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Running low on state-capacity: strengthening EU mobile workers' rights by outsourcing enforcement? The role of advisory services in Germany

Abstract

During the Covid-19 pandemic, the precarious working and living conditions of mobile workers made headlines across Europe. The challenges of securing better working conditions are inherent in the integration of the European single market, which removed market barriers while leaving the enforcement of labour rights to national institutions. At the same time, representing workers' interests in a cross-border context poses difficulties regarding organisation and access. This paper focuses on the role of civil society actors in the cross-border enforcement process by examining the role of advisory services in Germany. To what extent can these new structures fill existing gaps in the enforcement of labour rights and the representation of the interests of mobile workers? Where do they reach their limits? Empirically, this paper draws on documents, reports and semi-structured expert interviews. The data was analysed using qualitative text analysis. Drawing on the literature on interest representation and the enforcement of EU law, I examine the position of these services in the enforcement process along the lines of the fire-alarm vs. police-patrol dichotomy. I argue that these advisory services function as a "sponsored" fire-alarm, compensating for some of the institutional shortcomings but falling short of structural improvements beyond individualised support.

Keywords: EU labour mobility, enforcement, labour rights, civil society, mobile workers

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1. Introduction

During the Covid-19 pandemic, widespread infections in the workplaces of mobile workers, such as slaughterhouses, drew public and political attention to the precarious working conditions and employment arrangements of these workers (Klawitter, 2020). While these were not the first such reports, the incidents highlighted the vulnerability of these workers, making them easy targets for exploitation.

The free movement of labour and services in the European Union (EU) enables workers to take up employment in another member state in a permanent manner

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or to provide a service temporarily e.g. as a posted worker or for seasonal labour. While permanent employment through the free movement of labour technically allows for long-term employment and adjustment to the national system (learning about administrative, legal and employment practices), temporary employment based on the freedom to provide services comes with its own set of challenges. European as well as national laws grant labour rights to mobile workers in terms of working time, safety, and remunerations through legislation such as the Posting of Workers Directive. However, the competence to enforce these EU directives lies with the member states' authorities and remains especially challenging in a temporary cross-border context as mobile workers lack the knowledge about and trust in the host state's institutions and cross-border enforcement takes time and additional administrative capacities (Cremers, 2020).

Traditionally, workers' rights are not only enforced by state institutions but are also defended through organised workers' struggles with trade unions being an important guarantor of these rights. However, in addition to language barriers and cultural differences, the question of how to represent EU cross-border workers, who are usually not union members, remains a challenge (Wagner & Berntsen, 2016, 202–205). Moreover, the temporary nature of employment, makes it more difficult for unions to mobilise and represent these workers in a sustainable manner (Berntsen & Lillie, 2016). Hence, alternative forms of providing information and support to mobile workers have developed since the 2000s in various EU countries.

Based on a case study design of the German advisory services for mobile workers, *Faire Mobilität* (Fair Mobility) and *Arbeit und Leben* (Working and Living), which provide support to mobile workers in precarious employment, this paper brings together the debates on the enforcement of labour rights and the representation of the interests of mobile workers. In doing so, it contributes to the often overlooked role of trade union actors in the enforcement of labour rights (Arnholtz, 2021, 1162). The German case is particularly compelling because these advisory services are organised under the political umbrella of the trade unions, while being funded primarily by the public sector.

This analysis examines the role these actors play in the national enforcement structures and the implications this has for the enforcement of mobile workers' rights more generally. I use the fire-alarm vs. police-patrol dichotomy coined by McCubbins and Schwartz (1984) as a theoretical frame for analysis to disentangle modes of enforcement. The paper outlines the role and integration of these advisory services in the German enforcement landscape. By analysing the role and limits of advisory services along the lines of the fire-alarm vs. police-patrol dichotomy the paper asks: To what extent can these new structures close existing gaps in enforcement of labour rights and interest representation of mobile workers? Where do they reach their limits? I argue that these advisory services function as a form

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of "sponsored" fire-alarm, compensating for some of the institutional shortcomings but falling short of structural improvement beyond individualised support.

The paper is structured in the following manner: The next section provides an overview of the conflict between EU social law integration, trade union cooperation and representation in the context of labour mobility. I then outline the theoretical dichotomy between fire-alarm vs police-patrol before turning to the methodological approach. I delineate the development and role of advisory services in the German enforcement landscape and discuss the implications of this setup. The final section summarises the findings.

2. Limits of social integration and trade union cooperation in a liberalised European market

This section examines economic and social integration in the context of European integration and its consequences for labour mobility. It highlights the dominance of economic integration over the social dimension, resulting in conflicts between citizens' rights, welfare needs and the priorities of capital. I then turn to European trade union organisation and cooperation, before focusing more specifically on the element of interest representation in labour mobility.

2.1 Economic and social integration and the consequences for labour mobility

The dominance of economic integration in contrast to a social dimension has always been a prevalent feature of European integration. The focus on market efficiencies and removing obstacles to liberalisation on the one hand and the complicated embeddedness of European social policy in substantially different national welfare systems and employment policies have created a constitutional asymmetry. In this dynamic economic ("market-making") policies were increasingly moved to the European level while social protection policies ("market-correcting") remained a responsibility of the member state (Scharpf, 2002). Throughout the EU integration process this imbalance created conflicts of social cohesion and was at the centre of debates concerning the equilibrium between citizens' rights and welfare needs, and priorities of capital (Ferrera, 2005; Streeck, 1996).

For labour mobility this translates into a highly flexible workforce with hardly enforceable labour rights. The enforcement of labour and social rights faces the underlying conflict that, while the free movement of people and services increased employment flexibilities for employers and service providers, the organisational capacity of labour and national administrations remain primarily in the national sphere (Wagner, 2015). This poses problems for the enforcement process of cross-border workers' rights as national enforcement actors "[…] have neither the geographic scope nor the substantive authority to regulate service-based free movement effectively" (Cremers, 2019, 128). Additionally, The East enlargement of the EU

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in 2004 and 2007 made the European single market even more heterogeneous, creating an opportunity to avoid national social-protection rules (Bernaciak, 2015a).

Existing research highlights the frequent exploitation of mobile workers and the insufficient enforcement of their labour rights (Bernaciak, 2015b; Wagner, 2018). Challenges range from inadequate capacities of and therefore merely sporadic controls by national enforcement authorities (Wagner & Berntsen, 2016) to a limited willingness to enforce because of the urgent need of labour supply (Heindlmaier & Kobler, 2022). Complex requirements of administrative cooperation between member states further complicate the actual enforcement of labour rights, thereby leaving mobile workers in precarious conditions (Blauberger & Schmidt, 2022). Moreover, it is difficult for mobile workers to pursue litigation in front of national courts due to language barriers and lacking resources (Rasnača & Bernaciak, 2021; Slepcevic, 2009) as well as a general lack of knowledge about the rights that apply to them in the host country (Cremers, 2017).

In the past decade, there has been an increased focus on enforcement in the field of labour mobility and posting of workers more specifically. In the case of posting, the Enforcement Directive (2014/67/UE), the Posting of Workers Directive (96/71/EC) and its revision (2018/957/EU) describe the main frame of reference for the member states and employers' responsibilities. The Enforcement Directive aimed to enhance administrative cooperation (Article 3) as well as prevent abuse and circumvention (Article 4). It emphasises the destination states' responsibility to conduct inspections to safeguard good labour conditions (Article 7). Similarly, the amended Posting of Workers Directive stressed the responsibility of destination states to safeguard enforcement through "effective, proportionate and dissuasive" punishments for violations of labour law (Article 5) and encourages member states to "make provision for cooperation" (Article 4(2)). Beyond posting, the seasonal workers directive (2014/36/EU) and the mobility package (2020) specified admission conditions and equal treatment of third country nationals in temporary employment as well as rules for the road transport sector.

On an institutional EU level, the Junker Commission launched the idea for a European Labour Authority (ELA), which was finally established in 2019 (EU/2019/1149) to compensate for shortcomings in enforcement and transnational cooperation. With comparatively weak independent centralised competences, the new authority is meant to safeguard fair labour mobility and social security coordination by providing information and facilitating better cooperation between member states (Blauberger & Heindlmaier, 2023; Cremers, 2020). These regulations and cooperation structures set a framework that then relies on the capacities and efficiency of national authorities when it comes to enforcement.

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2.2 European trade union cooperation and organisation

For trade unions, European integration with its removal of barriers for the common market and its progressively borderless labour market significantly complicated interest representation and mobilisation. The implementation of EU regulatory directives through national member states and the removal of market barriers by the European Court of Justice (ECJ) undermined national forms of social dialogue and the trade unions' scope of action (Scharpf, 1998). Consequently, there was a need for European trade unions to counter this trend by stabilising national labour markets and expanding their influence at the EU-level. However, Seeliger and Kiess identify three dimensions of heterogeneity of trade union politics that complicate finding common positions, especially following the East enlargements: (1) different national institutional settings and modes of bargaining, (2) divers organisational backgrounds concerning structure, scope, and ideology, and (3) asymmetric power resources between the national trade union movements (Seeliger & Kiess, 2019, 2). While transnational trade union cooperation does occur in some areas beyond these differences, e.g. exchange of information or training programmes, this is hardly the case for broader support for European collective bargaining (Furåker & Bengtsson, 2013).

At a European level, labour unions have struggled to organise across borders and politicise questions of social justice more broadly, therefore leaving resulting social conflicts mainly on the national organisational level (Armingeon, 1991; Erne, 2015). The European Trade Union Confederation (ETUC), which was founded in 1973, is the most visible campaigner for common political positions of the national trade unions – functioning as a form of umbrella organisation of 93 national trade unions and 10 European trade union federations. However, some research suggests conflicting interests between the membership-bound national and sectoral federations and the at EU-level operating ETUC (Seeliger & Wagner, 2020) as well as the development of a specific form of trade union elite culture (Wagner, 2013). This illustrates that multinational actors and campaigns cannot be successful without on the ground workplace representation and engagement with national companies and state agencies (Taylor & Mathers, 2002), which raises the question of inclusion of cross-border workers in national trade unions.

2.3 Interest representation

For mobile workers, not being union members in the destination state as well as language barriers additionally complicate interest representation (Wagner & Berntsen, 2016). A wide range of literature focuses on unionisation strategies to integrate mobile workers into existing unions, highlighting the importance of specifically targeted offers and services (Thomas, 2020), developing innovative strategies and involving different levels of union organisation (Fitzgerald & Hardy,

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2010), and union democracy (Marino, 2015). However, the interest representation of mobile workers outside of these established structures is much less explored.

The question of interest representation of groups that are usually excluded from traditionally grown membership structures, such as unions, is not a new one. In the context of enforcement, unions provide a certain assurance that their members' needs are met, and their rights are respected by negotiating with employer organisations, highlighting shortcomings, and offering (legal) advice.

Analysing the role of civil society organisations in representing non-union workers, Williams, Abbot and Heery (2011) find that these organisations have a significant influence on providing workers with representation alongside trade unions. They identify two main forms of interventions by civil society organisations: lobbying the government to impact policy-making and providing advice to workers. Similarly, Cella (2012) argues that new methods of representation in form of specific associations that complement traditional forms of labour organisation are essential for atypically employed workers. This access to knowledge about legal and institutional structures empowers mobile workers to understand their rights and possible claim enforcement by turning to authorities or pursuing legal steps.

All in all, even though a legal framework for member states' responsibilities in the enforcement process does exist, the practicalities remain complicated for reasons relating to the target group, capacity, and institutional set-up. From this point of departure, the following section turns to definitions of enforcement and the fire-alarm vs. police-patrol dichotomy as a base for the analysis.

3. Enforcement strategies between police-patrol and fire-alarm

This section opens with some definitional clarifications on the term enforcement and how it is used in this paper, especially considering the notion of civil society involvement. I then turn to the fire-alarm vs. police-patrol oversight dichotomy that I draw on as a frame for the analysis and discussion.

In the process of policy implementation of EU law, Treib (2014) categorises enforcement as the final stage, following the transposition of directives into national law and the application by administrations and societal target groups. As the main enforcement actors, he identifies national administrations and courts providing detection mechanisms of noncompliance and enforcing it. However, Treib also emphasises the importance of civil society organisations and support structures for individuals to ensure enforcement (Treib, 2014, 30). Börzel and Heidbreder describe enforcement as "[…] putting policies into practice. More specifically to ensure effective implementation and compliance by detecting, deterring, rehabilitating, or punishing violations" (Börzel & Heidbreder, 2017, 242). While rooted in a traditional focus on judicial and administrative enforcement actors, these approaches allow for the impact of civil society actors, e.g., in form of individual support,

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providing information or detecting violations. Therefore, when I write of their role in the enforcement process in the following, I do not suggest any executive enforcement capacities of civil society, but rather their role in providing structures that play into these enforcement activities as well as engagement with traditional enforcement actors.

3.1 Fire-alarm and police-patrol enforcement oversight

For policymakers the question of implementation oversights, is a matter of choosing instruments to safeguard legislation. Regarding modes of enforcement oversight, McCubbins and Schwartz differentiate between police-patrol and fire-alarm oversight and argue that legislators "instead of sniffing for fires, […place] fire-alarm boxes on street corners […and build] neighborhood fire houses" (McCubbins & Schwartz, 1984, 166). In this approach, less-centralised fire-alarm oversight that involves interest groups and individual citizens voicing concern is more flexible and focused on salient issues. By contrast, the centralised police-patrol oversight requires a permanent bureaucratic apparatus and constant intervention. In other words, it is the difference between discouraging and detecting violations of law through institutionalised and continual supervision (police-patrol) and a more reactive approach to incidents brought forward by external actors (such as interest groups) because of an immediate need.

McCubbins and Schwartz argue that policy makers tend to prefer fire-alarm oversight, as its reactive nature provides them with the opportunity to benefit from fixing an immediate problem and therefore, appearing capable in the eyes of supporters and constituencies. In contrast, police-patrol oversight requires a large bureaucratic agency to control complex public policy issues, which comes with higher costs of providing this infrastructure as opposed to relying on external fire-alarms (McCubbins & Schwartz, 1984, 168).

This dichotomy has been put to the test in the past decades empirically as well as theoretically. While the declared preference for fire-alarm has been contested (see: Balla & Deering, 2013; West, 2015) the analogy remains helpful for understanding characteristics of oversight activity. In a multilevel system of governance, it adds to our understanding of relationships between actors and institutions by disentangling roles and scopes for action at different levels (Fontan & Howarth, 2021).

I apply this theoretic dichotomy of fire-alarm vs. police-patrol as a frame of reference to explore the position of the advisory services among other enforcement actors and contextualise the dynamics of European integration and trade union cooperation outlined in the section above.

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4. Case selection and methodology: German enforcement structures and advisory services

This article focuses on the support structure for mobile workers in Germany because of its relevance as a destination country for mobile workers and the recent development of specific support structures for mobile workers in the 2010s. This section first defines the term "mobile worker", presents information on mobile workers in Germany and then focuses on the case of advisory services, data, and methodology.

While the term "mobile worker" is quite broad, this paper refers to a specific form of intra-EU labour mobility. In traditional long-term labour migration, EU citizens move from one Member State to another under the free movement of persons to settle for a longer period or even permanently. In addition, EU legislation recognises three other forms of labour mobility: seasonal work, posting of workers, and self-employment (including subcontracting). These forms of labour mobility take place in the context of different fundamental freedoms of the EU (services, labour, establishment) and have some distinctions in terms of contract types and national regulations. What they all have in common, however, is the temporary nature of the employment in the other member state (Wagner & Hassel, 2016, pp. 128–129).

When it comes to labour mobility, Germany has long been the main receiving country in Europe. In the years prior to EU enlargement, Germany was the main destination country for labour migration, especially from Poland, and bilateral agreements facilitated the labour mobility of seasonal workers from Eastern European countries. This regular form of labour mobility decreased after EU enlargement, as Germany used the longest possible period of the transitional agreements to protect its own labour market. However, labour provided under the freedom to provide services continued despite these agreements and was a way (e.g. through posting or self-employment) to circumvent the restrictions (Galgóczi & Leschke, 2012, pp. 6, 13–14).

In 2021, Germany was the main destination country for active EU mobile workers (Hassan et al., 2023, p. 24), and while the data on mobile workers must be treated with caution as an indicator rather than a complete picture, some figures are available. In terms of seasonal labour, EU workers are particularly needed in the agricultural sector, where around 56,000 workers from other member states (mainly Poland and Romania) and third countries were employed in 2022 (Federal Employment Agency, 2023). The numbers are higher for posting, with 410,908 postings to Germany in 2020, mainly in the construction, transport, and logistics sectors. The main countries of origin of the workers are Poland, Slovenia and Slovakia (Albrecht et al., 2022, 20–22).

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Across the EU, there are different support projects for mobile workers organised by trade unions or trade union related organisations (Hähnel, 2014). However, most of these projects are of limited scope, primarily focusing on providing information through events and service hotlines with only few employees. The German advisory services networks on the other hand grew across Germany since the 2010s and are now predominantly and partially permanently financed through public funding while being organised exclusively by trade unions. Hence, making these advisory services a permanent feature among labour mobility actors.

Specifically, this paper focuses on the federal project Fair Mobility (Faire Mobilität) and the regionally based advisory services coordinated under the umbrella organisation of Working and Living (Arbeit und Leben). The number of these advisory centres increased throughout the 2010s – in total, there are currently 28 advisory centres in Germany (13 Fair Mobility, 15 Working and Living; see Annex I for an overview of the advisory office locations). The mixed financing and hence, the positioning between the political and the trade union sphere, enables them to exist within the political sponsorship of a trade union without actually representing membership-based interests. The increase of these advisory structures in Germany and the setting up of a similar project at European level for closer cooperation with the countries of origin makes them an interesting case for examining their role in the enforcement landscape.

This paper asks: To what extent can these new structures fill existing gaps in the enforcement of labour rights and interest representation of mobile workers? Where do they reach their limits? Understanding the role and limits of these services contributes to our knowledge of trade union actors in the enforcement of mobile workers' labour rights in a European integration context empirically and theoretically. To a certain degree, some conclusions are also applicable to other areas of civil society engagement in the organisational sphere of the nation state, e.g., refugee support networks. I argue that these advisory services function as a form of "sponsored" fire-alarm, compensating for some of the institutional shortcomings but falling short of structural improvement beyond individualised support.

Empirically, this analysis is based on 13 semi-structured expert interviews with representatives of trade unions, advisory services, the German Federal Ministry of Labour and Social Affairs and public administrations. All interviews were conducted through online video calls in 2021 and 2022 and lasted between 1–2 hours. They were recorded and transcribed with the permission of the participants. Structurally, the interviews were divided into two broad themes. One section of the interview guide focused on the role and tasks of advisory services in particular, whereas the other questions were centred around the enforcement of the labour rights of mobile workers more generally, also taking into account other actors. While the online interview arrangement generally worked well, it should be noted that conducting interviews online, as opposed to in person, entails a loss of picking

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up on non-verbal cues and other interference such as inconsistent internet connections or dropped calls (Roulston & Halpin, 2022, 673; Seitz, 2016).

I supplement my interviews with documents and reports provided by governing and administrative bodies, as well as by the advisory services themselves. To accumulate these documents, I collected available flyers and evaluations from the homepages of the respective regional and federal advisory centre offices. For the official information from the public sides, I used the document search functions of the German Bundestag and Regional Ministries to gain an understanding of the extent of funding structures as well as potential cooperation in the enforcement process. These documents varied from parliamentary debates, to answers to written inquiries as well as official statements and reports published in this context. In total, the body of analysis consists of 50 documents and the 13 interview transcripts (see Annex II for an overview of conducted interviews).

For the interpretation of the data, I applied a qualitative text analysis and used the analysis software MAXQDA to store and code the material. For the analysis, I follow Kuckartz's (Kuckartz, 2014) approach of thematic text analysis as it allows for several coding cycles and a mixture of inductive and deductive category setup. In the initial stage of the analysis, I coded the material more generally around categories I derived from the previously outlined literature regarding the fire-alarm vs. police-patrol dichotomy. Additionally, I identified further topics inductively that recurred while working through the material (e.g., individualisation of support, quality of cooperation, isolation of workers) (Kuckartz, 2014, 69–88).

5. Developing advisory structures: growing problem awareness and integration

To understand the specific position that advisory services take on in the German enforcement landscape, this section first outlines the main actors and elaborates on the gap in the German institutional structures based on the document analysis. Drawing primarily on the interview data, I then turn to the development of advisory services, their increasing integration into these structures and the focus of their work.

5.1 Gaps in the enforcement landscape: customs authority and labour inspectorates

Institutionally, there is no national labour inspectorate in Germany. The German enforcement competences are divided between regional labour inspectorates and the Black-Market Financial Control Unit (FKS – Finanzkontrolle Schwarzarbeit) which, within the institutional framework of the Central Customs Authority, belongs to the Federal Ministry of Finance (BMF).

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As a part of the Central Customs Authority, the Black-Market Financial Control Unit is the main German competent authority controlling and prosecuting undeclared work since 2004. On a national level, the audit tasks of the Central Customs Authority refer to the minimum wage act, the posting of workers act and the temporary employment act (Mindestlohngesetz, Arbeitnehmer-Entsendegesetzes, Arbeitnehmerüberlassungsgesetz). The legal boundaries for these audits, are outlined in the law against illegal employment (Schwarzarbeitsbekämpfungsgesetz – SchwarzArbG).

The FKS unit focuses on financial enforcement and the responsibility of the employer to follow legal regulations concerning wages and taxes. To receive pending salaries mobile workers must pursue this in the civil courts. In other words, the FKS enforces the fiscal and financial responsibilities of employers towards the state but not labour rights of mobile workers. Moreover, the capacity and competency of this unit, while increasing throughout the years, remains limited in contrast to the task at hand. According to the annual report of the customs authority, the FKS had about 8000 employees in 2021 (Customs, 2022).

Concerning the safeguarding of working conditions, the respective states in Germany (Bundesländer) are responsible to provide the administrative structures in form of labour inspectorates (Arbeitsschutzbehörden) to this effect. They are responsible to execute controls in at least a certain number of companies and cooperate with the statutory accident insurance to promote appropriate working conditions (Arbeitsschutzgesetz (ArbSchG), § 21). These regional labour inspectorates are responsible for the quality of working conditions in general (e. g. workplace safety and correct equipment) but are not specifically appointed to focus on the challenges of mobile workers. Furthermore, their capacity is also limited. According to the report on 'Safety and Health at Work' published by the German Ministry for Labour and Social Affairs in late 2021, the regional states' labour inspectorates employed 1.490 local inspectors in 2020 (BMAS, 2021; numbers for Baden-Württemberg not reported). The German Trade Union Confederation (DGB) strongly criticised this number as covering not even half of the quota recommended by the International Labour Organisation (Wörsdörfer, 2022).

All in all, the mismatch of the institutional setup and respective competencies creates a gap in which mobile EU workers' labour rights cannot be specifically controlled for. The FKS enforcement focuses on recovering money for the state and the regional labour inspectorates' effort to ensure appropriate working conditions for all employees, leaves the mobile workers without much institutional attention. Additionally, the split between the FKS at federal level and the regional labour inspectorates at regional state level hampers cooperation and makes it difficult for affected workers and interest groups to identify the responsible institutions (Interview 3; DGB). Against this background, additional structures for this group are evidently necessary. In the following, I outline the development and competencies of the

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German advisory services, before discussing to what extent these structures are fit to compensate for those institutional limitations.

5.2 German advisory services: from a need for new structures to sponsored fire-alarms

The need to establish an additional point of contact for mobile workers in Germany became apparent in the wake of the EU enlargement and the increasing heterogeneity of the European labour and services market. However, the mandate to represent the labour rights of mobile EU workers did not lie with the national trade unions, as these mobile workers were not union members and the unions did not have the capacity to represent an additional group of workers (Interview 4, BMAS).

In 2004, the industrial union for Building, Agriculture and the Environment (IG BAU) founded the European Migrant Workers' Union (EMWU – Europäischer Verein für Wanderarbeiterfragen e.V.) attempting to shift unionism to the European level. The IG BAU funded the initial phase of the project and hired Polish speakers to consult with mobile Polish workers in Germany. Additionally, another office was set up in Warsaw (Lillie & Greer, 2007, 566–568). While the original aim of gaining members across different EU member states did not work out, the project still cooperates with the single unions under the umbrella of the German Trade Union Federation (DGB). Currently, the project has six offices in Germany and was the starting point for following projects such as Fair Mobility.

The Fair Mobility project started in 2011 and was explicitly designed to target the needs of mobile workers, by establishing information centres across Germany. Multilingual counsellors provide assistance concerning legal advice and other employment questions in the workers' native language. Currently, there are 13 of these information centres in Germany, which primarily give advice to workers from Poland, Romania, and Bulgaria. The project states that it aims to enforce fair salaries and working conditions for workers from (Central) Eastern Europe. According to the statistical semi-annual evaluation of 2021, the Fair Mobility offices worked 3474 cases in the first six months (as opposed to 2447 in 2020) addressing mostly issues of remuneration, layoffs, and employment contracts. During the initial funding period, Fair Mobility was financed through project funds of the Federal Ministry of Labour and Social Affairs (BMAS) and the DGB. Since 2020, the project is legally entitled to financial resources from the federal budget, which now cover 90 percent of the project's costs. The union's federal board contributes the remaining ten percent. However, the political responsibility for Fair Mobility lies with the DGB, meaning that the union manages operative activities and strategic objectives (Faire Mobilität, 2023).

The association "Working and Living" (Arbeit und Leben) provides a service similar to the one of Fair Mobility, however, the organisation generally has a wider appeal,

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also focussing on civic and youth education and not exclusively on mobile workers. It is carried out jointly by the DGB and the German Association of Adult Education (DVV – Deutscher Volkshochschulverband). Yet, their advisory network for "good work" is active in ten of Germany's sixteen federal states. The local offices rely on mixed financing approaches by ministries of the regional governments, the DGB and money from the European Social Fund (ESF) (Arbeit & Leben, 2023).

In political debates about fair labour mobility in Europe, politicians from across the party spectrum frequently mentioned advisory services as important actors. Despite fair mobility being a comparatively small project, politicians emphasised the importance of providing information in other languages for workers and of preventing scandals (Uwe Schummer, Christian Democratic Party, 19th parliamentary term – 164th session. 2020, May 29), thanked the counsellors for their work (Beate Müller-Gemmeke, Green Party, 19th parliamentary term – 201st session. 2020, December 16) and stressed its value to "report to us on what is happening in the sector and [do] so publicly" (Hubertus Heil, Federal Minister of Labour and Social Affairs, Social Democratic Party, 19th parliamentary term – 191st session. 2020, November 18). Institutionally, the EU Workers' Equality Office was set up in 2016 as part of the implementation of the Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (2014/54/EU). It has the mandate to support EU workers in exercising their rights under the free movement of workers in Germany and is located at the Federal Chancellery. It provides information for mobile EU workers and gives an overview of possible advisory services in the respective region – thereby mainstreaming the information about the different projects. All in all, this indicates the simultaneous development of a growing political awareness concerning the problem of exploitation and a stabilisation of funding.

The mixed financing while being simultaneously managed by an institution focused on employees' interests illustrates the specific position these advisory services take on. The public funding enables the advisory services to exist within the political sponsorship of a trade union without representing membership interests. As described above, this structure developed from a civil society context and grew as a network with an increasing political problem awareness that the institutional state enforcement structures were insufficient.

5.3 Operation modes of the advisory services

After considering this development: What do these advisory services actually do and how do they interact with other actors involved in enforcement? Throughout the interviews and documents, two main fields of involvement of the German advisory services can be distinguished: the immediate advising of mobile workers and developing of information materials, as well as advocating for mobile workers in public and political settings.

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The most relevant function of the advisory services is quickly identified: The counselling centres offer a low-threshold service that overcomes the problem of the language barrier. These consultation meetings are offered to individuals as well as in groups and can be held in person or via telephone. Most importantly, the consultation sessions are not bound to one place, because the advisors actively seek out workers who could need information for example on construction sites or close to harvesting sites (Interview 9, Fair Mobility). Some regional advisory services e.g., rely on advisory busses to flexibly move between work sites and hand out information to workers arriving or leaving the workplace. This exemplifies one main difference to traditional union representation. Instead of providing services and mobilising members, these services actively seek out non-members to offer support and information.

This type of outreach can be exemplified by a transport case that recently took place at a motorway service station in the federal state of Hesse. A group of truck drivers went on strike against their Polish transport company because of weeks of wage arrears. The situation escalated when the employer went so far as to send in a paramilitary-like fighting force to get the cargo. The strike at the motorway service station lasted for more than a month. Fair Mobility staff assisted in mediating with the local police and in negotiating with the employer. In the end, the wages were paid (Tügel, 2023). As most of the drivers were Georgian and Uzbek, this also illustrates that the problem of labour exploitation and the need for a support system already goes beyond the intra-EU context.

The advisory sessions take on a bridging function, providing structural knowledge to workers on where to turn to for e.g., legal advice and mediating between mobile workers and employers if possible. In the words of one interviewee "Our mission ends where jurisdiction begins" (Interview 9, Fair Mobility) – illustrating this function between enforcement and judicial authority. The advisory centres then use the collected information about recurring violations to create and update information material for the workers. These materials vary from leaflets to podcasts and YouTube videos summarising important advice and best practices (Faire Mobilität, 2020). Counselling thus goes beyond face-to-face and telephone meetings and includes information distribution via social media and messengers.

As for the advocating function and cooperation with other enforcement actors, the cooperation with trade unions on national and regional level functions through committee work as well as informal exchange. Here, it is important to note that while these advisory services are placed under the political sponsorship of the union, they do function as separate projects within these structures. Similarly, cooperation and exchange with political actors does occur on request, in case of an immediate need for information exchange. Some regional states also established structures of cooperation between advisory services and regional labour inspectorates in form of regular meetings for knowledge sharing between advisory services

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and enforcement authorities (Interview 8, Arbeit und Leben). In a legislative context, experts from Fair Mobility were involved in the development of the new Occupational Health and Safety Control Act (Arbeitsschutzkontrollgesetz) in 2020 (Interview BMAS 2). A research report on Fair Mobility which was commissioned by the BMAS specifically describes the potential of this cooperation, stating that "Fair Mobility could be increasingly seen by politics and administration as a competence centre and used for expert knowledge. In addition, agreements can be made on the conditions and ways in which Fair Mobility itself can take the initiative in approaching politics and administration as a kind of 'early warning system'" (Jetter, Maaßen, Stephan, Sommer & Karato, 2020, 121). This assessment by the authors indicates the possibility of even more integrated cooperation in the future.

When asked about their own role, the counsellors emphasised their position as "spokespersons for the workers", stressing that "counselling structures are good and important, but counselling structures simply cannot put an end to this systematic exploitation" (Interview 9, Faire Mobilität). The proximity to mobile workers was seen as positive, as it provided a low-threshold contact rather than recourse to official authorities. The counsellors were more critical of the limited funding, the need for more cooperation and capacity (interview 9 Faire Mobilität, 5 and 8 Arbeit und Leben).

On a structured level, the Ministries of Finance and the Ministry of Labour and Social Affairs signed an agreement for cooperation with the DGB to "end labour exploitation and undeclared work", which took effect in July 2021 and is to grant a better cooperation between the respective actors (BMF, 2021). As this agreement was signed fairly recently, it is too early to conclude on its actual impact, however, the establishment of a framework for closer cooperation suggests a tendency to incorporate the expertise of advisory services more systematically. An additional platform for cooperation is provided by the advisory board of Fair Mobility, which comprises not only project partners and members from the BMAS but also representatives of trade unions and labour ministries from (Central) Eastern European, e.g., Poland, hence, suggesting some cooperation that goes beyond national German sphere.

Throughout the interviews, most interviewees also referred to the European dimension of cooperation. In this context, several interviewees (e.g., interviews 4, BMAS; 8, DGB; 9 Faire Mobilität) referred to partner projects of the advisory services that were carried out in cooperation with trade unions in the countries of origin of mobile workers to set up competence centres for cooperation. There have been several transnational temporary projects for better cooperation to support mobile workers. In an EU pilot project "European Fair Mobility Network" (VP/2013/011) the European Commission granted money to some member states to set up information centres for intra-EU migrant and posted workers. Drawing on this experience, the Fair Posting project was active from 2017 to 2018 (DGB, 2023a).

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There have been some follow up projects since that had limited financing for some years. Currently, "Fair European Labour Mobility" runs information centres in Poland, Slovenia, Hungary, Romania, Germany and Austria and funding is secured until the end of 2023 (DGB, 2023b).

On a national level, advisory services have become gradually more relevant in the enforcement of mobile workers' labour rights and their cooperation with other actors become increasingly integrated. The integrated form of cooperation with other national German actors through information exchange and cooperation agreements does suggest, that the role of the advisory services goes, at least selectively, beyond the mere external fire-alarm function. The advocacy and policy consultation function provides a feedback structure into the political sphere, entailing background discussions and sharing insights from the consultation sessions for appointment preparations for politicians and administrators or for drafting legislative initiatives.

6. Discussion

The previous sections outlined responsibilities and challenges in the enforcement of mobile workers' rights, gaps in the institutional enforcement landscape as well as the development and operating modes of the advisory services. In this section, I discuss these structures in the context of the fire-alarm vs. police-patrol dichotomy and consider implications for union representation and the enforcement of mobile workers' rights more generally.

Situating the advisory services in the duality of fire-alarm and police-patrol, they take on a form of integrated "sponsored fire-alarm". They function as an ad hoc fire-alarm oversight that is focused on a specific group of interest representation but can also direct more structured feedback into the political sphere. In addition to providing information to the affected mobile workers, advisory services aim to create public and political attention for structural problems and enforcement challenges – hence, ringing the fire-alarm. However, the feedback communication into the political sphere, which is established through the financing of these projects by public funding, indicates that the advisory services' function in the oversight process goes beyond the ad hoc and reactive interest representation nature of the fire-alarm dimension.

As outlined above, mobile workers in Germany face a form of double exclusion, being hardly represented in trade unions because of the membership structure and falling through the institutional cracks of the German enforcement authority setup. With such great challenges, advisory services' contribution in form of providing information and advocacy is certainly important but can hardly compensate for a weak national police-patrol in form of enforcement authorities.

Regarding the capacity of these advisory centres, it is important to note that these services are still provided selectively rather than systematically. This aspect of

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limited capacity applies to financial as well as staff capacities. As the financing of the advisory services is mostly temporary, it complicates long-term strategies and employment of personnel. Additionally, cooperation with other structures, such as the black-market control unit, occurs rather infrequently and depending on the contact person in charge. Nonetheless, the growing number of advisory offices for mobile workers as well as the increased cooperation with political actors during the 2010s does indicate a more integrated approach to these advisory services. If the goal is to prevent exploitation, this raises the question of goodness of fit of a fire-alarm leaning enforcement oversight for the interests of mobile EU employees.

From the perspective of political actors, this form of oversight appears more reasonable, as it provides some decentralised support to a particularly vulnerable group of workers which by itself does not have a lot of political leverage. Hence, this individualisation of enforcement can rationally be seen as a more appealing solution than reforming the entire enforcement apparatus and devoting significantly more resources to control units (police-patrol).

In the context of interest representation, the advisory services take on tasks similar to other non-union workers' representation such as providing information and council to workers and lobbying political actors (Williams, Abbott and Heery, 2011; Hähnel, 2014). While this is a crucial improvement and the increased financing of these projects illustrates a certain problem awareness of political actors, it remains a rather selective solution to a more comprehensive problem. The individual manner of the support provided to mobile workers was a reoccurring topic throughout the interviews. With the word of one interviewee, "one could consider to what extent this individualisation makes sense in the enforcement of workers' rights, especially regarding this group, which usually has no knowledge of the system and language and no financial resources" (Interview 3; DGB). As mobile workers have to go to court individually to e.g., recover unpaid salaries, this also places the burden primarily on these individuals, who mostly do not speak the language of the destination country, do not know the legal system and struggle to afford legal aid. We know from the literature, that there are efforts and specific programmes to integrate mobile workers into national trade unions (e.g., through short term memberships; Thomas, 2020) and counselling sessions at advisory centres can lead to union membership (Interview 9; Faire Mobilität). However, union memberships often remain expensive for mobile workers with lower salaries (Interview 13; Equal Treatment Unit EU Workers).

This selective support of mobile workers through advisory services is also reflected in the transnational dimension. The European projects to set up offices in home and destination states provide a network of contact points for information sharing and exchange. However, the financing remains temporary, and the individual projects only run for a few years. Hence, creating a smaller version of European fire-alarm but without the immediate feedback structures into the political sphere.

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Stepping aside from the empirical analysis that has guided this article, I turn to the more general aspects of labour rights in a liberalised market. Labour and social rights did not just arise out of nowhere but were fought for and championed by trade unions in constant struggle with politics and economics. However, this growing separation of a liberalised international economy and nation-state-based social protection has strongly undermined the role and influence of unions (Streeck, 1996).

As described in the second section of this paper, trade unions have not been able to fully organise across national borders for reasons of diversity in several dimensions. However, for the effective representation of mobile workers' rights, it would need new structures that go beyond selective advising to balance social protection in an internationalised setting. This also touches upon the question of transnational deservingness and solidarity concerning whose rights are protected and which rights are granted (Visconti & Kyriazi, 2022). Of course, nation-states could put a stronger focus on the enforcement of these rights in terms of capacity, penalties, and the right for associations to bring collective action cases forward. If this is realistic in a single market that tends to remove market barriers is evidently unclear.

7. Conclusion

This paper set out to analyse the role of the German advisory services in the enforcement process along the lines of the fire-alarm vs. police-patrol dichotomy (McCubbins and Schwartz, 1984) as well as these services limits. Throughout the 2010s, the number of advisory offices as well as their political importance increased significantly. Culminating in permanent funding of the federal advisory project Fair Mobility in 2020. Drawing on the German case study, I argued that these advisory services function as a form of sponsored fire-alarm, which compensates for some of the institutional shortcomings, but cannot possibly bring about a structural improvement that goes beyond individualised support.

On the one hand, the German advisory services take on reactive tasks like providing counselling sessions and information as well as raising public and political awareness when detecting abuse in the existing structures. On the other hand, they are (to an extent) integrated in these structures and connected with other enforcement actors through funding, providing expertise and new cooperation agreements. Hence, the position of the advisory service remains rather fire-alarm leaning with some organisational and financial ties to the administration and authorities in form of a sponsored fire-alarm. While this does support mobile workers' ability to navigate the host countries administrative and judicial system, it is also a simpler solution to existing challenges of enforcement than reforming state authorities.

Of course, this approach places the role of advisory services in a rather straightforward theoretical dichotomy. Their role and cooperation contexts could certainly

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be further explored theoretically as cooperation networks develop. For an initial approach, however, the clarity of the fire-alarm vs. police-patrol approach was a valuable template for exploring the role of these organisations. Further research could also explore how these services are perceived by the workers themselves, as this analysis focused rather on the structural dimension.

For mobile workers, advisory structures make it possible to have a form of interest representation without the need for union membership. However, the focus on providing information and support on an individual level also individualises enforcement. This individual form of interest representation, that aligns more with the fire-alarm approach, appears to be at odds with the target group, which due to language barriers as well as lack of access to union structures and legal advice, often does not have the resources to take on this individual form of litigation. In the German case, a significant institutional mismatch met a particularly vulnerable target group.

At the European level, there has been additional cooperation through competence centres in the countries of origins as well as individually by the members of the advisory services, who speak the respective languages and can reach out to authorities in other member states more easily. However, this remains a, while growing, rather selective form of cross-border cooperation in enforcement involvement. It remains to be seen to what degree this initial collaboration could translate into more permanent cooperation structures in the future. If this can grow into a structured bottom-up network, it will most likely be a question of resources and capacity management among European trade unions. Returning to the "outsourcing" question of this paper's title, it can be concluded that it is only limited outsourcing but one that comes at the cost of individualising the needs and rights of an already vulnerable target group.

While this paper focuses on a very specific case, it speaks to the bigger challenge of social – and actually human – rights protection in a liberalised European single market. The undermining of trade unions as established guarantors of workers' rights in combination with insufficient cross-border enforcement structures creates an environment in which mobile workers continue to be highly exposed to precarious working conditions.

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Annex I: Overview Advisory Services Offices

Living and Working Offices in German states and cities (Arbeit und Leben)

State	City
Berlin	2 offices
Brandenburg	Grünheide
Bremen	Bremen, Bremerhaven
Hamburg	Hamburg
Lower Saxony	Hannover, Oldenburg, Braunschweig, Lüneburg
North Rhine-Westphalia	Düsseldorf, Dortmund
Saxony	Leipzig
Saxony-Anhalt	Magdeburg
Sleswick-Holsatia	Kiel

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Fair Mobility Offices in German states and cities (Faire Mobilität)

State	Cities
Baden-Württemberg	Nürnberg, Munich
Baveria	Mannheim, Stuttgart
Berlin	Berlin
Brandenburg	Grünheide
Hessen	Frankfurt (Main)
Hamburg	Hamburg
Lower Saxony	Oldenburg, Rheda-Wiedenbrück
North Rhine-Westphalia	Dortmund
Thuringia	Erfurt
Sleswick-Holsatia	Kiel

Annex II: Overview Interviews

Interview 1	BMAS	80 Minutes
Interview 2	DGB	45 Minutes
Interview 3	DGB	45 Minutes
Interview 4	BMAS	67 Minutes
Interview 5	Arbeit & Leben	60 Minutes
Interview 6	Bremer Senat (Arbeitsschutz, Technischer und stofflicher Verbraucherschutz, Eichwesen, Gentechnik)	22 Minutes
Interview 7	Gewerkschaft der Polizei (police union)	259 Minutes
Interview 8	Arbeit & Leben	60 Minutes
Interview 9	Faire Mobilität	70 Minutes
Interview 10	European Trade Union Confederation	90 Minutes
Interview 11	Polish Ministry of Family, Labour and Social Policy	60 Minutes
Interview 12	Federal Employment Agency	76 Minutes
Interview 13	Federal Chancellery, Equal Treatment Unit EU Workers, Citizenship and Diversity	63 Minutes
Written answers	Generalzolldirektion (German Customs Authority)	

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