

(English version)

**Priority question for written answer P-001075/20  
to the Commission  
Cindy Franssen (PPE)  
(21 February 2020)**

*Subject:* Monitoring of posted workers from countries outside the European Union

A new report by the Centre for Social Policy at the University of Antwerp shows that the increase in the total number of posted workers in Belgium (236 000) over the past three years is entirely due to the increasing number of posted workers from countries outside the EU (26 000 in 2019).

Workers from outside the EU who have valid work and residence permits in one Member State can be posted freely to other EU Member States. According to the case-law of the European Court of Justice ('Van der Elst' judgment of 1994, 'Essent' judgment of 2014 and 'Danieli' judgment of 2018), a requirement for posted third-country nationals to have a work permit is contrary to freedom of movement. Alternative measures such as prior notification could, however, be justified.

1. Does the Commission have figures on the number of posted workers from third countries broken down by country of origin, country of work permit, country of posting and employment sector?
2. Does the Commission apply the obligation concerning Form A1 (Regulation (EC) No 883/2004) and the principle of equal pay for equal work at the same workplace laid down in the revised Posting of Workers Directive (Directive (EU) 2018/957) to posted workers from third countries?
3. What concrete measures, such as imposing a prior notification obligation, is the Commission planning as a way of monitoring posted third-country nationals?

**Answer given by Mr Schmit on behalf of the European Commission  
(26 May 2020)**

1. The annual statistical report on posting of workers <sup>(1)</sup> contains data collected from Member States on the number of issued Portable Documents A1 (PD A1) by sending and receiving Member States, by type and by sector of activity. It does not distinguish between posted workers by nationality.

As regards data from the national declaration tools <sup>(2)</sup>, very few Member States break data down to nationality. Therefore, it is difficult to draw conclusions on the number of posted third-country nationals (TCNs).

2. If the TCN satisfies the conditions <sup>(3)</sup> of Regulation (EC) No 1231/2010 <sup>(4)</sup> and thus falls within the scope of Regulation (EC) No 883/2004 <sup>(5)</sup>, then the same obligations as for EU nationals apply, including the obligation to request and hold a PD A1.

When a TCN, who is legally residing and working in a Member State, is posted by a company to another Member State, all the relevant rules on posting will be applicable. This includes as of 30 July 2020 the obligation to guarantee the payment of remuneration according to the host Member State rules, as provided by Directive 2018/957 <sup>(6)</sup>.

3. Employers of TCNs and self-employed TCNs who fall within the scope of Regulation (EC) No 883/2004 must comply with all obligations stemming from the regulation, including the prior notification obligation. Member States are primarily responsible to assess whether posted workers, including TCNs, meet the posting conditions of Regulation (EC) No 883/2004.

Similarly, in case a Member State has introduced an obligation for service providers to submit a declaration <sup>(7)</sup> when they post workers, this obligation covers also posted TCNs. In the latter case many Member States ask information about the legal basis for the stay of the TCN in the Member State of origin.

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<sup>(1)</sup> <https://ec.europa.eu/social/BlobServlet?docId=22302&langId=en>

<sup>(2)</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2019:337:FIN> (see Annex IV); In line with Article 9(1) of the directive 2014/67/EU Member States are allowed to put in place administrative requirements and control measures, an obligation to request a simple declaration is provided for in Article 9(1)(a).

<sup>(3)</sup> Article 1 of Regulation (EU) No 1231/2010 provides that TCNs must be legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

<sup>(4)</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality OJ L 344, 29.12.2010, p. 1-3.

<sup>(5)</sup> 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.

<sup>(6)</sup> 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 (Text with EEA relevance), OJ L 173, 9.7.2018, p. 16-24.

<sup>(7)</sup> See footnote 2.