



Changing Regulations, Changing Practices?

The Case of the German Meat Industry

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1 Executive summary

The turnover of German slaughterhouses doubled since 1996. At the same time, working conditions and wages in the German meat processing industry have been attracting criticism for years. In particular, the conditions for employees of Eastern European companies posted to Germany have been criticized in numerous media reports and academic studies. The main areas of concern have been excessively long working times, extremely low hourly pay rates and the poor quality of much of the accommodation made available by the meat processing companies. This report focuses on measures undertaken by the social partners in the German meat industry and by the federal government aiming to improving the working and living conditions of posted workers in the German meat processing industry. The so-called 'voluntary commitment of the meat industry' pledges that the singatories (6 at the time but now 18 meat companies):

- *improve working and living conditions* for employees in the meat processing industry;
- adapt their organisational structures by July 2016 in such a way that all workers deployed in their plants will be in a regular employment relationship, registered in Germany and liable for social insurance contributions. This amounts to *abandoning the use of posted workers* whose social insurance contributions and entitlements are determined by the usually considerably lower standards prevailing in their home countries;
- increase and further develop the share of their *core workforce*; and
- provide *training* places and putting in place the appropriate promotional and recruitment measures to ensure they are filled.

As a result the large slaughterhouses in Germany stopped using posted workers by July 2016 and from then on concluded subcontracts with German firms or German subsidiaries of foreign companies only. Employing migrant workers at subcontractors with the home base in Germany, instead of abroad, implies that these workers are employed according to the German social insurance law, which is usually higher and more easily accessible than the equivalent in a lower wage sending country. Companies also committed themselves to increase the proportion of core workers. The positive outcomes of this are that workers have better access to healthcare services and better legal enforcement of their rights because rights framework is within host country framework. Moreover, the federal government adopted the law on securing workers' rights in the meat processing industry.

However, this report also shows that there are still considerable gaps in both collective representation (weak organisation on both the employers' and employees' sides, small number of collective agreements and only a few works councils) and enforcement of labour standards in the industry. Even though posted workers are employed at a company based in Germany they are employed by subcontractors nonetheless and employee representatives continuously report unlawful practices such as wage deductions for knives and clothing.

The research findings call for several further improvements. First, binding targets for the reduction in posted work contracts should be established. Second, there should be a binding target to increase the percentage of core workers. Third, co-determination rights for works councillors should be improved. Fourth, collective redress should be possible and fifth, the burden of proof in case of bogus subcontracting should be reversed.

2 Introduction

Early in 2008 a story broke that would be discussed in newspapers and political debates in Germany for years to come – a tale familiar to the people from other advanced economies as well: the troubling working conditions of migrant workers, in particular in the successful German meat industry. The radical growth in precarious employment was mainly associated with 'posted' labour migrants who reported excessively long working times, extremely low hourly pay rates and the poor quality of much

of the accommodation made available by the meat processing companies. These conditions have been deplored as the 'criminal practices of modern slavery' (Doelfs 2012). Belgium, France and Austria have accused Germany of unfair competitive practices because posted workers have been employed on dumping wages (EFFAT 2013).

In July 2014, the four largest meat processing companies in Germany made a commitment to end these practices. One important pledge was to stop employing workers via posting contracts. Instead, within a year's time all previously employed posted workers should find themselves in an employment relationship with a German employer, receive minimum pay and health benefits accordingly, and be provided with proper accommodation. Indeed, the companies pledged to abandon the much discussed and criticized business model of employing posted workers. Three years after the voluntary pledge the federal government enacted a law to improve the rights of workers in the meat industry. The aim of this report is to examine the mechanisms as to how change occurred but also to assess the effect of re-regulation on employment practices for migrant workers. Before describing these initiatives in more detail, the report starts with a brief description of the meat processing industry.

3 The German Meat Industry and Posted Work

In Germany, meat slaughtering houses slaughter over 58 million pigs annually making the country the largest producer of pig meat in Europe (Statistisches Bundesamt 2015). More than half of these millions of pigs are slaughtered in factories owned by the four biggest slaughtering houses in Germany; namely, Tönnies, Danish Crown, Vion and Westfleisch (ISN 2015). Traditionally, slaughterhouse work has utilised low-skilled labour and a Tayloristic work organisation and is constantly looking to reduce the cost of labour. Indeed, labour cost represents up to 82 % of added net value (Mériaux 2011). As a result, the slaughter and meat processing companies have adopted strategies to reduce wage costs, which have led to deteriorating wages and working conditions in countries such as Germany and the UK (Grunert et al. 2010, Wagner 2015a, Wagner and Hassel 2016) and resorted to external flexibilisation by employing posted workers.

For slaughterhouses in Germany the European Union Enlargement eastwards in May 2004 presented an opportunity. At the time of the accession, Germany had neither a statutory minimum wage, nor a sectorally binding minimum wage. This is important not only in the context of intra-EU labour migration but specifically in relation to posted work. The EU Posting of Workers Directive states that posted workers shall receive the minimum wage of the country where they are posted to, but in the absence of such will be subject to the sending country wage. In practice this meant that up until 2015 – the year when Germany introduced the statutory minimum wage – posted workers could receive wages as low as €3 to €5 per hour (Dälken 2012; Siebenhüter 2013) in a country with steady economic growth, low levels of unemployment and that is usually regarded as having strong labour unions and workers rights.

What happened in 2004 is that the big slaughterhouses in Germany increasingly employed teams of workers on posting contracts. The sending firms were established in lower wage countries and sent groups of workers to Germany temporarily. In practice, these work teams would execute a particular cut on the dead animals at the conveyor belt. This would constitute a service rendered from the posting company to the slaughterhouse. Even though the entire slaughtering process occurs in one slaughterhouse, it is segmented and tasks are distributed among many service companies employing teams of workers from various countries. For example, a work team from Poland executes one particular cut at a conveyor belt while a team from Bulgaria executes another cut at the conveyor belt next to the Polish team. The workers receive different wages and are subject to different social security contribution according to the sending country standard.

It is difficult to measure the extent of posted worker employment in the industry because posted workers working at subcontractors are not obliged to register. However, a good indication of the prevalence of posted work is the decrease in employment relationships with registered social security contribution in the German meat industry. Between 1999 and 2014 more than 44,000 workers in the meat industry subject to social security contributions in Germany fell out of employment. In the same time period the number of posted workers increased to 30,000 (Brümmer 2014). Survey information from the trade union NGG and works councils from the main slaughterhouses suggest that posted workers have made up 50-90 % of the factory workers in the big four slaughterhouses (NGG, 2012). The details of the workers' grievances have been related to underpayment, highly flexible working times, employment insecurity and substandard housing arrangements.

4 Labour Relations and the Minimum Wage in the German Meat Industry

The NGG (*Gewerkschaft Nahrung Genuss Gaststätten*) represents slaughterhouse workers and workers in meatpacking or meat processing. It has a membership of 204,348 (Güster 2015). Whilst the trade union structure for the meat industry is straightforward, the interest organisation of the employers in the meat industry is more complicated. Four employer associations exist at the federal level; namely, the *Arbeitgebervereinigung Nahrung und Genuss e.V.* (ANG), *Verband der Fleischwirtschaft*

e.V., *Bundesvereinigung der Deutschen Ernährungsindustrie e.V.* (BVE) and the *Bund für Lebensmittel und Lebensmittelkunde e.V.* (BLL). The BVE represents the employer interest of 90% in the sector and is a member of the *Bundesverband der Deutschen Industrie* (BDI) and the *Confederation of the Food and Drink Industries of the EU* (FoodDrinkEurope). The BLL is mainly concerned with legal and scientific questions concerning the food business. The ANG mainly represents the socio-political interests of the employers in the sector. However, the ANG has no autonomy to bargain collective agreements with the NGG because that autonomy rests with the employer associations at the *Land*-level.

Here it is important to note that until recently the employers' association in the sector was dissolved, depriving the union of a centralised counterpart at the bargaining table (Behrens and Pekarek 2012). The social partners in the meat industry in general negotiate sector-level collective bargaining coverage for all slaughterhouses. The difference to other sectors in the German economy is that in the meat sector (but also the food sector more broadly) every year hundreds of collective agreements are concluded and re-negotiated at the firm and regional level leading to a very differentiated collective bargaining landscape (Güster 2015). The NGG has concluded currently 4.000 collective agreements of which 2.800 are firm or in-house agreements (Güster 2015). So even though the NGG was actively in favour of negotiating a minimum wage agreement it faced severe employer resistance and was caught up in manifold negotiations at the company level. It was not until 2014 that the NGG and the employers' side negotiated an agreement for minimum wages which was introduced just shortly before the statutory minimum wage came into effect in Germany.

After the introduction of the minimum wage the trade union, works councillors and political actors continued to criticize the precarious nature of work in the industry. In 2015 the four big companies along with Sigmar Gabriel, then Federal Minister for Economic Affairs and Energy, agreed to improve the working conditions in the meat industry through a voluntary, instead of a regulatory binding, agreement.

5 The Voluntary Agreement of the Meat Industry

In the spring of 2015 the German Federal Minister for Economic Affairs and Energy visited a number of abattoirs and discussed the employment relations with the management at each site. His action was motivated by immense public outrage about the working conditions in the meat industry at national but also international level. One outcome of the visit was his demand to companies to improve working conditions. The companies responded promptly. On 21 September 2015, the six largest German meat producers in Germany agreed to a voluntary commitment to make working conditions more attractive (Bundesministerium für Wirtschaft und Energie 2015). Alongside minister Sigmar Gabriel (SPD), six meat producers (Danish Crown Fleisch GmbH, Heidemark Geflügel Spezialitäten, Lohmann & Co. AG / PHW-Gruppe, Tönnies Holding GmbH & Co. KG, Vion GmbH and Westfleisch SCE with limited liability) and the NGG union launched this initiative. The large companies hoped that their voluntary agreement to improve working conditions would send a clear political signal that the industry's economic actors were in a position to improve the bad working conditions themselves, without state intervention (Jaehrling, Wagner and Weinkopf 2016).

The signatories committed themselves to²:

- **improving working and living conditions** for employees in the meat processing industry;
- adapting their organisational structures by July 2016 in such a way that all workers deployed in their plants will be in a regular employment relationship, registered in Germany and liable for social insurance contributions. This amounts to **abandoning the use of posted workers** whose social insurance contributions and entitlements are determined by the usually considerably lower standards prevailing in their home countries;

² <http://www.vdew-online.de/bericht-zur-umsetzung-der-selbstverpflichtung-in-der-fleischwirtschaft/>

- increasing and further developing the share of their **core workforce**;
- providing **training** places and putting in place the appropriate promotional and recruitment measures to ensure they are filled.

6 Evaluation

6.1 Abandoning the Use of Posted Workers

The first progress report, one year after signing the voluntary self-commitment, reported that the signatories of the agreement changed the employment relations of posted workers: workers previously employed as posted workers are now employed at subcontract firms with a home base in Germany. The signatory companies have market shares of around 65% in the field of pig slaughtering whilst their shares in the areas of cattle (45%) and poultry (35%) slaughtering are much lower³. Accordingly, they are now subject to the German social security system and the German labour law applies. This was achieved by retaining the workers who were previously employed via posted worker contracts (Jaehrling, Wagner and Weinkopf 2016). The slaughterhouses changed their employment contracts instead of replacing them with native workers.

6.2 Increasing and further developing the share of companies' core workforce

The second goal of the voluntary agreement – the increase of the number and share of workers directly employed by the meat processing companies themselves – has marginally been met. Table 12 illustrates that the composition of the total workforce remained largely unchanged between 2014 and 2015.

Table 1 *Structure of employees at the 18 companies that have signed the agreement, 2014 and 2015*

	2014	2015	Change of number	Change in %
Core employees	14,287	14,814	+527	+3,7
Employees at subcontractors	15,054	14,871	-183	-1,2
Temp agency workers	2,581	2,512	-69	-2,7
Total number of employees	31,922	32,197	+275	+0,9

Source: Jaehrling, Wagner and Weinkopf 2016

The core workforce of the meat processing companies increased only very slightly by 527 employees (+3.7%) respectively from 44,8% to 46% of the total workforce while the share of employees of the subcontractors was reduced by only one percentage point (from 47.2% to 46.2%). In the press release launched by the Federal Ministry for Economics and Energy, it was stated: 'The achieved result is an important interim step but we will keep on talking with the companies in order to intensify the efforts to increase the proportion of the core workforce.' (Bundesministerium für Wirtschaft und Energie 2016).

³ <http://www.vdew-online.de/bericht-zur-umsetzung-der-selbstverpflichtung-in-der-fleischwirtschaft/>

6.3 Improving working and living conditions for employees in the meat processing industry

'Abandoning the use of posted workers' is not equal to guaranteeing previously posted workers a permanent employment relationship. In this context, workers hitherto employed at a company based in a foreign country have to be employed directly in German companies (or branches of foreign companies in Germany) in accordance with German (social insurance) law. Slaughterhouses ceased to enter or renew subcontracts with foreign service companies without aiming to abandon the use of contract workers altogether or recruiting workers from lower wage countries. In order to put this agreement into practice, annual reports are to be produced and submitted to the Federal Ministry of Economic Affairs and Energy and the Federal Ministry of Labour and Social Affairs. Even though there is the commitment to reduce the share of subcontract workers, and to evaluate the implementation on a regular basis, neither targets on the reduction of contract work are set nor are sanctions in place that punish companies if they have not kept their promise.

From the point of view of the union NGG the voluntary agreement is a step 'in the right direction' (NGG 2015b). It regards the greatest benefit to workers who were previously employed as posted workers that they would be better protected against risks such as illness and workplace accidents. At the same time the NGG is concerned about the voluntary nature of the agreement. Due to their negative experiences in this industry, they have serious doubts as to whether a voluntary agreement will really be effective (NGG 2015a). In fact, the NGG emphasized that the employees of the subcontractors remain to be exploited in precarious employment and co-determination is circumvented (Krogmann 2016a). The vice-president of the union, Claus-Harald Güster, requested the companies to increase the share of core employees and to conclude collective agreements. He emphasized: 'Only collective agreements provide reliable standards and are binding, self commitments are not.' (Krogmann 2016b).

The works councillors of two large meat processing companies were equally concerned that this regulation will not alter the status quo very much due to the nature of contract work more generally that makes the monitoring minimum wages in external service providers inherently difficult (Jaehrling, Wagner and Weinkopf 2016). Even though posted workers will be employed as contract workers at German companies, there is still little insight into their actual employment conditions. Moreover, works councillors are concerned about the pay gap between subcontract workers and core workers. In the works councillors' opinion, a lack of binding quotas to increase the core workforce and the absence of sanctions act as disincentives for slaughterhouses to practically increase the share of core workers (Jaehrling, Wagner and Weinkopf 2016). Even though both the union and works councillors regard the developments as a step in the right direction they are sceptical of the voluntary nature of the industry. The demand from these sides is an industry-wide *binding legal solution* that restricts the use of contract workers (NGG 2015a).

The employers' side emphasised the importance of the voluntary agreement to the social integration of migrant workers into the German labour market. The ANG was not worried about the implementation of the agreement because of self-interest. However, the employers' side admits to increasing the core workforce only slightly (NGG 2014).

6.4 Providing training places and ensuring they are filled

Overall, there is little information on the efforts to meet the aim to provide training places. However, according to the trade union NGG the reason is due to the fact that little effort has been put into improving the situation in this regard. One first step to make the sector more attractive is to increase the employment conditions and the minimum wage (NGG 2015b).

7 Law on securing workers' rights in the meat processing industry

In June 2017, three years after the signing of the voluntary self-commitment, the German Bundestag adopted a law on securing workers' rights in the meat processing industry. It is meant to establish fair

working conditions in the meat-processing industry, protecting workers and stopping abuse. The law establishes chain liability for the employer to back pay wages for the whole subcontracting chain and for the payment of social security contributions. The employer also has to provide clothing and tools needed for the work free of charge and is required to record the working times of the employees. According to the NGG with this law 'the government has made it clear that the voluntary self-commitment...is not sufficient. Voluntary commitments only work when all players in the sector abide by them. This was no means the case in the meat-processing industry' (EFFAT 2017).

8 Conclusion

The German meat processing industry was long associated with 'wild west conditions in food processing' (Czommer 2008). The industry-wide (minimum) wage standards and the voluntary agreement, signed now by eighteen companies, to improve working conditions were supposed to change this situation. Clear improvements of the situation are that the workers previously employed via posting contracts are now employed at companies based in Germany with the consequence that they receive social security benefits in Germany and are able to, i.e. access health services easier when need be. With the introduction of the sectoral minimum wage and the adoption of the meat industry into the German Posting Law workers do have the possibility to claim their rights via the main contractor legal enforcement mechanisms in place. Even though this is not part of the voluntary self commitment of the meat industry these are part of a larger process of re-regulatory change that also impacted the implementation of the self-commitment.

However, so far, the positive impact of this voluntary agreement on working conditions seems to be rather limited. There are still considerable gaps in both collective representation (weak organisation on both the employers' and employees' sides, small number of collective agreements and only a few works councils) and enforcement of labour rights in the industry. Effective controls and sanctions for non-compliance with the minimum wage as well as proper recording of actual working times would be first but very important steps in order to improve working conditions. Moreover, even though formerly posted workers are employed at German-based companies, they are still employed by subcontractors. The core workforce increased only minimally from 44,8% to 46% (SPA report, 2016). Moreover, employee representatives continue to report unlawful practices such as wage deductions for knives and clothing.

As a response to this situation the federal government responded with implementing a law on securing workers' rights in the German meat industry. Whether this law will translate to practical changes in the sector is yet to be determined. Looking at similar regulations in the construction industry, where related problems occur, it is doubtful whether enforcement officers are equipped to effectively improve workers' rights (Wagner, 2015b; Wagner 2015c). Nevertheless, these legal developments indicate a political commitment that has been previously absent. Whether the issue of workers' rights will remain on the political agenda and to what extent might also depend on the next government, to be elected in September 2017.

Improvements:

- Better access to **healthcare** services
- Better **legal enforcement** because rights framework is within host country framework
- Workers can access rights under the framework of **main contractor liability**

Future Recommendations:

The research findings support calls for:

- **Establish binding targets for the reduction in posted work contracts**
- **Increase the percentage of core workers** (with bindings targets)

- **Improve the co-determination rights for works councilors** (e.g. all employees at one place should have the right to elect a works council which should also be able to represent subcontractors and be able to control working conditions)
- **Implement collective redress** (e.g. avoid that every person has to act against violations individually)
- **Facilitate the reversal of burden of proof in case of bogus subcontracting** (e.g. when subcontract employers are integrated into the work of the main contractor)

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