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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	AOB for the meeting of the EPSCO Council of 9 March 2026: Proposal to provide legal clarity on the posting of third-country nationals in the context of the Fair Labour Mobility Package <i>- Information from the Netherlands, Austria, Belgium, Bulgaria, Germany, Italy, Latvia and Luxembourg</i>

The Netherlands, Austria, Belgium, Bulgaria, Germany, Italy, Latvia and Luxembourg welcome the *Fair Labour Mobility Package* and look forward to its publication. We advocate an ambitious package, since more action is needed at EU level to promote fair labour mobility within the EU and to foster fair competition.

We particularly urge the European Commission to strengthen legal clarity regarding the posting of third-country nationals. This contributes to a level playing field among companies and protects third country nationals against abuse and exploitation.

Clarification of the legal framework is required to ensure effective enforcement by competent national authorities of the posting rules, facilitated by the European Labour Authority (ELA). This should in particular enable authorities to determine whether a posting is a genuine posting or a false posting. According to the [ELA report on the posting of third country nationals](https://www.ela.europa.eu/sites/default/files/2023-04/ela-report-posting-third-country-nationals.pdf)¹, the posting of third-country nationals from one Member State to another by cross-border service providers is a growing

¹ <https://www.ela.europa.eu/sites/default/files/2023-04/ela-report-posting-third-country-nationals.pdf>

phenomenon across the whole EU. In principle, postings contribute positively to the realisation of the internal market, and this also applies to the posting of third-country nationals. However, posting of third-country nationals can be misused in order to circumvent national labour immigration policies. This phenomenon, and the consequences and risks it brings, is an unforeseen and undesirable side effect of the free movement of services following from EU case law² and was not taken into consideration when designing the internal market. Case law on the posting of third-country nationals is interpreted very differently across Member States, which hinders effective enforcement, undermines the protection of third-country nationals and does not contribute to a level playing field for companies.

In his report, also Enrico Letta stressed that more could be done to prevent the evasion of existing labour standards in order to gain a competitive advantage over bona fide companies. He emphasises that third-country nationals are particularly vulnerable and face a higher risk of unfair, unhealthy and unsafe working conditions. Letta specifically points to the need to clarify the legal framework for the posting of third-country nationals, including those working through temporary work agencies or recruited via intermediaries. We feel strengthened in our call for action by the broad support of Member States expressed in Aalborg during the informal EPSCO in July 2025.

In this context, we also refer to the common non paper³ from the Netherlands, Belgium, Denmark, Germany, Italy, Latvia and Luxembourg, that was presented to Executive Vice-President Roxana Mînzatu in February 2025. We continue to stand ready to deliver input on the content of a proposal to clarify the legal framework for the posting of third-country nationals.

² The posting of third country nationals in the EU is mainly based on an interpretation of the freedom to provide services in the Van der Elst judgement (C-43/93) and subsequent case law.

³ <https://zoek.officielebekendmakingen.nl/kst-34655-F.html>