

Summary

Third-class citizens by posting practices

THE RISKS FOR POSTED LABOUR MIGRANTS AND DUTCH SOCIETY

Advisory
report



Advisory Council
on Migration

Summary

Posted workers are a growing phenomenon and the Netherlands is one of the main receiving countries of EU posting. Deriving from the freedom to provide services, posting of workers is a form of cross-border labour mobility anchored in the Treaties of the EU. Posted migrant workers are employed by companies in one European country and work in another European country.¹ Their labour employment law protection is – in this case – governed by Dutch rules, and their social security rights are governed by the rules of the other European country from which they are posted from. Posting entails considerable risks for posted labour migrants in labour-intensive sectors and has undesirable consequences for Dutch society.

Increasing number of posted migrant workers in the Netherlands

Currently, it is easy for employers to take advantage of EU posting. The EU legal framework on posting of workers does set out the rules for EU postings, but because the rules apply from the country of employment and rules apply from the country from which they are sent, the conditions created by employers are sometimes very untransparent. It is also a way to deploy third-country migrant workers without applying working permits in the Netherlands. The lack of enforcement has encouraged misuse of practices in relation to posting. It is almost impossible to know exactly what a posted migrant worker is entitled to. Not only for the migrant worker himself, but also for municipalities and government bodies like the Netherlands Labour Authority. Lack of capacity, lack of investigative powers, lack of European cooperation and lack of data on the situation of people make it difficult to monitoring compliance.

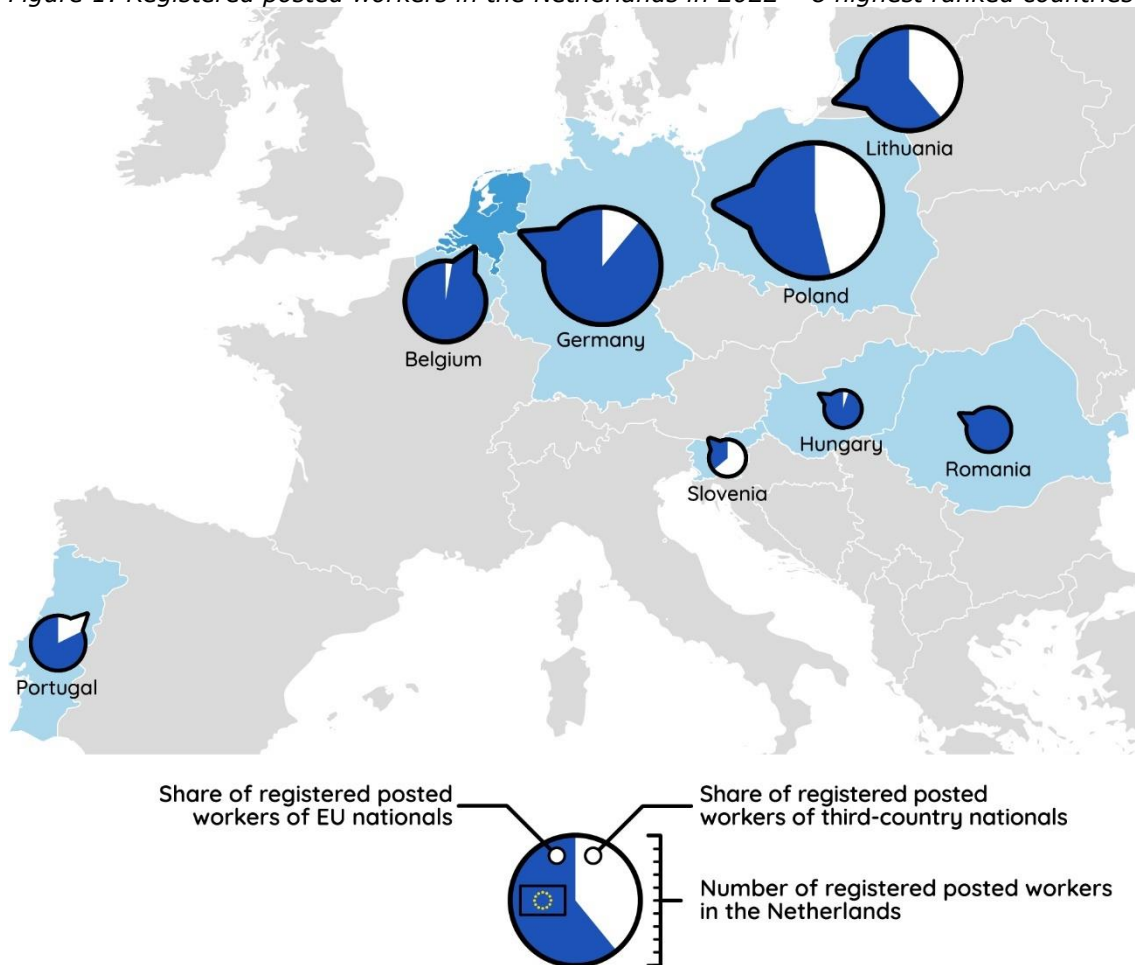
Moreover, the Dutch government has little control over the number of posted migrant workers working in the Netherlands. For example, while only 4,000 work permits for third-country migrant workers were issued in 2022, almost 22,500 *posted third-country nationals* were working in the Netherlands². It is likely that many more posted non-EU migrant workers are working in the Netherlands, but by no means all posted migrant workers are registered by their employers.

Figure 1 shows the eight countries from which companies reported the most posted migrant workers in the Netherlands in 2022. Most registrations were made from Poland (at least 22,700), followed by Germany (18,500) and Lithuania (14,500). Belgium, Portugal, Romania, Hungary and Slovenia have a smaller circle in the figure because their numbers are lower; from 9,000 to 1,500. Although the numbers appear to be relatively limited, we see more posted migrant workers in almost all countries in 2022 than before. We see the increase in the number of postings among both EU nationals (blue part of the circle) and among third-country nationals (white part of the circle).

¹ Directive 96/717, on the posting of workers defines a 'posted worker' as a worker who for a limited period carries out their work in the territory of a Member State other than the State in which they normally work.

² Including road transport, the figure is 358,670 people. Of these, 233,250 EU nationals and 125,420 third-country nationals.

Figure 1: Registered posted workers in the Netherlands in 2022 – 8 highest ranked countries



Risks for labour migrants and Dutch society

Due to unclear situations and evasion routes, posted labour migrants are at real risk of not receiving the wages, working conditions and social security to which they are entitled. This opens the door to labour exploitation, as they are often dependent on their employer for accommodation. Posted third-country nationals are even more vulnerable than posted EU nationals, as they are also dependent on their employer for their residence permit.

Finally, we identify a real risk for Dutch society from EU posting in labour-intensive sectors. This competitive posting creates a 'race to the bottom'. Employers who post migrant workers can reduce their labour costs because they pay contributions in the sending country, which are often lower than in the Netherlands. These employers compete with employers who pay better wages, pay contributions in the Netherlands and invest in their employees. Ultimately, the risk to society from this race to the bottom is that this makes wages and working conditions deteriorate across the whole sector, and vulnerable migrant workers who can no longer manage on their own, can lead to risks of disturbance in neighbourhoods or homelessness. The weak position of posted labour migrants is even more vulnerable than that of regular labour migrants, which is reflected in the title 'Third-class citizens by posting practices'.³

³ After the Roemer Commission had referred to the position of EU-migrant workers as second-class citizens.

Recommendations

There is a lack of comprehensive and comparable data on EU posting in the Netherlands and other European Union countries. It is essential that better information is collected for policy-making and enforcement. Additional research and monitoring is needed on the nature and extent of EU posting and the abusive practices in the Netherlands. At the same time, we recommend that the Dutch government strengthens its efforts at European level on four issues. It is essential that implementing bodies, employers, employment agencies, trade unions and municipalities take responsibility in this regard.

1. Slow down the race to the bottom by tackling labour market flexibility more intensively

The group of seconded labour migrants can be given more attention in the approach to excessive flexibility in the Netherlands:

- Prohibit flexible employment contracts - such as the posting of migrant workers - in sectors with high levels of abuse;
- Require municipalities to impose a business impact assessment as a condition for the establishment of companies employing posted labour migrants;
- As a government, set more requirements for the form of contract in tenders.

2. Tackle malpracticing of employers harder and strengthen enforcement

The government can do more to tackle employers who cheat on exploit wage agreements and working conditions. The government should also allocate more resources to monitoring and enforcement, such as (transnational) inspections:

- Impose large(er) consequences on employers and parties involved in the posting of workers that disadvantage posted migrant workers. This can be done by increasing fines or by blacklisting fraudulent malpracticing entrepreneurs;
- Increase controls at the front-end of reporting, where contractors must prove compliance with laws and regulations.

3. Strengthen the position of posted labour migrants

To strengthen the position of posted labour workers, we recommend:

- Extend the legal chain liability to all working conditions;
- Inform posted labour migrants about their rights and obligations before departure to the Netherlands and shortly after their arrival in their own language, and improve information to posted migrants about their acquired social security rights.

In view of the particularly vulnerable position of posted third-country nationals, we recommend the following:

- Introduce a period after the end of the posting during which non-EU nationals can apply for a new residence permit and they do not have to leave immediately.

- Make the Plan of Action on Vulnerable Homeless EU Citizens (Plan van Aanpak kwetsbare dakloze EU-burgers) applicable to vulnerable homeless third-country nationals who came to the Netherlands via the EU posting construction.

4. Better agreements in Europe and bilaterally with other Member States

Given the European nature of EU posting and the challenges it poses for posted migrant workers and national migration policies, we make the following recommendations at European level:

- Improve cooperation at European level between Member States and with the European Labour Authority and give the latter an important role by extending its mandate;
- Address the sending Member States on the posting of workers from third-country nationals and raise this issue with the European Commission;
- Urge the European Commission to draft a new EU directive regulating the rights and obligations of posted third-country nationals.

Dutch Advisory Council on Migration

The Advisory Council on Migration is an independent council that advises the Dutch Government and Parliament on migration issues. The council reports on migration policy and legal issues.

Colofon

'Geen derderangsburgers. De risico's voor gedetacheerde werkmigranten en de Nederlandse samenleving'

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