

The Posting of Third Country Nationals

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ELA Report on Posting of TCN



Report on the
cooperation practices,
possibilities and
challenges between
Member States –
specifically in relation
to the posting of
third-country nationals

Final Report

ELA/2022/RS/027/ELA.306-2021/TITLE 3/2.2

February 2023



- › **Mutual learning and understanding programme:**
 - › *examine outstanding or complex implementation and enforcement challenges in the field of posting;*
 - › *promote, share and contribute to disseminating best practices between the Member States;*
 - › *promote and support mutual assistance;*
 - › *explore synergies and cooperation with other EU bodies*

Workshops on posting TCN

1. Discussion on main issues faced by national administrations
2. On national legislation and practices concerning the necessary preconditions to sending posted third country nationals to other EU Member States (*October 2023*);
3. Procedures and potential issues related to the verification of the lawfulness of the posting during the posting activity (*February 2024*)
4. Relevant aspects of EU legislation and CJEU case law

Overall challenges

- › Posting of TCN: a growing phenomenon but not fully measured
- › Concentration of TCN in risk-sectors (road transport, construction...)
- › Posting as a *bypass route* to regular migration processes;
- › Posting of TCN is lawful, but can be misused:
 - › To compress labour costs and force market competition beyond fairness;
 - › To grant workers a free movement right within the EU they are not entitled to.

Legal framework

- › Equal terms and conditions as EU posted workers (remuneration, working time, equal treatment if agency workers...)
- › Social security coverage in the EU Member State where the TCN legally resides
- › *Vander Elst case* (1994): host MS cannot ask a second work permit/visa to a TCN if (s)he has it already from home MS.
- › Further case law: ECJ precludes any other differentiated requirement by host MS vis-à-vis EU posted workers
- › Host MS may require a temporary residence permit in their territory as with all other TCN.

Specific Challenges

- › Length of stay of a TCN in a host country: temporary or de facto permanent? (work permit waived because of presumption of weak link of TCN with host MS)
- › Assessing the nature of a visa/work permit;
- › Recruited to be posted? On the genuine nature of posting and the role of work agencies;
- › Dependence of worker on her employer for original visa
- › Cooperation and exchange of data between labour, social security and migration authorities.

Future ELA Activities

- › Report on recruitment channels of posted third-country nationals (Q4 2024)
- › Directory on competent authorities
- › A learning resource for national authorities on national legislation and requirements upon sending and receiving posted TCNs
- › Update of the European Commission's Practical Guide on Posting of Workers
- › Dedicated trainings for national authorities, including inspectorates

Thank you!

Email address of the trainer

