preparation, training and instruction.

1.3. Structure of the Country Report

In Chapter 2 the report first establishes the country-specific context and outlines the socio- economic background in Germany before focusing on OSH. Chapter 2 highlights aspects such as the OSH legal framework, the relevant posting stakeholders and data and sectoral characteristics. Chapter 3 highlights the methodological background, describes the empirical approach and provides insight into the challenges and limitations associated with the overall analysis. The following chapter covers all the findings on OSH-related vulnerabilities, the OSH institutional framework, OSH-related issues in transnational workplaces and the language and cultural barriers. The penultimate chapter summarises the synthesis and conclusions before issuing policy implications and recommendations in the sixth and last chapter.

2. Country Context

2.1. Socio-economic Overview

Germany consists of 16 federal states, of which five belong to the so-called 'new federal states', since they were incorporated into the Federal Republic of Germany after the reunification of Germany in 1990.

The economic situation in Germany in 2017 was characterised by steady and strong economic growth. For the entire year 2017, the Federal Statistical Office announced that there was an increase of 2.2%. Price-adjusted gross domestic product was, according to the first calculations of the Federal Statistical Office in 2017, 2.2% higher than in the previous year. The German economy thus grew for the eighth consecutive year (see Destatis, 2018).

Germany is one of the EU countries with the lowest unemployment. According to the OECD, the average unemployment rate in the year 2015 was 4.6%. This puts Germany in a good position compared to other major economies (see Federal Minister for Economic Affairs and Energy, 2015). Employment subject to social insurance continues to be at a very high level and continues to grow. At the same time, the demand for new employees remains at a high level. The vacancy rates reported to the Federal Employment Agency in 2015 stood at 600,000. The number of occupations, in which there is a shortage of skilled workers nationwide or where there is regional shortage, has been increasing for a long time.

The statutory minimum wage in Germany, which also applies to seconded employees, is €8.84 in 2018. In addition, there are generally binding sector minimum wages that take precedence over the general statutory minimum wage. Thus, skilled workers in the construction industry have a sector minimum wage of currently €14.70 (East: €14.55). There are also special regulations for seasonal workers. Employees who work for a limited time in one season also receive the minimum wage. However, if this time is less than 70 days per year, the seasonal worker is not covered by social insurance, and has no pension and unemployment insurance, insofar as he works occasionally and not professionally (see DGB, 2017, p. 4-8).

The population in Germany has been shrinking for years. Studies show that, in comparison to 2013, in the year 2030 about 5 million people less of working age will live in Germany. These shortages of skilled labour expected by 2030 appear especially among healthcare professionals, managers and executives, engineers and scientists (see Federal Ministry of Labour and Social Affairs, 2015).

2.2. OSH and Posting in the Country

2.2.1. OSH Legal Framework

OSH in Germany covers all "measures for the safety and health of employees at work" (European Federation of Building and Woodworkers & European Construction Industry Federation, 2015, p. 14). This includes, in particular, the prevention of accidents at work, and the prevention of occupational diseases and work-related health hazards, taking into account the humanly adequate structuring of work.

Health and safety laws in Germany

The current Working Conditions Act (ArbSchG) was adopted on 7 August 1996 and entered into force on 21 August of the same year. The Working Conditions Act in Germany aims to improve the health of all employees in Germany. This also includes posted workers.

In order not to ignore other hazards in addition to the classical hazard potentials such as chemical, biological or physical hazards, risk assessment was included in the introduction of the Working Conditions Act. Risk assessment includes the design of work and manufacturing processes, work processes and their interaction. The preventive measures that emerge from such a risk assessment must be checked for their effectiveness. Since the Working Conditions Act aims at improved working conditions in general, individual protection measures of individual employees are often neglected. Therefore, it is necessary to document the health and safety measures implemented by a company in order to create transparency and traceability. In addition, under the OSH legislation, the employer is required to brief his employees regularly (see Working Conditions Act, 2017).

General working conditions

All employers resident abroad, who send workers to Germany, have to follow, according to § 2 of the Posted Workers Act (AEntG) regardless of the industry in which they operate, the rules in Germany that are generally predetermined by legal or administrative regulations. These rules are also valid for posted workers. In detail, the rules are (see Zoll, 2017):

- Minimum premium rates including overtime rates
- Payment for minimum annual leave
- Maximum working hours and minimum rest periods
- Conditions for the leasing of workers, in particular by temporary employment agencies
- Safety, health and hygiene in the workplace
- Protective measures relating to the conditions of employment and employment of pregnant women, women and children, children and adolescents
- Equal treatment of men and women and other non-discrimination provisions.

At any time, both the sending and the receiving employer are responsible for taking care of security and OSH and always have to adapt these to changing circumstances.

Any costs that arise should not be transferred to the employee (see European Federation of Building and Woodworkers & European Construction Industry Federation, 2015, p. 14). The Posting of Workers Directive (Directive 96/71 / EC) regulates the social protection of workers. In addition, technical safety at work can also be of relevance, which includes specified protection at the workplace.

2.2.2. OSH and Posting Stakeholders

Competent authorities

- Federal Ministry of Labour and Social Affairs: <http://www.bmas.de/EN/Home/home>
- Federal Ministry of Health: <https://www.bundesgesundheitsministerium.de/en/>
- Central Customs Authority: http://www.zoll.de/EN/Home/home_node.html
- Federal Institute for Occupational Safety and Health (BAuA): https://www.baua.de/EN/Home/Home_node.html

Social Partners

- DGUV (German Social Accident Insurance): <http://www.dguv.de/en/index.jsp>
- German Industry and Trade Federation: <https://www.dihk.de>
- German Confederation of Skilled Crafts: <https://www.zdh.de>
- IG Metall (Industrial Metal Union): <https://www.igmetall.de>
- DGB (German Trade Union Confederation): <http://en.dgb.de>
- IG BAU (Industrial Trade Union Building Agriculture Environment): http://www.ig-bau.de/IG_Bauen-Agrar-Umwelt.html
- Ver.di (Unified service sector union): <https://www.verdi.de>

Other stakeholders

- Association of the German Construction Industry: <https://www.zdb.de/zdb-cms.nsf/id/home-de>
- Federal Labour Office, EURES consultants: <https://ec.europa.eu/eures/public/de/homepage>
- Joint German Occupational Safety and Health Strategy (GDA): <http://www.gda-por-tal.de/en/Homepage.html>
- National Occupational Safety and Health Conference (NOSHC): <http://www.gda-por-tal.de/en/NOSHC/NOSHC.html>
- The BG ETEM (Professional Association for energy, textile, electrical and media products): <https://www.bgetem.de>

2.2.3. Data on Posting

There is no specific OSH-related data available regarding posting of workers. This is due to the fact that the same regulations apply for both posted and domestic workers (see also Chapter 1.1). Posted workers are not listed separately with regard to OSH. The European Commission has some data available, but this only provides benchmarks and has already been presented in the introduction to this report (see Chapter 1). These benchmarks, however, highlight some trends, such as Germany being both a strong receiving and strong sending country in Europe, with the proportion of receiving posted workers being predominant (see European Commission, 2015). Furthermore, it becomes clear that the number of received posted workers in Germany has increased steadily since 2009 (see European Commission 2016).

2.2.4. Sector(s) Characteristics

In Germany, there is very little information on how the posting is distributed across the different industries. Based on calculations by Wagner & Hassel in 2013, the distribution can be roughly outlined as follows. About one third of all posted workers work in the construction industry, and about the same in the slaughterhouse or meat processing industry. About 26% of posted workers find work in the metal-working industry. The remaining 10% are spread across the shipping, transport and forwarding industry, the care sector or subcontracting (see Hassel, n. y.).

In 2014 about 414,220 A1 certificates were sent from other Member States to the *Data Centre of the German Pension System* for posting to Germany. Most of the A1 certificates for posting are recorded from the following sectors:

- Construction of buildings
- Manufacture of products from concrete, cement and sand-lime brick
- Meat processing
- Slaughter (not including slaughter of poultry)
- Private households with house staff

In 2016 most of the A1 certificates were covered from the following countries: Slovenia, Hungary, Belgium, Poland, Netherlands, Austria, Slovakia, France, Croatia and Luxembourg (see Deutscher Bundestag, 2016, p. 2-3).

In addition to this data generated at national level, the European Commission also provides information and data. For instance, it published factsheets on the subject of posting, which is differentiated by country. Also according to this data, in 2016 the industry represented the main sector, in which posted workers worked in Germany. On the other hand, the European Commission cannot provide any substantiated data regarding the main sectors of employment of workers posted from Germany in 2016 (see European Commission 2016).

2.2.5. Specific Issues for Migrant and Posted Workers

Very little literature exists on the subject of migrants and posted workers in Europe: especially in Germany. Various country comparisons on different aspects of posting can be found in the literature, highlighting system structures or the role of actors related to the field of posting of workers and migration. Trade unions are a point of focus in many of the studies. For example, Meardi's article examines the implications of migrating for trade unions and how trade unions deal with the challenges. He makes a comparison between Germany, England and France, and emphasises both general similarities and clear differences. The German trade unions are characterised by a corporatist approach in their participation in migration policy (see Meardi 2013).

Kahmann opens up a specific perspective on the action strategies of the construction trade union (IG Bau) – a sector of large-scale immigration of workers, which has already been the subject of many studies (see Kahmann 2006). Kahmann points out that the new developments on the part of the IG Bau were only hesitant. Greer et al., on the other hand, investigate transnational union activities that wanted to take on the task of organising migrant workers. The authors point out how this transnational organisation failed because of national resistance and defence of existing institutional arrangements at the national level (see Greer et al., 2013).

Another actor involved in the field of posting of workers and migration – the employer – is examined by Lillie and Wagner in an article entitled ‘Subcontracting, insecurity and posted work: evidence from construction, meat processing and shipbuilding.’ In their study in three sectors and countries, they examine the design of contractual relationships by employers in the context of the employer’s “ability to arbitrate between European regulatory frameworks, exploitative regulatory gaps and avoiding regulatory enforcement” (Lillie / Wagner 2015, p. 7).

In addition to this rather actor-centred perspective, a system-centred view can also be found in the literature. Pernicka’s anthology focuses on the social integration process in the social and labour-policy dimension in Europe and examines how opportunities for deeper system integration are opened up by increasing European social integration (see Pernicka 2013). Bosch analyses the effects of the European posting regulations on different national wage systems and reveals different effects in individual countries (see Bosch 2012). Although the changes brought challenges for all countries, it was especially difficult for countries with a voluntary wage system, as is the case in Germany (see *ibid.*, p. 7).

3. Methodology

3.1. Data Collection

Data for this report was collected from existing scientific literature, national legislation and regulation and empirically in the context of interviews with relevant actors involved in the OSH of posted workers. The interviews were conducted in the period from December 2017 to April 2018 on the basis of a semi-structured interview guideline with a total of ten interview partners:

- Representatives of the Ministry of Labour and Social Affairs (BMAS) (3 interviewees)
- Representatives of the German Social Accident Insurance (DGUV) (2 interviewees)
- Representative of the trade union IG Metall (1 interviewee)
- Representative of the project “fair mobility” conducted by the trade union DGB (1 interviewee)
- Representative of a “work and life” counselling centre for posted workers (1 interviewee)
- Posted workers employed by a German company (shipyard) and posted abroad to Austria, Belgium, France and the Netherlands (2 interviewees)

Most of the interviews were conducted via telephone, most of them were individual interviews and one was a group interview. All interviews were conducted in German. The agreement regarding the audio recording was given by nearly all interviewees, so that the recorded interviews could be transcribed – for that the transcription programme f4 was used – and finally anonymised. In the case of one interview no agreement regarding the audio recording was given. During the interview, therefore, notes were taken and afterwards a protocol was created, which was used in the data analysis.

3.2. Analysis

The data was analysed using Kuckartz’s qualitative content analysis. This is a method for evaluating and analysing data (see Kuckartz, 2016, p. 52). In a systematic, rule-based procedure, the collected data – in this research work the collected data includes the interview transcripts and protocols – was divided into sections based on analytical categories, structured in terms of content and condensed (see *ibid.*). The MAXQDA software supported the process technically. The extracted data was then processed and finally analysed with regard to the research subject of interest (see Gläser/Laudel, 2010, p. 200ff.). The systematic structuring of the collected data was carried out on the basis of five main categories, which were subdivided into several subcategories and generated on the basis of the research questions. These main categories include: OSH-related vulnerabilities of posted workers; OSH institutional framework; OSH in practice in transnational workplaces; language and cultural barriers in transnational workplaces; and policy implications and recommendations. For the interpretation of the analysed data Sargeant and Tucker’s analytical framework (2009) was used. They developed a layered framework to assess the OSH vulnerabilities of migrant workers. Therefore, they defined three layers of vulnerability: the migration factor; the characteristics of the migrants themselves; conditions in the receiving country (see Sargeant/Tucker, 2009).

3.3. Challenges and Limitations

During the research process some challenges arose: on the one hand, in the context of generating interview partners; on the other hand, in terms of handling the interview guideline. After identifying relevant actors and interesting interviewees within the broad German OSH system, it was difficult to persuade them to be interviewed. Long lines of communication and referrals to colleagues were often the case. With regard to the group of posted workers, it was particularly difficult to identify them and make contact.

Challenges related to the interview guideline were twofold. First, in the context of the translation, the question came up of how to deal with specific question stimuli. Should they be translated one by one to guarantee a good comparability of the results between the different countries or should they be adapted to the German system as some terms do not fit in properly? Secondly, some of the interview partners were deterred by the volume of the interview guideline. During the interviews some of them felt partly over-questioned and reacted with reservation, which caused the flow of interviews to falter.

4. Results

This chapter and Chapter 6 present the results of the data analysis. These mainly refer to the different actors. The perspective of the posted workers in this report is focused on German workers who have been sent abroad, since interviews could only be conducted with this group of workers.

4.1. OSH-related Vulnerabilities of Migrant and Posted Workers

According to trade union representative posting is a very diverse field in terms of OSH in terms of the related challenges and problems. In Germany, the difficulty of providing strong and consistent OSH is mainly due to the fact that there is no central body that oversees all relevant processes and stakeholders holistically. Different authorities with different responsibilities and status are involved. The basis for occupational health is the Working Conditions Act, with which the parties have to comply. A representative of the German Social Accident Insurance emphasised that it must be controlled whether the legal basis is actually observed. In this context, a representative of a trade union mentioned the decrease in external workplace monitoring:

“Monitoring has practically disappeared from the field. They come only when there are legal notices or serious accidents. But a regular check has mostly been eliminated.”

On the one hand, the interviewee points out that the number of checks has generally fallen; on the other hand, he is problematizing a procedure, which is reactive rather than preventive. Bad working conditions often become visible only after a complaint has reached the supervisory authorities or an accident at work has happened.

It happens that numerous workers work on construction sites in Germany. Two thirds of them come from other European countries, with different languages and with different customs and legal statuses. This raises a host of additional OSH challenges which the employer must consider in the context of risk assessment. According to two representatives of the German Social Accident Insurance and a consulting project, one of these challenges is that posted workers are often not informed about their rights and obligations: e. g. that they are not allowed to work more than 10 hours a day.

The topic of “OSH-related vulnerabilities of migrant and posted workers” will be considered in more detail below on the basis of various aspects that were identified by the interviewees. The results from the interviews with the posted workers are considered separately at the end of the subchapter.

Accommodation

Regarding the accommodation of posted workers, there are different problems. As an interviewee from a consulting project remarked, posted workers are often placed in accommodation by their employers. This initially creates a kind of dependency. It sometimes happens that, on the one hand, the accommodation arrangements do not correspond to the desires of the posted worker(s) and, on the other hand, are not as agreed in advance with the employer.

Sometimes, the accommodation is very poorly equipped and lacks the usual furniture and facilities. A representative of a trade union illustrated the associated risks using a practical example. In that case, a shipyard in Germany suffered a devastating accident with Romanian workers when a fire broke out in their accommodation, because the workers were using gas stoves, as there was no stove in the property.

Another aspect, as a representative of a trade union reported, is that sometimes it is not possible for posted workers to find adequate accommodation in conurbations for posted workers. In some cases, there are no flats at all or, because of the high demand, they are far too expensive and cannot be paid in proportion to the salary. Then posted workers have to turn down their opportunity to work because they cannot find accommodation. The lack of living space can, therefore, lead to missed job opportunities.

From the point of view of the interviewed posted workers, who were posted from Germany to other countries, the accommodation was never a problem. The accommodation was pre-booked by the company and corresponded to German standards.

Payment

Fair payment is an important issue in the context of the posting of workers because it is often a problem. For example, a representative of a counselling centre reported on wage dumping and the fact that travel and housing costs were passed on to posted workers. Especially with relatively short posting in connection with some employment agencies, posted workers may not receive their wage.

In contrast, the posted workers who were interviewed reported that payment was always trouble-free or could be clarified quickly in case of problems with the electronic registration. They also pointed out the connection between the size of the company and the works council and the union, which observe the processes. The extra salary they can earn is an incentive for both interviewees to be sent abroad:

“So you do that to make money. You can earn very, very good money over time, especially when you travel abroad for a German company.”

Working conditions

Changes in climatic conditions are also significant: for example, when a posted worker moves from a very hot country (e.g. Spain) to a more temperate country where it is very cold. According to a representative of the German Social Accident Insurance this can lead to concentration or circulation problems, which should not be underestimated.

Another challenge is the respective legal status. If migrant workers are so-called solo self-employed, they are responsible for their own. For these workers, no one checks whether sufficient protective clothing is available or whether working and break times are complied with. This is the responsibility of the person himself only. Furthermore, as an interviewee (representative of a trade union) reported, the phenomenon of solo self-employed leads to wage dumping, because these workers usually work much longer, for example, 14 hours, but are declared as working only 10 hours.

Posted workers are generally exposed to a higher accident risk than the permanent workforce, as they usually do not know the establishments well, where they work. The operation is new to them and; the arrangement of the machines or processes must first be understood and learned. Other workers who have been working at this business for many years benefit from their practical knowledge that the posted workers do not possess. The interviewees also pointed out the fact that they are only working for short periods in the company, and are hired to do very dirty work, where it is still unclear which long-term diseases could be caused by this work:

“But what still plays a role is that especially dirty work, demolition work and clearing work are sometimes likely to be passed on to foreign subcontractors, because employers worry about heavy metals and other burdens in the dirt or atmospheric pollution, which can cause secondary disease.”

A representative of the trade union also pointed out that, in the context of precarious employment, the pace in the work process is much higher and that the performance target is much higher, so that additional stress arises, which increases the risk of suffering an accident at work.

As far as working conditions are concerned, the posted workers who were interviewed did not perceive any differences in the negative sense within this study. In the Netherlands one interviewee recognised rather tight security measures compared to Germany. Only material supply emerged as a problem sometimes. In the delivery of wrong materials from Germany, long waiting times and downtime occurred, which made it impossible to comply with the completion date. One attributed the good conditions to posting in a team. As an individual, he would not let himself be sent abroad.

Working times/break

According to a representative of a trade union, in the metal and electrical industry employers try to provide the same working conditions for all workers: the working and break times are more or less usually kept.

The posted workers who were interviewed reported that working and break times were complied with. The maximum working time of ten hours was exploited in compliance with pause regulations.

Family issues

Another challenge is that the posted worker can often only contact his/her family via telephone. If the contact cannot be kept regularly and the posted worker feels very disconnected from his/her family, the concern for the welfare of the family increases. As an interviewee from the German Social Accident Insurance pointed out, as a result of worry the worker then lacks focus at work and the lack of concentration increases the risk of accidents at work. Sargeant and Tucker also argue that social isolation can lead to stress and other mental circumstances and make the posted worker even more vulnerable (see Sargeant/Tucker, 2009). Sometimes truck drivers, e.g. from Hungary, Poland or Romania, quit their jobs after driving for three months for a forwarding company to be able to return to their family for a few weeks. Afterwards they look for a new job. The option of bringing the family to Germany to live together does not exist, because posted workers only work for a few weeks in the same place before they have to leave again for the next job in the next city.

Health Insurance

According to a representative of a counselling centre, sometimes posted workers do not carry the necessary documents: for example, the A1 certificate or the European health insurance card. Then it is very difficult for the social insurance authorities to understand which state is responsible in the event of an accident at work, and to whom the services (treatments) can be charged. If this is not clear because documents are missing, there may be a delay in the treatment of the person affected.

Furthermore, as two interviewees (a representative of a counselling centre and a representative of a counselling project) pointed out, sometimes posted workers do not have full health insurance, but have only tourist or travel insurance, which does not cover the full cost (mainly only first-aid). In part, this is also due to the fact that the migrant workers are not employees at all, but have been forced in their home country by the employer to take over bogus self-employment, which is then insured by additional travel insurance. It is very precarious, and there have been cases, e.g. in the meat industry, where in a work accident, the subcontractor has driven the victim to the hospital in a private car, paid the treatment in cash and brought the posted worker to a bus and sent him home.

'Shadow Economy' and irregular posting

According to a representative of the German Social Accident Insurance, neither managers nor corporate executives have a strong understanding of OSH as it should be. This is often a trade-off between costs, benefits and a sense of responsibility. Part of the responsibility is given to the subcontractor with the understanding that he will provide his workers with sufficient information. On the other hand, the employer presumes that the posted workers leave the company after a few weeks and continue their work in another company, another city or another country, so that a detailed training in health and safety is not considered worthwhile.

It is also a problem that the posted workers are not members of the German trade unions, which makes it difficult to carry out exclusive monitoring. For this reason, there are no statistics on posted workers. The trade unions lack possibilities for action. The fact that posted workers are not members of German trade unions means that they have no access to collective representation, which is another factor that increases their vulnerability (see Sargeant/Tucker, 2009).

Sometimes posted workers are brought to Germany via intermediaries. Letterbox companies also play a major role here. There are industries, e. g. the meat industry, construction industry, metal industry, electrical industry, logistics or the chemical industry, where companies have recognised that posting offers options to circumvent workers' rights. As one interviewee reports, this circumstance leads to the point at which they try to use *pseudo-posting* for their own enrichment. Pseudo-posting via letterbox companies also means that, in the event of an accident at work, no one takes care of the posted worker. There are employers who count on the physical attrition of their migrant workers. If the worker does not do his work properly, he is scrapped and replaced. These employers take advantage of the fact that the pool of potential employees is very large. Letterbox companies often have no establishments, no offices and no official address where claims can be made. In Germany, the court does not feel responsible if there is no official address. Abroad, the courts do not feel responsible if German law is to be enforced. According to a representative of a counselling project, it is particularly difficult when these letterbox companies receive valid A1 certificates for their employees.

Another point reported by a representative of a counselling centre is that, because of the short duration of operations in the companies, posted workers rarely get really in touch with the works council or company doctor, and so they never really learn what rights they have. Sometimes employers know that, even if they know their rights, posted workers find it difficult to enforce them. Employers then use this feeling of powerlessness to put more pressure on the posted worker and force them, for example, to work longer hours. In addition, posted workers are also forced to do work that is not part of their field of occupation. For example, Polish nurses are sent to Germany to help in the household. In fact, however, they have to take over tasks that can only be taken on by trained hospital nurses, such as caring for sick people with infectious diseases. Again, the OSH of those affected is also inadequate.

Access to protective clothes and training

Access to further education is fundamentally not dependent on the employment relationship. Posted workers generally work full time, otherwise it would not be worthwhile for the employee. Regardless of whether they are domestic or migrant workers, whether full-time or part-time employed, the same occupational safety applies to all. The provision of protective clothing is legally the same for everyone. In the opinion of the interviewees, whether the instruction and the clothing are actually provided for everyone needs to be better monitored. The biggest influences on access to instruction and training are, on the one hand, the industry and, on the other hand, the size of the company. This corresponds to Sargeant and Tucker's framework of vulnerability, which points out that the "receiving country conditions" differ greatly, for example from sector to sector (see Sargeant/Tucker, 2009). According to a representative of a trade union, in sectors where seasonality is the main activity, or where only short-term employment is involved, access is very low. Basically, with regards to the size of the company, it can be stated that the smaller the company, the lower the offer of further education, because in smaller companies there are often no active works councils.

Health problems

Both the posted workers, who were interviewed, reported that working abroad had no adverse effects on their health, as the countries to which they were posted hardly differed from Germany in terms of living and working conditions. Although working abroad usually took more than 8 hours a day, but a maximum of 10 hours, as OSH allowed, it was a bit more stressful overall, because work was often done at the weekend, and they worked overtime. But the posted workers were aware of this, as the employer made the prevailing situation transparent. The food supply was regulated by the employer: the posted workers were either provided with food by the crew on board the ships, on which they worked or, if they were housed in flats, they had cooking facilities at their disposal. Fatigue did not occur abroad, as no night work was done.

"Of course, there's a lot of dust, lots of paint dust, insulation and all that, especially on finished ships, if you fix something there again. [...] if you go in there without a mask, then it's your own fault. So, we had complete protection with us and then it's ok. Well, it is stressful and a bit harmful work, but not more than other hard physical work. Of course, it all affects the bones. But that's the job. So, to say now, 'My back went completely broken!' (Laughing), then I have to do an office job."

In this quote, the employee emphasises self-responsibility for one's own health. However, this statement as well as the other insights of the interviewed posted workers must also be assessed and classified against the background of their life situation as high-earning German employees. The work situation they describe during posting differs greatly from the conditions described by the other interviewees of a posting to Germany. In the light of Sargeant and Tucker's three layers of vulnerability for posted workers, it is not only the migration factor and the receiving country conditions, which in the cases of the interviewed posted workers were also quite sound, but also the characteristics of the posted workers themselves that have an impact on the vulnerability of posted workers. The interviewed employees have a secure, stable job in Germany with a good salary and are qualified professionals. Besides that, in contrast to many other posted workers in often precarious circumstances, in their position they have the choice, first, whether they want to do an office job or a job with physical work and second, whether they want to be sent or not. In addition, their families, if they have one, do not depend on the extra money.

4.2. OSH Institutional Framework

4.2.1. Actors' Roles

The German OSH system is characterised by a dual structure. It consists of state health and safety at work (federal and state governments) and self-administered accident insurance providers. The state side (federation and counties) issues the laws, regulations and rules of state committees. The accident insurance institutions issue their own accident prevention regulations after a needs test and with the approval of the federal government and the federal states. Supervision of, and consultation with the companies are carried out by the supervisors of the responsible state supervisory authorities (federal states) and the accident insurance institutions. In addition to these authorities, a third group involves other actors in the German OSH system, such as employers, trade unions, safety officers, occupational safety specialists, works councils and others. An overview gives the following diagram and the further explanations.

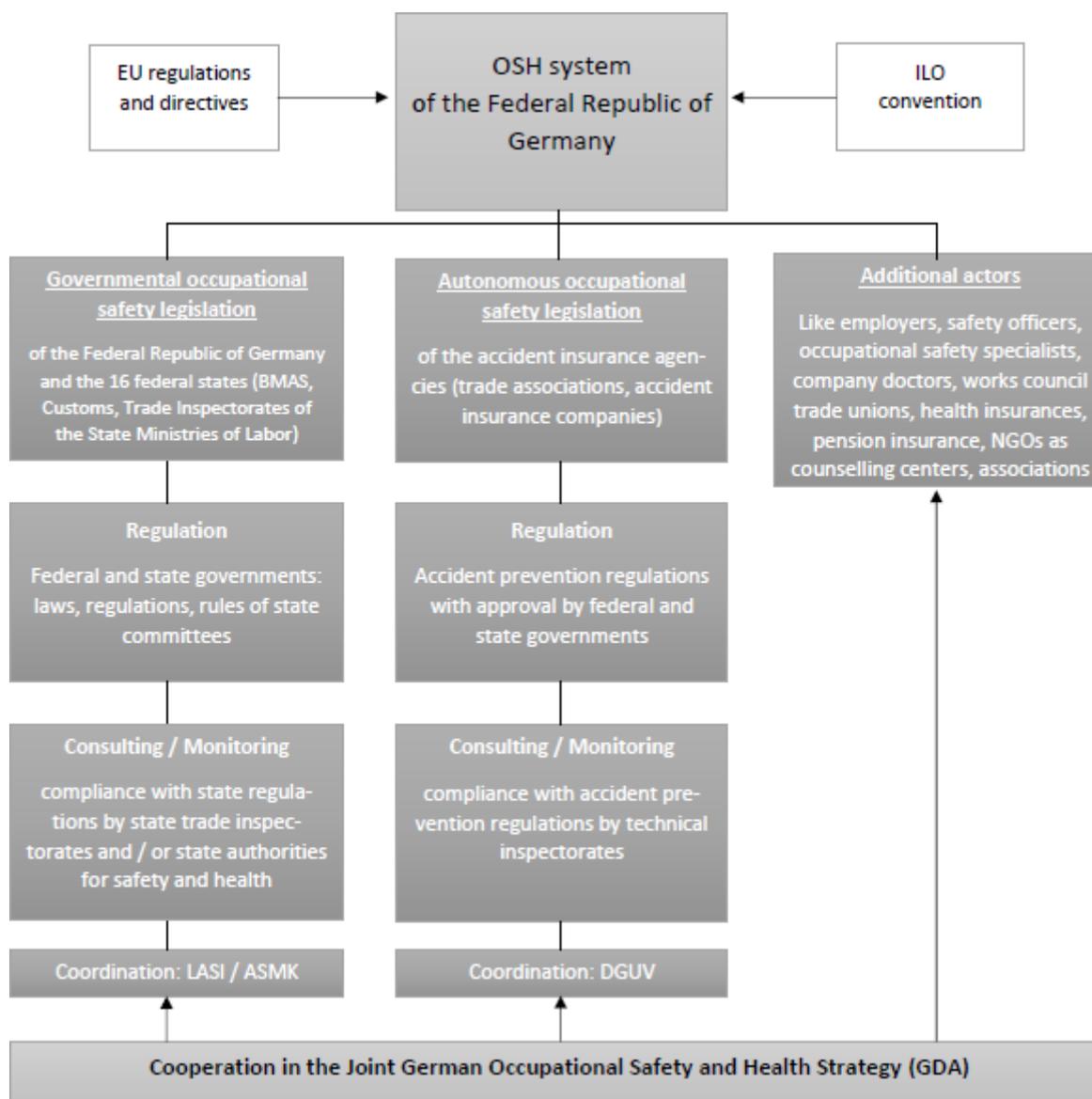


Figure 1: OSH system of the Federal Republic of Germany.

Source: Representation based on Bayerisches Staatsministerium, n. y., and BAuA, 2016, p. 7.

Various influences from the international level, such as regulations and EU or ILO convention, have an effect on the German OSH system. The actors at national level are presented below.

State OSH law

- Dissipation of competences at state and federal level
- Coordination by Federal Commission for Occupational Safety and Security Technology (LASI) and the Conference of Ministers for Labour and Social Affairs (ASMK)
- ASMK serves the cooperation and the coordination of the country interests between the respective departments as well as the cooperation with the federal government (see Landesportal SH, 2018)
- LASI is the highest professional body for occupational safety and security technology below the level of ASMK with tasks like consultation to the ASMK, implementation and further development to the GDA in cooperation with the federal government and the accident insurance agencies and with the participation of the social partners (see LASI, 2014)

Ministries

- Federal level: Federal Ministry of Labour and Social Affairs (BMAS)
 - o Develops the draft legislation, conceptions and amendments of legal regulations – for example the specifications for the occupational safety specialist
 - o The most important laws are the Working Conditions Act (ASiG) and the Occupational Safety Law (ArbSchG)
 - o Develops new concepts in various committees, in which sometimes social partners are included
 - o Funds a variety of projects, such as “Fair Mobility” as a CO financier
 - o Acts on the European level in expert committees
- Federal level: state ministries of labour
 - o Manage and coordinate the state supervisory authorities
 - o Deal with questions such as: *“How do I equip the state supervisory authorities (personnel)? How much capacity do they have to carry out the supervision? How many checks can they perform? How likely is it that a company is controlled?”* (representative of a counselling project)

Customs authority – authority of the Ministry of Finance

- Belongs to the Ministry of Finance and is an economic and security administration
- Main legal basis is the Illicit Work Law (SchwarzArbG)
- Controls the correct discharge of social security contributions and payroll taxes, observance of working hours and minimum wage regulations, illegal employment with the *Financial Control of Undeclared Employment (FSK)*

Trade inspectorates – authorities of the state ministries of labour

- Supervise the compliance with government regulations regarding OSH
- Become active on their own initiative or as required from outside, at any time they have the right to enter and visit companies unannounced
- The control relates, for example, to the testing of (safety) equipment, the investigation of working procedures, measurements
- They also fulfil advisory tasks in companies and departments

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Autonomous OSH law

- Detached from the state system
- Coordinated by the DGUV: joint umbrella organisation for the nine trade associations and the 27 accident insurance companies
- Diverse tasks, for example preparation of model accident prevention regulations, participation in the adoption of accident prevention regulations and the promotion of legal uniformity, implementation, coordination and promotion of joint measures as well as research in the field of prevention of occupational accidents, occupational diseases and work-related health hazards (see DGUV, n. Y.)

Accident insurance agencies – trade associations and accident insurance companies

- Main legal basis is the social security statute book VII (SGB VII)
- Shall use all appropriate instruments to prevent occupational accidents, occupational diseases and work-related hazards
- Review prevention measures and ensure enforcement
- Be in contact with foreign authorities and agencies to settle accounts regarding to payments in kind or to clarify questions regarding A1 certificates
- Detected problems or failures affecting all member states are reported to the Administrative Commission in the EU

Other actors

Employer/Management

- The management of the receiving company has to ensure that the health and safety regulations are respected: obligation to carry out risk assessments, conducting instructions, provide and cover the costs for necessary work equipment, observe working hours, all necessary instructions, etc.
- The management is obliged by law to require certain persons to ensure that OSH is guaranteed, if the company has a certain number of employees -> safety officer, occupational safety specialist

Safety officer

- The safety officer is an employee of the company and is employed by the management with an advisory and supporting function in the field of OSH
- His main task is to make the employer aware of deficits regarding to OSH
- § 22 SGB VII stipulates that in companies with regularly more than 20 employees the employer has to appoint security officers with the participation of the works council or staff council
- The number of security officers varies according to the number of employees and industry affiliation of the company

Occupational safety specialist

- Legally defined scope of duties in § 6 ASiG: They have the task “to support the employer in occupational safety and accident prevention in all matters of occupational safety, including human working conditions”

Company doctors

- Have to be ordered by the employer in writing
- Legally defined area of responsibility in § 3 ASiG: “The company doctors have the task to support the employer in occupational safety and accident prevention in all questions of health protection”

Works council

- Supervises work safety in the individual company
- According to a representative of a trade union and a representative of a counselling project the work council is a very relevant actor in practice, since he is in the field and permanently “in the middle” of the company, so the works council can carry out very different controls than an external body

Trade unions

- Employee representatives who work for the interests of the members, such as better working conditions, wages, etc.
- Contribute to OSH at various levels: support and (legal) advice to works councils and employees, financing of projects, participation in various committees, for example as social partners in the DGUV

Health and Safety Committee – company’s level

- § 11 ASiG requires from a workforce of more than 20 employees to form a Health and Safety Committee in the company
- This should bring together occupational safety and accident prevention officials to discuss matters of OSH
- Members of the Health and Safety Committee: employer or one of his representatives, two members of the works council, company doctor, occupational safety specialist, safety officer
- Tasks of the Occupational Health and Safety Committee: Analysis of accident occurrences in the workplace, consultancy on measures and facilities to counteract accidents and health hazards, exchange of experience on implemented measures, consultancy on safety aspects in the introduction of new work procedures and more (see ASiG)

NGOs such as counselling centres

- Trade union counselling centres and other low-threshold counselling formats for workers
- For instance „Fair Mobility”
 - Information centres at various locations in Germany, consultancy and support of posted workers to enforce rights, emphasis often on payment but also on OSH
 - Close cooperation with trade unions
 - Point of call for physicians in service provision cases with posted workers – provides information material for them
 - Also supports the work of works council through legal advice and placement of contacts

Pension insurance

- Checks the payment of social security contributions every four years

Others: Doctors (service providers), (trade union-related) associations

4.2.2. Mechanisms and Procedures at Different Levels

The German OSH system is composed of many, sometimes very different actors and institutions. The previous list in Chapter 4.2.1 gives a first impression of its fragmentation and differentiation. The German OSH system is also characterised by the fact that almost everything has been registered and regulated in laws and regulations. To give an overview of this report – as an interviewee (representative of a trade union) put it well – is almost utopian:

“There is little in terms of occupational health and safety, which is not regulated in Germany. So it is somewhat utopian to give an overview, but basically, I think, one can claim that there is hardly a single area that is not regulated.”

Nevertheless, let us take a quick look at prevailing mechanisms and procedures in this area. The various actors and institutions operate at very different levels: from the European political level, the state level and the level of the federal states to the regional and individual company level. In order to ensure efficient control and monitoring, the various bodies are obliged to cooperate closely and share experiences. Since coordination was lacking in the past, the GDA was launched. In order to maintain, improve and promote the safety and health of employees through coordinated and systematically- perceived occupational safety and health, the Federal German Government, federal states and accident insurance institutions developed the GDA. On the basis of jointly defined occupational safety targets, the GDA's agencies will, in the area of prevention, act in even closer coordination in the future. The dual OSH system in Germany remains in place. However, the cooperation of the supervisory services of the statutory accident insurances and the labour protection authorities of the federal states in advising and monitoring companies is further improved (EU-OSHA, 2017).

4.2.3. National and Transnational Actor Interaction and/or Cooperation

Respondents question the cooperation between institutions and actors at national and international level in many areas and have identified a general need for improvement. At national level, coordination of the exchange of information between the different actors is considered to be in need of improvement. For the actors it is sometimes frustrating to prevent a relevant exchange of information for data protection reasons. The cooperation and the exchange of information between the counselling centres and the labour protection authority as well as the professional association are classified as functional by a representative of a counselling centre. A general cooperation between the responsible German authorities is sought, with the GDA being an important first step in this direction.

Interviewees have different assessments of the cooperation between competent bodies across national borders – there exist both bad and good practical experiences. In some cases, the authorities from the home countries of the posted workers are more likely to step back when it comes to payments and try to place the responsibility on the receiving country. On such points, one interviewee (representative of a counselling project) sees no constructive cooperation. Thus, the professional associations report problems in the recovery of costs incurred in the context of an accident at work. The problem here is the different legal bases regarding the definition of an accident at work. According to one interviewee, the impression sometimes is that the foreign authorities are systematically trying to defend themselves against payments and using legal justifications as an excuse. When it comes to the examination of the A1 certificate, the accident insurance has direct contacts and contact persons in the responsible institutions abroad. There are countries where the payments take longer or there is sometimes dissent about the payment obligation, but the cooperation is perceived as cooperative and constructive. The exchange between trade unions across national borders takes place at two levels: first, within the European Commission's advisory committee,

where trade unions come together; secondly, through informal contacts. There are more and more inquiries from foreign countries, also non-European countries, about the German OSH-regulations. For example: "How is the training of an occupational safety specialist organised? Why are there safety officers in Germany? Where is the difference?" The information exchange at this level is rated as good by two interviewees.

In the regional context, there is some bilateral cooperation in cross-border regions such as Germany and France. These focus, for example, on social security checks. However, an international body for control and monitoring is so far missing. According to the interviewees (representatives of the German Social Accident Insurance, Ministry of Labour and Social Affairs and a counselling centre) the trend is moving away from the bilateral towards the establishment of a European body. The IMI system has already been implemented in this regard and is intended to facilitate the exchange of information between the authorities of the member states. The national IMI coordinator for Germany is the Federal Office of Administration (BVA). Although the IMI system differentiates between different levels of cooperation, the IMI structure in Germany is a major challenge due to the federal structure of Germany and the dual structure of the German OSH system (see BVA 2018a). The BVA, therefore, looks after the federal authorities and the 16 federal IMI coordinators. In Germany, numerous authorities and bodies have already been registered in IMI, but there are plans to further expand it, so that all relevant actors in the German OSH system have access (see BVA 2018b). This is not the case at the moment and makes the exchange of information even more difficult.

In addition to the bilateral agreements, there are occasionally other good collaborations, for example with Polish rehabilitation clinics. In order to enable injured Polish posted workers to make the long stay in the hospital close to the family, the trade unions reached agreements with four Polish rehab clinics.

"[...] such cooperation with clinics is being used to ensure that home is closer and that the posted workers are treated at the same good level as in Germany. So that's pretty good, but that does not succeed with all European neighbouring countries. This has something to do with case numbers and also with employment opportunities and of course you also need partners abroad who are willing to cooperate."

According to the interviewee (a representative of a trade union), to implement such cooperation, no major political decisions are necessary in the first place, but good individual contacts and accommodation from both sides of the countries are important. This includes, for example, the willingness to document medical reports in several languages.

4.3. OSH in Practice in Transnational Workplaces

During the interviews, preventive measures were also discussed, with the aim of better protecting posted workers and avoiding accidents at work. The focus of the considerations was on transnational workplaces, employee representation and protection, case management and grievance procedures.

4.3.1. Preventive Practices in Transnational Workplaces

4.3.1.1. Information Dissemination

Information on health and safety can be found: on the webpages of the BMAS; on the site of the DGUV; on the sites of the trade unions; or via the counselling centres. However, as a representative of a trade union emphasised, posted workers often do not know that this information exists or that they can contact German unions, for example.

Basically, there is not enough dissemination of information. The coordination of the information material is still not working well, even if digitisation is being used. Several interviewees agree that they see employers as more obliged to abide by the law and to fulfil their duties.

4.3.1.2. Training

Mostly, the interviewees agreed that there are no preparatory or regular OSH training courses. There are also no qualifications or certificates that would prove that. As a representative of a counselling centre reported, if training takes place in the home country in preparation for posting, it is more in terms of employment in general. By law in Germany, however, a job safety briefing must be carried out before starting work and repeated once a year. The extent to which these training courses are carried out depends, on one hand, on the size of the company – the greater the size of the company, the more intensive the training – and, on the other hand, on the duration of employment. The shorter the employment, the lower the level of training, according to two trade union representatives. Also, cost issues play a role here. The more time invested in a briefing, the more expensive the worker receiving the instruction will be. Only one positive example of a large steel construction company was mentioned: for each worker, intensive basic instructions in occupational health and safety are carried out before he or she is allowed to enter the factory premises. In contrast, two interviewees (representatives of a counselling centre and a counselling project) also reported that the posted workers were given instructions in German that they could not understand, and then had to sign that they had been briefed.

In contrast, the posted workers who were interviewed positively reported two different cases of how work-safety instruction was carried out during their posting. For example, on a construction site in the Netherlands, the instruction was carried out by the responsible company. On the construction site, there was a safety chief of work and a safety group, who carried out the instruction, supported by a film, in German. The instruction received had to be confirmed by a signature. Language problems did not occur. The other case described was that the own master, who had come from Germany, carried out the instruction. There were also no language difficulties, as the master was well trained in English and managed the coordination with the site manager.

4.3.1.3. Artefacts

Written Material

In general, there is a law in Germany to permanently display important laws such as the Working Conditions Act. However, this only applies to the German language. The creation of instructions for use is regulated by the European Single Market, so that at least some of them are available in many languages. This also applies to manuals for machines or operating and care instructions for safety clothing. An interviewee mentioned only one positive example where a car manufacturer had general safety instructions in 17 languages. However, as soon as more specific information is needed, this information is usually only available in German and English.

The interviewees confirmed that usually no guidelines, manuals, flyers, instructions for use or posters were provided to posted workers to educate them about their health and safety at work. Even if there was information material, it was not usually in a language that the posted workers could understand. Such materials are nowhere kept systematically.

Protective clothing

The employer is obliged to provide his employees with the necessary clothing and is also obliged to check this regularly. However, difficulties occur. On one hand, sometimes the employers charge the posted workers for the cost of the gear or deduct it from the salary. On the other hand, according to one interviewee, the provision of protective clothing does not even happen. The minimal basic equipment, such as a helmet on a construction site, is usually provided by the employer.

4.3.1.4. Monitoring

In principle, the federal states in Germany are responsible for inspecting and monitoring companies. However, according to the statements of the union representatives, the inspections barely take place. As one interviewee explained, in Germany, there are about 4 million companies and about 700,000 of them are checked each year. The surveillance in the city-states operates a little better than in the other federal states. When inspections are carried out, only a fraction of all companies can be inspected, so that no overall impression can emerge. Another problem is, that far too few risk assessments are carried out. On average, 70% of all companies have not carried out a risk assessment, which means that they do not know what would be necessary to provide adequate OSH.

Basically, the interviewees agreed that the number and frequency of checks performed are too few.

4.3.2. (Migrant and/or Posted) Worker Representation and Protection

Migrant and posted worker representation and protection were not directly mentioned by the interviewees. They do not exist in the strict sense. However, below are some points that would improve the safety and health of all workers, whether domestic, migrant or posted.

- In some companies, there are health and safety committees, which could deal more intensively with the health and safety of posted workers.
- OSH authorities monitor OSH equally for all employees and they cooperate with several counselling agencies in Germany. One interviewee suggested that the works councils in the companies could be trained by trade unions.
- Works councils are committed to the health and safety of all employees, even if they are employed by a subcontractor, if they pose a threat to the permanent workforce.

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The information contained in this publication does not necessarily reflect the official position of the European Commission.

- In Germany, the occupational safety specialist supports employers in their work and health protection.
- If an occupational safety specialist or a safety officer is to be appointed, the trade union must also be informed.
- As a representative of a counselling centre reported, even if posted workers are not union members at first, counselling centres try to involve unions in case of difficulties or accidents at work.
- Posted workers always have the opportunity to visit counselling centres (union-friendly associations) and find out about their rights and obligations according to an interviewee from a counselling centre.
- All employees are compulsorily insured in an employers' liability insurance association, for which the employer pays the contributions. This was decided by the Federal Social Court a few years ago. The background is that employees sometimes do not know whether the employer is paying social security contributions or not, and so in case of doubt, there is even insurance for illegal employment to protect the victim.

4.3.3. OSH-related Grievance Procedures in Transnational Workplaces

4.3.3.1. Legal and Healthcare Mechanisms and Practices for Accidents Involving Migrant and Posted Workers

The greatest difficulty is caused by the interpretation of national law. According to the interviewees, as the legal situation in the other countries differs from the situation in Germany, the enforcement of the claims can sometimes be very difficult. It becomes even more difficult to assess an accident at work, when the victim does not carry any papers. Then, the responsible authority first has to find out what kind of employment it is (e. g. posting or multi-employee), which law applies and which insurance status is available.

The posted workers are registered in Germany by the trade association. The trade association is responsible for accidents at work in Germany. It usually takes over the treatment costs, the injury pension and the survivor's pension, if necessary. In the case of the posted workers, however, these costs must be borne by the accident insurance institutions in the home country and the employers' liability insurance association grants only an advance. According to a representative of a counselling project, this sometimes leads to difficulties in transnational cooperation and the settlement of costs:

"So, there are several aspects – on the one hand the enforcement and first of all the medical treatment costs, where there are problems due to the responsibilities, which are not clarified, due to the different legal situations and due in part to, I would say, blockade by individual insurance carriers."

Even in a case where all responsibilities have been clarified, sometimes institutions refuse to provide the necessary services/payment. It becomes difficult when posted workers are sent home after an accident at work or voluntarily return home and then try to claim compensation from their home country. Unless the case was previously reported in Germany, this is very difficult. However, if the accident at work is reported regularly, no distinction is made between domestic, migrant or posted workers:

“The pleasant thing in Germany is that there are no differences. So, there are no separate statistics. In these cooperation questions with Poland, we could only estimate how many Polish employees there are on German construction sites. Because it is not registered anywhere and the colleagues work here as normal, and when an accident happens, they are also treated medically and all services are provided as if it had always been in Germany.”

This statement highlights that, on the one hand, the equal weighting of domestic, migrant or posted workers causes disadvantages with the statistical coverage of the posted worker, but that, on the other hand, it enables equal medical treatment for all employees.

Several interviewees indicated that there are difficulties with the company doctors. Some are very sceptical about the European health insurance card and do not know correctly how to deal with it. This partly leads to the fact that only emergency treatments are carried out and no additional services are provided, or that the billing is unclear and therefore private bills are falsely implemented, which is not permitted. Sometimes doctors even require a pre-payment on many occasions. Often, however, there is the problem that those affected do not carry any insurance card with them, either because they did not care for it in advance or because it was not handed over to them. Then the question arises of who bears the costs.

A representative from a trade union mentioned a very striking example. He talked about volunteer doctors or ‘Docs on the road’, who drive around in their holidays with caravan homes and open surgeries at rest areas, so that they can examine the truck drivers, who live in their truck for months. The health status of these workers is very bad.

Basically, there are two different ways in which a posted worker connects to the German system: through a company audit by the likes of accident insurance agencies or the customs authority, where the posted workers have to show their A1 certificate. If the posted worker has the A1 with him, it will be clear which social security law applies. If the posted worker does not have an A1 certificate, the competent authorities abroad will be informed. This is also the case, when the A1 certificate is not issued properly. The second possibility is the occurrence of an accident at work. Then the following questions are asked: 1. Is he insured? 2. Where is he insured (A1)? The first question answers the facts about who pays for the hospital costs; the second question aims to find the person/authority responsible for taking over the loss of earnings or rehab costs. The reimbursed person will then be sent to the company doctor who will inform the German Liaison Office (accident insurance institution) of the case.

The interviewees criticised the German system for the fact that the exchange of information between the trade associations and insurance associations is very problematic. The coordination processes are more difficult because there is no central department in Germany; the competences are shared by different actors. Furthermore, it is mentioned that the IMI system is not used intensively enough by German authorities to check the validity of the A1 certificate.

4.3.3.2. Liability

The interviewees did not point out any aspect regarding the liability of main contractors when the subcontractor (receiving employer) does not comply the contract.

4.4. Language and Cultural Barriers in Transnational Workplaces

4.4.1. Prevention

Language

The majority of the interviewees stated that the language barrier is one of the biggest challenges related to posting and OSH, and that it has received little or no attention in practice so far. In the context of posting workers, there are always employees from different countries working together in a workplace and speaking different languages. This is why, in addition to education and skill level, language skills also play a role in Sargeant and Tucker's framework, on the level of "characteristics of the migrant" (see Sargeant/Tucker, 2009). A lack of knowledge of the national language and language barriers in general can mean that posted workers do not understand work instructions, are unable to read operating instructions for machines or do not understand important hazard warnings or signals. Furthermore, this can significantly increase the risk situation in the workplace for both the posted and the other workers.

"So the language is, I think, really one of the most important challenges when people of different nationalities work together. If in normal communication, when you tell each other what to do now, you can make effort, maybe you can use the English language, but over there, in crisis situations, it is too much to ask for. He cannot call in five languages: Go on, everyone run away!"

The interviewee here presents the problem of the language barrier as fatal, especially in unpredictable dangerous situations. Language barriers could also be detected in the context of statutory workplace instructions. Media used for instructions are often available only in German, although the instruction must take place in the language of the insured. As one interviewee reported, some exemplary companies have already put up operating instructions for the machines in many different languages. But this is far from the rule. Some methods exist to improve this situation. Trade unions are preparing information materials in different languages, for instance. An interviewee, however, does not rate these as simple enough, as the texts are too long and complex for the target group. On the other hand, basic information on safety and health at workplaces is also provided in various languages by the German Social Accident Insurance. Besides that, counselling services for posted workers are offered in several languages. These counselling services are, for example, initiated by trade unions in the context of projects.

It turns out that these first methods and measures do not follow a uniform strategy and merely represent a first attempt at improvement. It also becomes clear that these offerings are not yet known to all protagonists in connection with OSH, considering the proposed measures and suggestions for improvement (see Chapter 6).

From the point of view of the posted workers from Germany in the survey, language barriers did not play a role and did not lead to any risks with regard to the OSH. Both posted workers were able to report workplace accidents. In one work accident, a colleague got a metal splinter in the eye, in the other, the interviewee himself suffered an open wound on the shin, when he slipped on oily ground in the installation of a rolling mill in Belgium and got injured on the metal edges. In both cases good, extensive on-site care was carried out. In the case of the shin injury, at the personal request of the injured posted worker, only first aid care was done in the receiving country and the treatment itself was performed in Germany. In the case of the injured eye, there would have been considerable language problems in the hospital in France, because, according to the interviewee, the French spoke very little English, unless an employee had come along and provided linguistic support.

Both interviewees agreed that these accidents at work could easily have happened in Germany and that these were not caused by posting or language difficulties.

“This has nothing to do with working abroad. Employment injuries are everywhere. I heard of accidents abroad, because one even happened to me, so, I myself had an accident at work abroad. But the same would probably have happened to me in Germany too.”

Culture

The posted workers that were interviewed highlighted international experiences in different areas. On the one hand, English language skills could be refreshed, even though posting in a German team resulted in the most contact with colleagues speaking the same language. On the other hand, they were able to get to know foreign working contexts and processes. The effect on one's own life is described by an interviewee as very positive. During posting, they were always with their team: in other words, in a protected environment, in which they rated the posting in terms of different language(s) and culture(s) as particularly enriching for themselves professionally and personally.

Safety Culture

Culture as a barrier in general was not discussed in the interviews, but different types of safety cultures were problematized. Sargeant and Tucker have already defined “safety culture” as a relevant factor in their framework of vulnerability of migrant workers (see Sargeant/Tucker, 2009). Frequently, such different safety cultures come together on the construction sites. This manifests itself in the fact that the understanding of how a construction site is to be secured can differ greatly. So there can be disagreement, for example, about whether assemblies should be closed off only with a tape, or with grids.

“And so, despite the harmonised domestic market, there are already different ideas about how to secure a construction site, for example. Whether it's a bit of warning tape or if you really need to padlock it.”

In addition to language, this also plays a role in whether the posted workers can recognise tags, labels and warning signs and whether they can interpret them correctly.

4.4.2. Grievance Management

The interviewees did not point out any aspect regarding grievance management.

5. Synthesis and Conclusions

“Ensuring workers’ rights across borders” is a topic that currently poses far-reaching challenges for the large number of actors in the German OSH system. Thus, this topic was also the title of a symposium at the Hans Böckler Foundation in April 2018 in Berlin, where attendees included representatives of the University of Rostock. In the context of this symposium, not only those interested, but also representatives of the German OSH institutions came together, such as representatives of the DGUV, trade unions, counselling centres, trade inspectorates etc. Significantly, the customs authority, which could not be contacted for an interview in this study, did not attend the symposium either, although it is a relevant actor. The symposium reconfirmed what was also revealed in the course of the literature review and this study: the fact that there is a scarcity of data on posted workers in connection with OSH. There are no differentiated data or studies that are fully devoted to this area. Among other things, this is due to the need for improved coordination and communication between the different actors.

The results of this study were able to trace the discrepancy of the following two extremes very clearly: on the one hand, the complexity and differentiated legal situation in the field of OSH and its actors in Germany; on the other hand, the lack of coordination and communication of the actors and an insufficiently developed control system to enforce the laws and regulations.

The German legal basis in the field of OSH is widely differentiated and ranges from the Working Conditions Act to legally defined tasks for the occupational safety specialist. When it comes to OSH, no differences are made between employees from Germany or abroad. Various actors are involved in the German OSH system (see the overview in Chapter 4.2.1). Within the research, it was possible to conduct interviews with numerous different actors (see Chapter 3.1) and thereby obtain a comprehensive picture. Due to the complexity of the dual OSH system in Germany, however, further interviews need to be carried out: for instance, with institutions such as the Ministry of Labour, customs, pension insurance or service providers such as doctors. But even this selected section of the study clearly showed that the coordination and communication of the actors in Germany need to be improved. The distribution of powers, which is characteristic for the German OSH system, does not only refer to splitting between federal and state levels due to federalism, but also to a division into a state and an autonomous subsystem. A coordinating body is not yet predominant, and the exchange of information due to data protection regulations is made considerably more difficult. This can be used as an explanation for the poor data and lack of studies. Besides that, not all actors have access to the IMI system, which aims to improve the exchange of information between European countries.

The monitoring of compliance with legal regulations in the OSH area is carried out by different authorities in Germany with regard to different aspects. It became clear that nationwide control cannot currently be guaranteed. During the symposium, with regard to these resource problems, representatives of the labour inspectorate reported that in recent years a reduction in workforce with simultaneous task increase has taken place. In the area of the autonomous OSH subsystem, on the other hand, there was an increase in personnel. Further expansion in both areas is indispensable and necessary.

Another result that emerges from the present study is the heterogeneity between posted employee groups. A distinguishing feature is, for example, the posting to or from Germany. However, in the context of this study only German posted workers who were sent abroad could be interviewed, so that no comparison could be made. Another aspect of the distinction is the “voluntariness”. Because the posted workers interviewed in the context of this study had choice when it came to posting, as they already had a good paid job in Germany and the posting only offers an additional income.

Their view of the topic of posting turned out to be extremely positive: posting in a working team within Western Europe, accommodation with German standards organised by the company, good working conditions. Further studies should, therefore, make a more detailed differentiation of the group of posted workers in the context of data collection.

Furthermore, there was a lack of detailed statements by the interviewees about problems involving linguistic and cultural barriers. There is no greater clarification than in the literature. Difficulties were only discussed and problematized on a very general level. However, this could be related to the fact that most of the interviewees were actually not personally involved.

Finally, it can be mentioned that the interviews showed that there was a great interest, not only in the Ministry, but also amongst individual trade unionists, to issue uniform occupational safety qualifications and to ensure regular occupational safety with the help of these qualifications. Nevertheless, it should be noted that OSH is often case-related and thus very specific. Here, further research should be conducted to elaborate how it would be possible to design cross-company, intra-industrial qualifications at European level and to offer regular training.

6. Policy Implications and Recommendations

On the basis of the collected data various recommendations and suggestions for improvement could be worked out, which are to be differentiated according to four levels of action: workplace level, industry level, national level and EU level. The issue of poor information exchange and the lack of availability of information come up at all four levels.

1. Workplace level

- Posted workers frequently face new, unknown workplaces, which are unfamiliar to them. They need, but often do not get or have important information and experience of the potential sources of danger. A representative of a trade union proposes targeted partnerships with local colleagues. The work colleague can show him/her the workplace, and give advice and information on relevant procedures.
- In order to meet the challenge of multilingualism in the workplace, verbal or written warning signals could be exchanged for sound in certain hazardous areas.

2. Industry level

- To date, the employers' associations are not very involved in the processes of OSH and often show little interest. According to a representative of a counselling centre, they should be made more aware of the issue and be included in order to draw attention to the related problems and challenges. One suggestion might be to involve them in the preparation of multilingual information material.
- The other important actors, who should be involved more in terms of the lack of information exchange, are the executives of the contracting company. They should also become familiar with OSH and be involved in the processes in order to raise awareness.
- As was evident in the collected data, climatic conditions also play a role in the issue of posting. The sending company should be obliged to discuss this with the worker to be posted and a doctor.

3. National level

- Documents and applications in connection with OSH, which are exchanged between countries, must be available in different languages and filled in according to the language of the country of posting. This also requires increasing language competences in the authorities.
- The combination of the fragmentation of the German OSH system and federalism means that foreign authorities and posted workers, who want to enforce or impose their rights, are often uncertain about which authority they have to contact. Therefore, on the one hand, more transparency is required with regard to the responsible authorities and institutions in Germany. On the other hand, as one interviewee emphasised, there is a need for improvement in the coordination of responsibilities between the various German OSH actors and the difficulties in exchanging information due to data protection regulations.

- Alternatively, the introduction of a unified labour inspection in Germany, covering all aspects of OSH, working time, inspection of minimum pay and social insurance contributions, could improve processes and address privacy policy that currently hampers the exchange of information between different bodies.
- According to a representative of a counselling project, the capacity of the control authorities in Germany should be increased in order to be able to further expand the inspections and to signal to the companies that deficiencies are not tolerated, but precisely controlled.
- In the past, in Germany only a very small amount of the A1 certificates was checked by the control authorities by asking the sending countries. There should be more accuracy and more proactivity.
- The management of the sending and the receiving companies should be more legally liable with regard to the execution and observing of OSH regulations.
- In the past, it has proved effective in some industries that public announcements of detected deficiencies put more pressure on companies and lead to improved compliance. This should also be extended to other industries.
- So far, only a few, and sometimes undifferentiated studies on OSH and posted workers exist. There is a need for further studies to make the deficiencies in connection with posting and OSH visible and public.
- German OSH courses on a one-day basis should be developed and differentiated by sectors to provide basic information on OSH. On the basis of documents devised for this course, the sending companies can hold the OSH course in advance with the workers to be posted. One interviewee (a representative of a trade union) suggested developing this even in other receiving countries. A certificate serves as proof.
- The employer, who has the primary on-location responsibility for OSH, is frequently left alone with the challenge of multilingualism in the workplace. While general information as well as instruction manuals of machines and manuals are freely available in many languages, there is only little systematically kept material: for example, with regard to instructions. An internet portal, in which all the relevant information, law extracts etc. are placed in all relevant languages, can bring support to the employers.
- Another proposal by a representative of a trade union for reducing the language barrier in the workplace is the idea of installing a work-safety-specific app. In addition to a translation programme, the app should contain all relevant information about OSH in different languages and differentiated by sector. Besides that, the app could include a scanner for hazard symbols (a British department has already developed this). The posted workers would be able to use this app before or during their journey. The app could also be made part of the work instruction. The technical framework could be provided by a national or European party.

4. EU level

- There should be more transparency about the contacts and authorities in the different countries. For those affected, it is often not clear which steps they have to initiate and with which authority in order to enforce their rights.
- A final proposal for improvement by a representative of a counselling project recommends an integrated, uniform EU legal situation in the field of OSH, which would, for example, mean that an occupational accident would be defined in the same way in all EU countries. At present, an accident on the way to work in Germany is already considered a work-related accident, but not in all other countries. This provides backdoors for institutions to refuse payments. A uniform legal situation would both improve and accelerate processes in favour of posted workers.

Finally, to question the whole thing in another way:

“Yes, but if we turn it the other way around and say that health and safety would be neat, there would be less short-term posting. Then one would perhaps consider: Yes, do I really want to have a new employee every three months, or would I rather say: Now we have to invest so much in his knowledge anyway, then we want to retain him longer.”

This interviewee (representative of a trade union) already questions the model of short-term posting that has emerged in recent years and affects national structures.

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