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Towards a clear EU framework for the posting of third-country nationals (TCNs): ensuring genuine posting, legal certainty and fair competition

(own-initiative opinion)

(C/2026/5094)

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1. Conclusions and recommendations

THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE (EESC)

1.1. notes that the posting of third-country nationals (TCNs) within the Treaty-based framework on the freedom to provide services (Article 56 of the Treaty on the Functioning of the European Union (TFEU)) is governed by general EU legislation applicable to the posting of workers and also shaped by the case law of the Court of Justice of the European Union (CJEU). Differences in interpretation and implementation across Member States may give rise to legal uncertainty, risks of abuse and distortions of fair competition, which could threaten to undermine trust in and the legitimacy of the internal market;

1.2. calls for greater clarity on interpretation and implementation and more consistent application of the existing EU framework, including a clearer and more accessible guidance to the relevant case law, in order to ensure legal certainty, a level playing field and effective protection of workers as well as businesses;

1.3. emphasises that the posting of TCNs must correspond to genuine cross-border service provision and may never grant access to the labour market of the receiving Member State or to place workers at the disposal of another undertaking;

1.4. notes that Member States retain the competence, pursuant to Article 79(5) TFEU, to determine the conditions for entry and access to their labour markets, and underlines that abusive posting arrangements must not be used to circumvent these competences;

1.5. highlights that key conditions governing the lawful posting of TCNs, in particular with regard to lawful residence, habitual employment in the sending Member State and the requirement not to seek access to the labour market of the receiving Member State, require appropriate clarification as regards their practical application, implementation and enforcement;

1.6. welcomes the recent political agreement on the revision of social security coordination regulations which requires three months of prior affiliation to the social security system of the sending Member State before posting;

1.7. underlines that a genuine posting presupposes a real and verifiable link between the worker and the labour market of the sending Member State, and calls for ensuring clear and operational criteria for assessing such a link, including elements such as effective employment, coverage by social security systems and, where applicable, compliance with taxation obligations and the existence of real economic activity in the sending Member State by the employer to avoid letterbox companies. The recently agreed amendments to the social security coordination regulations provide an important reference point for how to assess the link with the employment market of the sending Member State;

1.8. notes evidence of situations where workers are recruited in one Member State primarily for the purpose of being posted to another Member State, which can raise questions as to whether the requirement of habitual employment is fulfilled;

1.9. highlights the growing role of intermediaries, recruitment chains and temporary work agencies in the posting of TCNs and calls for improved enforcement of the rules to ensure that such arrangements correspond to genuine service provision and are not abused to facilitate irregular migration and do not amount to the mere supply of labour, including through stricter application of criteria relating to substantial activities and the prevention of letterbox companies;

1.10. notes that non-compliance with the conditions governing the posting of TCNs may result in situations of illegal employment and residence, creating legal risks for both workers and employers, and underlines the need for effective enforcement by Member States;

1.11. stresses the importance of strengthening the role of the European Labour Authority (ELA), including by reinforcing its mandate and ensuring that it is equipped with adequate resources, in particular for the coordination of concerted and joint inspections, mediation, the exchange of information between Member States and the monitoring of posting patterns involving TCNs, including through shared digital tools, with stronger involvement of the social partners. In this context, the EESC welcomes the upcoming Fair Labour Mobility Package as an opportunity to further strengthen fair labour mobility, including through the development of the European Social Security Pass (ESSPASS) to support the digitalisation and cross-border verification of social security attestations, in particular PD A1 certificates;

1.12. highlights the particular vulnerability of posted TCN workers, which is exacerbated by problems linked to the interpretation and implementation of the legal framework and insufficient enforcement, and calls for improved access to information on rights and obligations, including through targeted information measures and cooperation with social partners. It also calls for appropriate EU support, including funding and programmes, to ensure effective and accessible information and guidance for posted TCN workers, with the active involvement of the social partners, and for appropriate support measures to facilitate the effective exercise of these workers' rights.

2. **General comments**

Labour mobility and freedom to provide services in the internal market: legal framework

2.1. The Letta report rightly stresses that the European single market 'has been a cornerstone of unprecedented economic growth, convergence, social progress, and enhancement of living standards across the continent' ([1]). Intra-EU mobility of labour is an essential part of the single market's success. It includes movements within the EU of natural persons from one Member State to another for the purpose of employment or the provision of services. It reflects the ability to work in another Member State based on the free movement of workers (Article 45 TFEU) and the freedom to provide services (Article 56 TFEU). The latter refers to the activity of a company sending (i.e. 'posting') workers for a limited period from one Member State to another.

([1]) Letta E. (2024), *Much More Than a Market*, p. 14.

2.2. Workers exercising free movement of workers are integrated in the labour market of the receiving Member State, while posted workers move within the framework of freedom to temporarily provide services by their employer and remain integrated in the sending State's labour market. TCNs legally working and residing in a Member State do not – except under certain conditions for long-term residents – have the right to free movement as workers, but they can be posted by their employer.

2.3. As the single market has developed, a growing number of undertakings have made legitimate use of the posting of workers, including that of TCNs, to provide services across borders, thereby contributing to the functioning of the single market and to the competitiveness of the European economy. The employment rights of posted workers are guaranteed by the Posting of Workers Directive 96/71/EC ([2]) [as amended by Directive (EU) No 2018/957 ([3])], the Enforcement Directive 2014/67/EU ([4]) and Directive (EU) No 2020/1057 ([5]) on posting in the road transport sector. The social security rights of posted workers are dealt with in Regulations (EC) No 883/2004 ([6]) and (EC) No 987/2009 ([7]) on the coordination of social security systems. These instruments apply irrespective of the nationality of the posted worker and therefore include TCNs ([8]).Where the need has arisen, this legal framework has been clarified to some extent and complemented by case law of the CJEU, including on the posting of TCNs.

2.4. The posting of TCNs for the purpose of cross-border service provision is covered by the general EU legislation on posting as it is not regulated by specific EU legislation. It is however shaped by the CJEU in the so-called *Vander Elst* case law, which is based on the employer's freedom to provide services ([9]). The CJEU has clarified that the receiving Member State may not oblige posted TCNs to have prior authorisation, such as a work permit, since these workers are already legally employed in the sending Member State. The CJEU considers that these workers have no intention of entering the receiving Member State's labour market, as they will return to their country of origin or residence upon completing their duties. However, the receiving Member State may ask the service provider to demonstrate that the posted TCN is in a lawful situation in the sending Member State as regards matters such as residence, work permit and social security coverage and that these workers are carrying out their main activity in the Member State where the service provider is established. They should not seek access to the labour market of the receiving Member State.

2.5. Moreover, the CJEU held that freedom to provide services cannot be used for purposes other than carrying out the service in question ([10]). This applies where those workers perform tasks under the supervision and authority of the undertaking established in the receiving Member State. The receiving Member State may also require these workers to acquire a residence permit after the first three months, which are covered by a Schengen visa, so that it can verify that they

([2]) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1, ELI: http://data.europa.eu/eli/dir/1996/71/oj).

([3]) Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16, ELI: http://data.europa.eu/eli/dir/2018/957/oj).

([4]) Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11, ELI: http://data.europa.eu/eli/dir/2014/67/oj).

([5]) Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ L 249, 31.7.2020, p. 49, ELI: http://data.europa.eu/eli/dir/2020/1057/oj).

([6]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/883/oj).

([7]) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/987/oj).

([8]) Regulation (EU) No 1231/2010 (OJ L 344, 29.12.2010, p. 1, ELI: http://data.europa.eu/eli/reg/2010/1231/oj) extended the scope of the social security coordination regulations to include TCNs who are legally residing in a Member State and are in a cross-border situation between Member States. The CJEU has given a broad interpretation of the conditions for legally residing in a Member State, including TCNs temporarily residing in a Member State on the basis of a temporary visa: CJEU C-477/17 *Balandin*.

([9]) See CJEU case law in C-43/93 *Vander Elst*; C-445/03 *Commission v Luxembourg*; C-244/04 *Commission v Germany*; C-168/04 *Commission v Austria*; C-91/13 *Essent*; C-18/17 *Danieli*; C-540/22 *SN and others*.

([10]) See CJEU case law in C-445/03 *Commission v Luxembourg*; C-244/04 *Commission v Germany*; C-540/22 *SN and others*.

are in a lawful situation, in particular with regard to the conditions of residence, authorisation to work and social security coverage in the Member State where the undertaking concerned employs those workers, and so that it can check that they do not represent a threat to public policy.

Need for a level playing field in the internal market

2.6. However, the implementation of this case law and of the EU and national applicable legislation depends on how Member States apply it. According to the ELA's findings from 2023, in a significant number of Member States the competent authorities apply and interpret the rules governing the posting of TCNs, including the relevant CJEU case law on the interaction between the freedom to provide services, posting rules and national labour migration legislation, in different ways ([11]). As a result, some uncertainty persists regarding the uneven implementation and enforcement of the criteria under which the posting of TCNs is legitimate under the freedom to provide services. Ensuring the clarity of these criteria and facilitating their proper implementation and enforcement has therefore become important for guaranteeing fair competition, effective enforcement of labour standards and the proper functioning of the internal market. Uncertainties for employers seeking to comply with the law may undermine the level playing field in the single market and can increase the risk that workers may be exposed to abusive practices.

2.7. This lack of clarity concerning the application of the rules and the CJEU case law can become especially problematic in recruitment-driven posting arrangements and in complex subcontracting structures involving labour intermediaries or temporary work agencies. In such situations, it may be difficult for enforcement authorities and labour market players to distinguish between genuine cross-border service provision and abusive arrangements which circumvent national labour migration rules.

2.8. At the same time, the number of posted TCNs is increasing in the Member States for which there is available data ([12]), and according to the internal findings on concerted and joint inspections coordinated by the ELA, there are indications that cases involving posted TCNs are often associated with more significant and serious infringements, including of posting rules. This could mean that TCN workers are being posted in scenarios that are not covered by this case law or by the Treaty provisions on the freedom to provide services. In such cases, the employment and residence of these workers in the receiving Member State risks being illegal. Consequently, the employer risks being penalised for employing TCNs without the necessary permit ([13]) while the worker in question risks being convicted of illegal employment and residence ([14]). This situation poses significant legal challenges for all parties involved and should be addressed with a view to finding appropriate solutions. It could in some cases be seen as jeopardising the Member States' competence, as recognised in Article 79(5) TFEU, to determine the volumes of TCNs admitted from third countries to their territory in order to seek work.

2.9. Targeted clarification of the implementation of the applicable legal framework would therefore support fair competition, build trust in the posting system and enable authorities to assess more consistently and with greater legal certainty whether a posting of a TCN constitutes genuine cross-border service provision or unfair competition abusing single market rules. Clarification of the conditions applying to posting and guidance for enforcement and application would protect workers while simultaneously providing businesses with the predictability they need to operate confidently within the single market without facing unfair competition.

([11]) ELA (2023), *Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals*.

([12]) De Wispelaere, F., De Smedt L. & Pacolet, J. (2025), *Posting of workers – Collection of data from the prior declaration tools – Reference year 2023*, Publications Office of the European Union.

([13]) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24, ELI: http://data.europa.eu/eli/dir/2009/52/oj).

([14]) Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98, ELI: http://data.europa.eu/eli/dir/2008/115/oj).

Inherent vulnerability of posted TCN workers

2.10. TCNs are disproportionately affected by abusive posting arrangements ([15]). Their vulnerability can in some cases be linked to their legal and economic dependency on their employers. This dependency can further be reinforced by their limited knowledge of their rights, language barriers and precarious living conditions, which may make it difficult for workers to assert their rights or report abusive practices. With the involvement of Member States and social partners, limited knowledge of the rights of posted workers can be addressed by ensuring provision of adequate information and raising awareness of workers' rights as well as targeted information campaigns for employers about their obligations. Abusive practices are particularly prevalent in high-risk sectors, such as construction, agriculture and transport ([16]). This leads to a distortion of competition and puts companies playing fair at a disadvantage.

Scale and patterns

2.11. The posting of workers has increasingly become a component of providing services in the internal market. Recent studies, drawing on administrative data from Member States, show that this phenomenon is based on clear patterns rather than isolated cases ([17]). Around two million workers are posted annually within the internal market. Within this broader phenomenon, TCNs are being posted in ever greater numbers. The number of PD A1 certificates issued for posted workers has risen significantly over the past decade, and several Member States report a growing proportion of posted workers who are TCNs ([18]).

2.12. Evidence from national administrative sources and ELA analytical studies further shows that the posting of TCN workers is not evenly distributed across the EU ([19]). Instead, it is strongly linked to specific recruitment and migration chains connecting third countries, sending Member States and receiving labour markets in the European Union.

2.13. The distribution of postings by sector also shows clear patterns. The number of posted TCN workers is particularly high in labour-intensive sectors affected by labour shortages and characterised by subcontracting chains and complex labour supply arrangements, notably construction, agriculture, logistics and certain segments of the manufacturing and service sectors ([20]).

2.14. Taken together, the available evidence demonstrates that the posting of TCNs is not a marginal or isolated phenomenon but forms part of the functioning of the internal market. This often combines recruitment from outside the EU into the sending Member State, the granting of residence and work permits in the sending Member State and the subsequent posting of workers to another (receiving) Member State. As a result, the posting of TCN workers may involve irregular labour migration by TCNs to the receiving Member State and could raise broader questions regarding the effective application of the EU rules governing the posting of workers as well as the rules on labour migration coming from outside the EU.

3. **Specific comments**

Link between the worker and the sending Member State

3.1. In practice, determining whether a worker can be considered habitually employed in the sending Member State often can be difficult. Situations can arise where TCNs are recruited in one Member State and subsequently posted to another shortly thereafter, for instance when the sending company is awarded a contract within a procurement process. In such cases, the employment relationship in the sending Member State may exist only for a limited period prior to posting and may raise questions as to whether the worker can genuinely be regarded as part of the labour market of that Member State. Further guidance can be found in Article 4(3) of the Enforcement Directive 2014/67/EU, which sets out criteria for

([15]) Letta E. (2024), p. 104; European Commission, *Report on the application and implementation of Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services*, COM(2024) 320; European Labour Authority (2023); European Labour Authority (2025).
([16]) ELA (2023).
([17]) De Wispelaere et al. (2025).
([18]) Ibid.
([19]) ELA (2025).
([20]) ELA (2023); ELA (2025).

determining whether a worker is temporarily carrying out work in a Member State other than the one in which they normally work. In addition, the recently agreed amendments to the social security coordination regulations require three months of prior affiliation to the social security system of the sending Member State. Article 4(2) of the Enforcement Directive 2014/67/EU also sets out criteria for determining whether the posting undertaking performs substantial activities, other than purely internal management and/or administrative activities, in the sending Member State ([21]).

3.2. Clearer guidance on the application of case law on the posting of TCNs and its interaction with existing rules identifying habitual employment in the sending Member State could help to improve consistency in assessing whether posting situations involving TCNs are genuine and to ensure that the posting framework is applied and properly enforced in accordance with its intended purpose. Pursuant to Article 4(4) of the Enforcement Directive 2014/67/EU, the assessment of those elements must be adapted to each specific case and take account of the specificities of the situation.

Temporary work agencies and labour supply chains

3.3. A recent analysis by the ELA highlights the growing role of structured recruitment chains in the posting of TCNs across the EU ([22]). Frequently, TCNs are posted as part of complex transnational labour supply structures involving multiple intermediaries and subcontractors.

3.4. In many cases, workers first enter the labour market of one Member State and are subsequently posted to other Member States. These mobility pathways may involve recruitment agencies, labour intermediaries or subcontracting companies coordinating the cross-border deployment of workers.

3.5. Posting supply chains often involve several layers of contractual relationships between the receiving undertaking in the receiving Member State, intermediaries organising labour supply and the undertaking formally acting as the posting employer in the sending Member State. In such situations, the employer established in the sending Member State may function primarily as an organisational node within a broader labour supply chain rather than as an undertaking employing workers for activities carried out in that Member State. This can, in some cases, pose questions as to whether the sending undertaking can still be considered to be performing substantial activities on the territory of the sending Member State.

3.6. Furthermore, the growing role of temporary work agencies and other intermediaries in these arrangements can also raise fundamental questions about the relationship between cross-border service provision and national labour migration policies. When agencies recruit TCNs from outside the EU, organise their entry through one Member State and subsequently post them to another Member State, private intermediaries seem to shape access to the national labour market of the receiving Member State. As several Member States have stated, this undermines their right, as recognised in Article 79(5) TFEU, to determine the volumes of TCNs admitted from third countries to their territory in order to seek work ([23]). The labour migration policies of the receiving Member State risk being circumvented by the (ab)use of the freedom to provide services.

Brussels, 15 July 2026.

The President
of the European Economic and Social Committee
Séamus BOLAND

([21]) See also CJEU C-784/19 *Team Power Europe* on the application of the posting rules in Regulation 883/2004.
([22]) ELA (2025).
([23]) Position paper from the Netherlands, Belgium, Denmark, Germany, Italy, Latvia and Luxembourg – EU policy priorities for the Commission period 2024-2029: Foster genuine and fair posting of third country nationals (TCNs).