

## POSTCARE

### Posting of third country nationals in care services - the current state of play and scenarios for the future

#### The Netherlands Country report

**22 March 2022**



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## 1. Introduction

*[description of a country as a sending and receiving country. Estimated scale and trends of TCNs' share in the workforce in live-in care]*

The (health) care and welfare sector represents the largest work sector in the Netherlands, with 1,725 million jobs on a total workforce of 9 million people. The Central Bureau of Statistics (CBS) subdivides this (health) care and welfare sector into health care and care & welfare. The category health care represents employment at hospitals, medical and dental practices and paramedical practices and remaining ambulatory health care. The category 'care and welfare' consists of sleep-in care and welfare care without overnight stay. Live-in care, the main focus of this research, thus forms part of the sleep-in care category.

Contrary to many other European countries, the Netherlands does not have a longstanding tradition of live-in care. Rather moving people in need of 24/7 care to nursery or elderly homes has for long been the common approach. Only in the past decades, live-in care has become more popular, but it continues to be more of an exception than a rule.

Many reasons can be given for this:

- The Dutch government is promoting people to stay at home for as long as possible, raising the threshold of being able to access a nursery or elderly home. At the same time people wish to stay at home longer (individualization of care)
- Deteriorating public health care services in elderly and nursery homes
- Cash for care (PGB) and independent living/autonomy have resulted in a personal budget that can be awarded to chronic ill, to arrange their own care services according to their own wishes and needs.
- People becoming older but also having more money to spend to arrange their care differently

This has created a (still small) market for commercial actors to provide live in-care services.

The Netherlands is a receiving country as far as live-in care is concerned. While the majority of live-in care services are still provided by Dutch nationals and EU citizens, the use of Third Country Nationals (TCNs) to provide such services is expected to rise.

The exact share of TCNs in the live-in care is difficult to determine. The Central Bureau of Statistics (CBS) does not offer much insight in the nationalities represented in the care sector, let alone in the sub sector live-in care. A recently published overview of share of migrants working in the care sector in the Netherlands, published by the Dutch Advisory Committee on Alien Affairs, an independent advisory board established by law, that advises the government and parliament on migration issues, does not give much insight in the share of TCNs either.<sup>1</sup>

With the new notification and verification obligation that is introduced for the posting of workers, more insight can be given in the segment of TCNs posted in the Dutch care sector. Yet still the reports received by the reporting desk only offer a broad insight as live-in care is not specified in the registration system, and the reporting procedure is not yet optimal resulting in contaminated figures and underreporting.<sup>2</sup>

What is clear from the figures, is that the number of posted workers in the care sector is limited, even more so when focussing on third country nationals.<sup>3</sup> From the moment of the introduction of the reporting obligation until the end of 2021 (a period of nearly two years), only 0,05% of the total of 1.262.660 registered posted workers was posted in the health sector (582 persons).<sup>4</sup> Of these 582 persons, 512 were EU nationals, while 70 were TCNs.

The share of TCNs in the health care sector is very limited, when compared with the share of TCNs among all posted workers in the Netherlands. Of the total of 1.262.660 registered posted workers, 60,3% are third country nationals, in comparison to only 13,7% TCNs in the health care specifically.<sup>5</sup> Here it should be noted that the share of TCNs in the transport (who might only be in the Netherlands for a few hours) taints the picture of TCNs working in the Netherlands through posting. While for this sector the percentage TCNs and EU migrants is 69%-31%, across the other sectors around 75% EU and 25% TCNs. It is noteworthy to mention that the Minister of Social Affairs and Employment has labelled the growing number of TCNs

<sup>1</sup> ACVZ, Migratie en de zorgsector. Cijfers over de arbeidsmarkt in de zorgsector en de arbeidsdeelname van migranten (11 mei 2021), <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2021/05/11/cijferoverzicht-migratie-en-de-zorgsector>. Only UK is now formally the only TCN nationality mentioned (while others are EU).

<sup>2</sup> Letter to Dutch Parliament November 2021; Interview Ministry of Social Affairs and Employment, 9 February 2022

<sup>3</sup> Even before the mandatory reporting obligation was introduced and UWV started to register posted workers, the care sector was never among the top 15 sectors that were monthly listed (Interview UWV, 16 February 2022)

<sup>4</sup> Figures provided by SVB upon request.

<sup>5</sup> 787.702 EU, 474.958 TCNs



through posting as a worrisome development, which clearly shows the reserved attitude of the government towards the posting of TCNs in any sector.<sup>6</sup>

It is thus interesting to realise that posting of workers is still rarely used in the health care sector in the Netherlands, providing that the registration figures provide a real reflection of the actual situation. That does not mean that hiring personnel from outside the EU will not become a trend in the Netherlands, on the contrary. While currently formal and informal routes are utilised to hire TCNs as caregivers, this is expected to increase in the next decade. What is important to realise is that within the Netherlands, for specific forms of care (specialised medical interventions performed by nurses) the required qualifications are a huge barrier for TCNs to work in the Netherlands (so-called BIG registration).<sup>7</sup> Unlike Germany, where migrants can show in practice their skills, knowledge and expertise and will then be awarded a certification, in the Netherlands they must show these qualifications beforehand. This explains for the most part the difference between the number of TCNs working in (long-term) care in the Netherlands and other European countries.<sup>8</sup>

The prognosis of the personnel shortages in the care sector are staggering. At the beginning of 2022, the Minister of Long-term Care and Sports informed the Dutch Parliament about the annually conducted prognosis.<sup>9</sup> In 2022 there is apparently already a shortage of 49,000 care workers, particularly in nursing (hospitals), care (nursing homes) and home care.<sup>10</sup> In the long term, the limited growth in the labour supply of labourers as well as the increase of the use of care services due to an aging population will only expand the shortages in the care sector, to an estimate shortage of 135.000 care givers in 2031.<sup>11</sup> Hospitals and healthcare institutions, in close cooperation with recruitment agencies, therefore increasingly look for opportunities to hire personnel from outside the EU to solve the labour shortages.<sup>12</sup> Also, the Dutch Advisory Commission on Alien Affairs has launched a project to inquire whether hiring TCNs is a solution for the labour shortages in long-term care.<sup>13</sup> It is clear from the discussion with the agencies, that the posting of TCNs in the care sector is not yet fully explored in this respect.<sup>14</sup> At the same time some agencies that already post workers in the care sector, indicate to only do so with care givers with an EU nationality as they fear the risks of violating rules and or labour exploitation of TCNs, when working with TCNs through posting.<sup>15</sup>

## 2. Live-in care – description of actors

When we focus on TCNs in the 24/7 live-in care sector, several central actors can be identified.

First, we have the end users of the live-in care, namely the live-in care receivers (and their family). These are elderly or chronically ill that, for a wide variety of reasons mentioned in the previous section, are in need of 24/7 home care assistance provided by care workers (also referred to as au care or care au pairs). Another, related category of live-in care receivers are families who seek support to look after their children (e.g. au pairs), often in combination with assistance for household duties. However, as we will see in the discussion below, when applied in the correct way, the legal regime for au pairs is not suitable for provision of 24/7 care of any sort. This is because the goal of the Dutch au pair regulation is to promote cultural exchange and not work (only allowing for limited hours of work, see below). It is important to mention this related category however, because the available legislation for au pairs can in practice be misused to factually organise 24/7 care.

Most of the live-in care is arranged through (recruitment and intermediary) agencies. These include for example T&S Care<sup>16</sup>, Uw ZorgCompaan, WWA&N<sup>17</sup>, Zuster in Huis<sup>18</sup> and many others.

<sup>6</sup> Minister van Sociale Zaken en Werkgelegenheid, Kamerbrief regulering arbeidsmigratie en detachering derdelanders, 22 November 2021, p. 5.

<sup>7</sup> ACVZ, Van Asielzoeker naar zorgverlener. Arbeidsdeelname van asielmigranten in de zorgsector (11 May 2021) <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2021/05/11/van-asielzoeker-naar-zorgverlener>

<sup>8</sup> Interview Frijling (Healthcare for Professionals) 17 February 2022, Interview De Lange (Academic expert on EU migration) 17 February 2022; Interview De Groot (Pharos) 11 March 2022; Focus Group discussion 16 March 2022.

<sup>9</sup> Minister of Long-Term Care and Sports, Letter to the Parliament on New Prognosis Expected Staff shortage (in the Care Sector), 20-01-2022, <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/01/20/kamerbrief-over-nieuwe-prognose-verwachte-personeelstekort>;

<sup>10</sup> The largest shortages will be in the care professions from mbo 3 to HBO level.

<sup>11</sup> Idem, page 1.

<sup>12</sup> Nieuwsuur, Zorginstellingen zoeken buiten de EU naar personeel om de tekorten op te lossen' 6 February 2022, <https://nos.nl/nieuwsuur/artikel/2416058-zorginstellingen-zoeken-buiten-de-eu-naar-personeel-om-de-tekorten-op-te-lossen>

<sup>13</sup> ACVZ, Projectplan: de bijdrage van niet EU migranten aan de langdurige zorg (7 February 2022), <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2022/02/07/projectplan-deelproject-de-bijdrage-aan-de-langdurige-zorg-door-arbeidsmigranten-van-buiten-de-eu>. Staat van Migratie 2021.

<sup>14</sup> Interview Otto Workforce 17 February 2022.

<sup>15</sup> Phone Conversations with care agencies, February 2022.

<sup>16</sup> [www.tensflexwerk.nl/care](http://www.tensflexwerk.nl/care)

<sup>17</sup> [wva-n.nl info@wva-n.nl](http://wva-n.nl/info@wva-n.nl)

<sup>18</sup> [www.zusterinhuis.nl](http://www.zusterinhuis.nl)



Besides, we have the live-in caregivers, who provide the services via recruitment and intermediary agencies or via direct employment. Live-in caregivers are mainly Dutch nationals, and to a lesser extent, EU nationals and third country nationals. Common nationalities of TCNs in domestic care include Indonesia and Philippines. When looking at the registered nationalities of TCNs posted workers in care (which does not single out 24/7 care as a sub-category) the most common nationalities include Brazil, India, UK and Ukraine.<sup>19</sup> When looking more broadly at TCNs in the care sector (not only through posting), the Philippines, Indonesia and Brazil are among the most common nationalities.

The Ministry of Housing, Welfare and Sport, and in particular the Ministry of Long Term Care and Sports, is relevant to mention as it concludes policies related to Long-Term Care and is responsible for addressing the structural bottlenecks (including labour shortages) in the care sector. This ministry is responsible for the annual (outsourced) assessment of the labour shortages in the care sector, mentioned in the above.

In addition, the Ministry of Social Affairs and Employment is an important actor, as it is responsible for labour market policy, including migration and free movement of workers, social benefits and reintegration, income policy, combining work and care, working conditions policy and inspection. Administering the registration and verification obligation of Posted Workers is a responsibility, which the Ministry of Social Affairs and Employment has delegated to the Social Insurance Bank (SVB).

The Netherlands Labour Authority <sup>20</sup>, that falls under the responsibility of the Ministry of Social Affairs and Employment, is another relevant actor, as it is responsible for monitoring the labour conditions of the live-in-care givers, as well as the conditions of other workers in the Netherlands. An important limitation of their mandate is that the work is provided in the household, a space where the labour inspectorate has limited competences. This makes live-in caregivers especially vulnerable to abuse.<sup>21</sup>

Therefore, the more important are worker's representatives - either the labour Unions (e.g. FNV and CNV), NGOs (FairWork, Healthcare for Internationals, Pharos) or migrant led or workers-led organisations (Commission for Filipino Migrant Workers/CFMW, Indonesia Migrant Workers' Union) - that represent the workers, promote their rights and stand up in case of abuse and (severe) exploitation.

Another important actor in relation to the issue of TCNs as live-in care givers is the Dutch Immigration and Naturalisation Service (IND), who fall under the responsibility of the Ministry of Justice and Security. For TCNs to directly apply for a work (and residence) permit in the Netherlands to offer live-in care services, the options are rather limited. In those cases, TCNs need to submit their application under the Dutch Aliens Employment Act (Wet Arbeid Vreemdelingen) which is reviewed by the IND, upon advice of the Employee Insurance Agency (UWV). The work permit may be refused based on a labour market priority test. The labour market priority test is conducted by the UWV.<sup>22</sup> The number of work permits (twv) and positive advice for a combined residence and work permit (gvva) granted by the UWV for TCNs was 9225 in 2020.<sup>23</sup> They do not register on specific sectors. For domestic services, including 24/7 live-in care, the work permit is generally not granted. The work permit may be refused based on a labour market priority test. The labour market priority test is conducted by the UWV.<sup>24</sup> Due to the labour market priority test, the possibilities for third country nationals to be granted a residence and work permit to offer live-in care services on the basis of the Alien Employment Act are severely restricted.

All of these actors have been interviewed or have participated in a focus group for the purpose of this research, including several experts on migration and EU labour mobility.

### **3. Legal and institutional framework of the sending Member State**

As mentioned above most of the TCNs that work in live-in care in the Netherlands, originate from Indonesia, Philippines, as well as Brazil, India, UK and Ukraine.<sup>25</sup> We have found little evidence that these workers are working here via posting by companies in other EU countries. (See Introduction, only 70 TCNs were reported to have been posted in the Care sector in the Netherlands). Might Posting occur, Poland is most likely one of the main EU countries, through which TCNs enter the Netherlands – as we see this in other labour sectors, e.g. with the transport sector. Especially also as in Poland many work visa were granted to TCNs, in particular to Ukraine and 5 other former SU countries, like Moldova, Georgia and Russia, as well as to Vietnamese and Philippine workers.

<sup>19</sup> SVB, posted workers and posted workers in care, March 2020- December 2021

<sup>20</sup> Formerly the Dutch Labour Inspectorate, has changed their name into since January 2022, a choice based on the introduction of the European Labour Authority. See <https://www.nlalabourauthority.nl/latest/news/2021/07/19/and-we-call-her-netherlands-labour-authority>

<sup>21</sup> E.J.A. De Volder, Trafficking in the Domestic-Work Sector in the Netherlands: A Hidden Phenomenon

<sup>22</sup> Interview UWV

<sup>23</sup> P. 2.

<sup>24</sup> Interview UWV

<sup>25</sup> SVB, posted workers and posted workers in care, March 2020- December 2021



Clearly, the legal and institutional framework of the countries of origin and the EU sending countries differ, for this section we shortly focus on Poland, as a major sending EU country. However we realize that in the framework of POSTCARE also research is being conducted on Poland.

Over the last years, a growth in ‘creative’ abusive and fraudulent practices has been noticed in Poland, including mis-use of the Posted Workers’ Directive. Poland is seen as the country sending the biggest number of posted workers to other European countries, including Ukrainian and other CEE and Asian nationals.<sup>26</sup>

### **3.1 Legal entry/stay - visa requirements or lack thereof**

Since flows of migrants started increasing in Poland, new policies and laws have been established relating to their stay and employment. Simplified procedures for obtaining a work permit in Poland were introduced for citizens of former Soviet Union countries by decree of the Minister of Labour and Social Policy. National citizens of Ukraine, Belarus, Georgia, Moldova, Russia and Armenia have been allowed to work in Poland – initially for up to six months in a year period – based on an employer’s statement they can quickly – within a couple of days – obtain a Polish (work) visa. In 2018 the period of work on an employer’s statement was extended for seasonal workers only, with the result that these groups can now work for a period of nine months on receipt of a statement by their employer. Regular simplified employment remains the same: six months. This simplified procedure does not require an application or a work permit, just a registration of the statement ‘Employer’s declaration of intent to employ a third country national’ (declaration of intent) at the local labour office. Declarations of intent are required separately for each employer.<sup>27</sup>

In general, other third country foreign workers have to obtain a work permit and conduct a labour migration test, as well as a legal permit to stay. The legality of work depends on the legal permit to stay, if you have a work permit but not a permit to stay, you cannot legally work in Poland. There are many exemptions to this law, especially for seasonal work.

### **3.2 Legal employment of third country nationals – work permit, labour market priority test vs. simple declaration of employment of third country national**

With new legislation in 2018 in Poland, more formal requirements are in place for employers who register declarations of intent. If people are employed under a declaration of intent, wages, work location, working days (not hours), work position (profession or duties) and sector or branch should be mentioned in a written agreement. If this is a civil contract – which is formally not a contract of employment – it is not subject to the provisions of the Labour Code and there is more room for flexibility. However, the provisions on minimum wage now also apply to most common civil contracts (known as Zilecenie). If an employer would like to prolong the employment of a foreigner, the employer or the migrant worker should apply for a work permit and a residence permit.

Before beginning an application for a foreign work permit, the employer must conduct a labour market test. The purpose of this test is to determine whether there are any Polish citizens or other EU nationals qualified to fill the position. These individuals have priority over foreign nationals. If there are no eligible job seekers in the market, the employer can apply for a work permit on behalf of a foreigner.<sup>28</sup>

On 29 January 2022, the Act of 17 December 2021 amending the Act on Foreigners and certain other acts entered into force (Journal of Laws of 2022 item 91). It introduces a number of significant amendments to the rules governing the legalisation of stay of foreigners in the territory of Poland, placing particular emphasis on persons who work. See more [here](#).

### **3.3 Social security of third country nationals in the sending Member State**

The overall regulations related to the conditions of entry, transfer, residence and exit of foreigners on the Polish territory are defined by Law of 12 December 2013 on foreigners. The Law regulates important provisions related to the right to social benefits, but also specifies conditions related to work permits depending on foreigners’ coverage of selected social security provisions. The access to social protection of immigrants in Poland is further specified in legal acts defining the accessibility to social security benefits.<sup>29</sup>

As stated, increasingly ‘creative’ abusive and fraudulent practices has been noticed in Poland, including mis-use of the Posted Workers’ Directive, due to which TCNs lacked access to social security and social benefits.

<sup>26</sup> Rights at Work – Tackling Labour Exploitation in all economic sectors in Poland, Bulgaria and Romania, La Strada International, March 2019 <https://documentation.lastradainternational.org/Isidocs/3301-RaW%20Tackling%20labour%20exploitation%20-%20final.pdf>

<sup>27</sup> Rights at Work – Tackling Labour Exploitation in all economic sectors in Poland, Bulgaria and Romania, La Strada International, March 2019 <https://documentation.lastradainternational.org/Isidocs/3301-RaW%20Tackling%20labour%20exploitation%20-%20final.pdf>

<sup>28</sup> See <https://www.globalization-partners.com/globalpedia/poland-employer-of-record/work-visas/#content>

<sup>29</sup> [https://link.springer.com/chapter/10.1007/978-3-030-51241-5\\_22](https://link.springer.com/chapter/10.1007/978-3-030-51241-5_22)



#### 4. Legal and institutional framework of the receiving Member State (the Netherlands)

The posting of workers in the EU is regulated in several EU Directives.<sup>30</sup> The term “Posted workers” refers to workers who are legally employed by a company established in one Member State (the home Member State) and sent temporarily by that company to another Member State (the host Member State) in order to carry out work. Workers may also be employed by a company who sends them to work in a subsidiary in another EU Member State (e.g. “intra-group posting”). Finally, workers may be hired out by temporary work agencies established in one Member State to a user company in another Member State. Since posted workers remain employed by their employer in the home Member State and are sent abroad only temporarily, their situation is covered by the free movement of services, not the free movement of workers.<sup>31</sup>

While overall the posting of workers remains a small percentage of the EU labour market, the posting of workers is an increasing phenomenon within the EU, particularly in certain sectors and certain Member States. In 2019 around 1,9 per cent of the EU workforce market have been issued a Portable Document A1 in comparison to 0,8 per cent of the EU workforce in 2018.<sup>32</sup> does not specify how many third country nationals are among the posted workers.

In the Netherlands, the Posting of Workers Directive (and its revision) and the Enforcement Directive have been transposed in the Act on the Working Conditions of Posted Workers in the European Union (*Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie*, WagwEU).<sup>33</sup> The Netherlands Labour Authority (NLA) is responsible for the supervision and enforcement of the WagwEU and Dutch labour laws in general.

The WagwEU imposes four administrative obligations on companies that post workers to the Netherlands. This includes an information obligation, an obligation to assign a contact person, an administration obligation and a reporting obligation. The obligation to inform means that the service provider the service provider must provide, when requested, all data and information, so that the Inspectorate SZW can establish whether there is a genuine posting. The administration obligation means that the employer needs to be able to provide proof for equal treatment of the posted workers (minimum wage, working hours) as well as all the relevant documents for the posting (e.g. A1 portable document).

Since 1 March 2020 the reporting obligation is introduced, comprising an obligation to notify and verify in case workers are posted in the Netherlands to better facilitate the supervision and enforcement by the inspectorate.<sup>34</sup> The obligation to notify rests on the employer who post the worker, the obligation to verify rest on the receiver of the service.<sup>35</sup> The employer is obliged to check whether the involved worker is correctly registered through the online ‘meldloket (reporting desk)’ of the Social Insurance Bank (SVB) at [www.postedworkers.nl](http://www.postedworkers.nl). This should make it easier to verify whether companies adhere to the rules.<sup>36</sup> Currently the registration system does not give substantial information. The registrations only offer a rough picture of the nature and extent of posting in the Netherlands. As the obligation to report and the reporting system are still new, the figures that are available must be viewed with the necessary caution. It is likely that there is still underreporting. It is also important to note that these are data provided by the service providers and service recipients themselves. By means of intensive information for service providers and service recipients, an easily accessible reporting system and the possibility of imposing an administrative fine on offenders, companies are encouraged to comply with the reporting obligation. The Minister of Social Affairs and Employment has promised to continue to improve the quality of the data. The Netherlands Labour Authority has already indicated that it does not have the capacity to follow up on all registrations, which seriously limits the benefits of the registration system.

When the information, administration and reporting obligation are violated, the NLA can impose administrative fines. Per violation the fine is 12.000 euros and can be increased with 50% in case of deliberate invasion of the rules. In case of recidivism, it can even be increased with 100 or even 200%.

While the NLA thus plays an important role in monitoring the observance of the rules of posting and working conditions of posted workers in the European Union Act, the Government has indicated that the complexity and the time-consuming nature of the enforcement of these rules impacts the desirability of the posting of third country nationals. Because of their

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<sup>31</sup> Court of Justice, Judgement of 25 October 2001, case C-4/98, *Finalarte*, paras 22-23

<sup>32</sup> F. De Wispelaere, L. de Smedt and J Pacolet (HIVA KU Leuven, 2019), *Posting of workers -Report on A1 Portable Documents issued in 2019*, European Commission, (<https://www.mobilelabour.eu/wp-content/uploads/2021/05/PD-A1-report-Reference-year-2018.pdf>); F. De Wispelaere, L. de Smedt and J Pacolet (HIVA KU Leuven, 2020), *Posting of workers -Report on A1 Portable Documents issued in 2019*, European Commission, p. 21-22 (<https://www.mobilelabour.eu/wp-content/uploads/2021/05/PD-A1-report-Reference-year-2019.pdf>). The report does not specify the share of TCNs.

<sup>33</sup> Latest revisions have entered into force on 30 juli 2020

<sup>34</sup> Meldings -en verificatieplicht, artikel 8 WagwEU

<sup>35</sup> The employer is obliged to check whether the involved worker is correctly registered through the online ‘meldloket’ of SVB at [www.postedworkers.nl](http://www.postedworkers.nl). The foreign company that is posting the worker for a specified temporary service, registers this service in the online ‘meldloket’ (registration).<sup>35</sup> The receiving employer will receive an email to check the accuracy of the registered service. This is a mandatory step (deny or approve registration). If there are changes, these need to be adjusted after which the same procedure of denial or approval will take place

<sup>36</sup> <https://wetten.overheid.nl/BWBR0038054/2021-01-01>



background and language barriers, they are often unaware of their rights and obligations, making them extra vulnerable to abuse.<sup>37</sup>

#### 4.1 Conditions of entry, waiving of the work permit and visa free mobility

In the landmark judgement ‘Van der Elst’, the European Court of Justice determined that a work permit requirement for posted TCNs in a EU Member State who, in the context of intra-community provision of services, temporarily carry out their work on the territory of another Member State and legally reside and work on the territory of the EEA service provider, constitutes an unjustified obstacle to the free movement of services. Restrictions on the free Movement of services may only be justified under strict conditions (proportional measures to protect public interest, for example to avoid disruptions of the labour market). When posted workers are temporary working in another Member State this cannot be considered a distortion of the labour market. Subsequently, the European Court of Justice ruled in the Essent Judgement (Van der Elst 2.0) that for the posting of so-called third country nationals and a reliance on the freedom to provide services, it is not required that the employer and the employee reside in the same country, or are established or active in the same country. This view was reaffirmed in the Danieli judgement (Van der Elst 3.0) on 14 November 2018. According to the Court, imposing a work permit requirement is not an appropriate means of control. Alternative measures such as prior notification, whether or not in combination with the provision of certain information, could be justified according to the Court.

In 2019, the Dutch Council of State decided on an extensive interpretation of the Essent Judgement in the Netherlands.<sup>38</sup> In the case before the Council of State, the employer and the employee were not established and active in the same Member State. The employer was established in Cyprus and the employees, with Filipino and Indonesian nationality, were active in Germany. In Germany, the workers had their main activity. They had the necessary residence and work permits for Germany. The Dutch Council of State ruled that third country nationals working legally in EU Member States have free access to the Netherlands for the free provision of services. For the posting of so-called third country nationals and a reliance on the freedom to provide services, it is not required that the employer and the employee reside in the same country or are established or active in the same country.

On 1 July 2020, the Dutch Parliament requested the Council of State to advice on whether it is possible to impose additional national rules to regulate EU labour migration. The Council of State has clearly informed the government and Parliament that it is not permitted to impose additional rules (e.g. demanding a work permit) based on EU law.<sup>39</sup> The only measures that might be taken are measures that are not related to labour migration per se but to concrete abuses that occur as a consequence of it (e.g. in relation to health, housing, labour conditions, sham constructions of posting, monitoring and enforcement).<sup>40</sup> This has been endorsed by the government.<sup>41</sup> As a result, posted TCNs, during the time of their posting, have their work permit requirement waived and enjoy visa free mobility.<sup>42</sup>

#### 4.2 Temporary nature of posting third country national

A posting must not last longer than is necessary to carry out a specific task. At the end of the posting, the posted TCN must return to the EU country where he/she previously worked. Because of their temporary employment, posted workers do not intend to integrate in the labour market of the host Member State and therefore remain covered by the social security system of the home Member State. To confirm that social security benefits are paid for them in the home Member State, posted workers are issued a Portable Document A1. Only when the duration of the work exceeds 24 months, then the posted worker will be subject to the social security system of the host Member State.<sup>43</sup>

In accordance with labour laws, the Labour Inspectorate must check whether the posting is truly temporary, correspond to the work for which the work permit in the sending country is issued and whether the work and residence permits in the EU/EEA country or Switzerland are legal. If one of the conditions is not met, then the work situation cannot be classified as posting, and then the Dutch migration rules, including the requirement of a work visa, are applicable (see the next section).

<sup>37</sup> Kamerbrief regulering arbeidsmigratie en detachering van derdelanders, pagina 8.

<sup>38</sup> Check datum van de uitspraak: <https://www.awvn.nl/nieuws/vrij-verrichten-van-diensten-derde-landers-niet-eu-onderdanen/>

<sup>39</sup> Voorlichting van de Afdeling Advisering van de Raad van State, van 18 november 2020, Kamerstukken II 2020/21, 35359, nr. 23, <https://zoek.officielebekendmakingen.nl/kst-35359-23.html>

<sup>40</sup> De Raad stelt: “Een verplichte tewerkstellingsvergunning en een verplichte periode van voorafgaande tewerkstelling waarin werknemers uit derde landen ter beschikking worden gesteld door een werkgever die in een andere lidstaat is gevestigd en aldaar al een tewerkstellingsvergunning heeft geregeld, zijn niet toegestaan. Dergelijke maatregelen brengen volgens het Hof van Justitie formaliteiten en verdragen met zich die het vrije verkeer van diensten kunnen ontmoedigen. Volgens het Hof zijn het geen passende middelen om de toegang van werknemers uit derde landen tot de arbeidsmarkt te controleren of om sociale dumping te voorkomen.” Zie: Voorlichting van de Raad van State van 18 november 2020, Kamerstukken II 2020/21, 35359, nr. 23.

<sup>41</sup> Minister van Sociale Zaken en Werkgelegenheid, Kamerbrief regulering arbeidsmigratie en detachering derdelanders, 22 November 2021, p. 5.

<sup>42</sup> In general, A foreign visitor or tourist (TCN) can remain in the Netherlands (and the whole Schengen area) for a maximum of 90 days per 6 months. During this period the TCN can travel in the Schengen area.

<sup>43</sup> Art 12 of 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* 166, 30-04-2004, p. 1-123.





## 5. Comparative analysis of employment conditions of EU-citizens and TCNs in live-in care services

### 5.1 Description of identified forms of employment of TCNs caregivers in the Netherlands

For third country nationals to directly apply for a work (and residence) permit in the Netherlands to offer live-in care services the options are rather limited. Therefore, the posting of third country nationals via other EU countries is an attractive alternative with future predications showing a higher demand and an overall labour shortage.<sup>44</sup>

#### *Alien Employment Act*

In the Netherlands the employment of third country nationals is legislated in the Aliens Employment Act (Wet Arbeid Vreemdelingen), adopted in the framework of the 2000 Aliens Act. The Dutch Migration policy is almost exclusively at the initiative of employers (demand-driven) and is formulated restrictively.<sup>45</sup> Recruitment of TCNs is meant as a last resort; a work permit will be refused if there is sufficient labour supply present on the labour market. The Aliens Employment Act stipulates that employers are forbidden to employ foreign nationals in the Netherlands without a work permit.<sup>46</sup> Such a work permit is required for the recruitment of foreign nationals. The obligation to have a work permit does not apply to Union citizens on the grounds of obligations under Union law (as also discussed in the above), nor does it apply to most scientists from countries other than those of the EU. The obligation also does not apply to labour migrants who fall under the so-called kennismigrantenregeling (regulation on knowledge migrants). This latter category also includes doctors and highly specialised medical personnel and requires a certain level of income.

The work permit may be refused based on a labour market priority test. The labour market priority test gives preference to employees who have been admitted to the Dutch labour market and who must first be given the opportunity to find a job: Dutch nationals, EU citizens and third country nationals that legally reside in the Netherlands and have free access to the Dutch labour market (e.g. foreign partners of a Dutch national or an admitted refugee).

Due to the labour market priority test, the possibilities for third country nationals to be granted a residence and work permit to offer live-in care services on the basis of the Alien Employment Act are severely restricted.

#### *Student programs*

After an initial Government to Government agreement with Indonesia to allow for Indonesian nurses to work in the Netherlands ended, new ways were sought for Indonesian nurses to offer their services. Hiring the nurses directly on the basis of the Alien Employment Act turned out to be rather expensive. Some care institutions then undertook the initiative to look into alternative ways as no other legal migration routes to work were available. They decided to align with the agency Yomema on a study program for Indonesian nurses. This means they study, intern, and have a few hours that they are allowed to work. Only after completing their studies, they can enter the labour market fully. Civil society organisations that promote the rights of labour migrants are fearful that student nurses from Indonesia in reality work much more hours than permitted.

#### *Dutch Au Pair policy<sup>47</sup>*

Some third country nationals are working as live-in care givers in the Netherlands on the basis of the Dutch Au Pair policy. The au pair visa – in principle for one year – is not limited to care for minors, as the only requirement is that the family consists of two or more people. Thus whether it is an (elderly) couple or a couple with a child, both families can make use of the au pair visa for live-in care services. In reality, however, the au pair regulation is not often used for the care of others than children. What is seen is that next to taking care of children, au pair have to take up a lot of household duties.<sup>48</sup> Yet, it must be highlighted that the intended purpose of stay for an au pair visa is cultural exchange rather than work. This means that most of the time spend in the Netherlands is reserved for cultural exchange and only limited hours for work. An au pair may only work for a maximum of 8 hours per day and a maximum of 30 hours per week.

Legally speaking, the au pair visa is thus not suitable for third country nationals to work as a live-in care giver in the Netherlands. However, in reality, the policy is misused<sup>49</sup> and most likely frequently used to ‘employ’ domestic workers. Many au pairs work much more hours than permitted – in exchange for additional remuneration but not always – particularly those that come from low income – in particular Asian – countries (including Philippines, Indonesia, Vietnam).<sup>50</sup>

<sup>44</sup> Sociaal Economische Raad (SER), Advies 2014/9: Arbeidsmigratie, <https://www.ser.nl/-/media/ser/downloads/adviezen/2014/arbeidsmigratie.pdf>

<sup>45</sup> J. Creemers, Mapping the rules on posting and short-term migration of third country nationals (TCNs): the legal framework and practice in the Netherlands (2021), p. 1.

<sup>46</sup> T De Lange (2013). De Wet arbeid vreemdelingen herzien: arbeidsmarktregulering in tijden van crisis. PS Documenta, 2013(11/12), 907-921.

<sup>47</sup> <https://ind.nl/uitwisseling/Paginas/Au-pair.aspx>

<sup>48</sup> Focus group discussion 16 March 2022.

<sup>49</sup> WODC, “Au pairs in Nederland: culturele uitwisseling of arbeidsmigratie” (2014)

<sup>50</sup> FairWork, Who Cares about Au Pairs? A Study on the Work and Social Protection Experiences of Filipina Au Pairs in the Netherlands (2021)



As of next year, the au pair policy is further restricted to prevent misuse of the policy and exploitation of au pairs.<sup>51</sup> This includes lowering of the age of a person eligible to become an au pair to 25 (now 31) and requiring the au pair to be unmarried, although experts indicate this is nothing new as it was already part of the initial legislation.<sup>52</sup> Civil Society Actors also doubt if these restrictions can indeed address the current exploitative practices with this scheme.

### **Other**

Many TCNs that are undocumented and work in live-in care, have travelled to the Netherlands on a Tourist Visa and then over-stayed. Recently, TCNs use tourist visa from neighboring EU countries (e.g. Germany, France), since it is considered easier.<sup>53</sup> Other options include rejected asylum requests, Dublin claimants or lost statuses.

## **5.2 Renumeration and working time**

Posted workers in the Netherlands are, during the first 12 months of their posting, entitled to the core of the Dutch working and employment conditions laid down in Dutch labour law and the generally binding collective bargaining agreements.<sup>54</sup> Hard core provisions include minimum wage, sufficient rest periods, (safe) working conditions holiday allowance, equal treatment, holidays, maximum working hours and a minimum number of holiday days. When the posting exceeds 12 months, then it extends to all applicable terms and conditions of employment.<sup>55</sup> It is possible for the service provider to prolong the first 12-month period with a reasoned notification to 18 months. If this extension option is used the full applicability of terms and conditions of employment will only apply after eighteen months.<sup>56</sup>

In the Netherlands the minimum wage is set out in the Law on Minimum Wage (Wet Minimum Loon), the working time rules in the Working time Law (Arbeidstijdenwet). For live-in care there is no collective bargaining agreement (CAO) applicable.

The problem therefore is not so much what is arranged on paper, but how minimum wage and working time rules are ensured in practice. The Netherlands Labour Authority cannot monitor all posted work situations. Inspectors see in practice that workers have no idea what they are entitled to when posted to the Netherlands.<sup>57</sup> They have limited or no knowledge about the rules that are applicable in their situation (that there is a minimum wage law or working time regulations). This lack of knowledge on the side of the employees and the limited capacity of the Netherlands Labour Authority to monitor the posting of workers in general, results in a situation that facilitates abuse.

Despite the fact that Member States cannot discriminate between EU nationals and third-country nationals in relation to remuneration and working time, The Netherlands Labour Authority indicates that posting results for example in a minimum of 10% cost advantage for Polish a company. "If you then have volume and the additional costs are limited, then there is a business model in the posting of workers".<sup>58</sup>

Here equality ('equal pay for equal work' principle) does not mean same work same pay, it just means that remuneration of posted workers should be *constructed* in the same way. This still leads to differences in the remuneration between nationals, EU nationals and TCNs and is considered a missed opportunity for the revised Posting of Workers directive.

Even if the remuneration would be the same, there is no complete equal treatment of posted and local workers possible, as there are also tax and social security advantages to be gained from posting. Therefore, labour costs for national workers compared to posted workers will continue to differ to some extent. Important cost items such as supplementary company pension schemes, social security entitlements and social contributions are not part of the hard core of working conditions. These are the costs that need to be paid in the sending Member State.

As far as working time is concerned, live-in care givers indicate to work more hours than anticipated. The responsibility for a person who is in regular or even constant need of care, while living under the same roof as the care-receiver makes it sometimes difficult to adhere to work time regulations.<sup>59</sup> Also, if a person needs to be on call, in many cases this time is not being paid for, while legally it should. Further, it may be challenging to safeguard their privacy and rest time because they live-in, combined with needing to be available on call. There have been reports by civil society actors of live-in care workers

<sup>51</sup> Directoraat-Generaal Migratie, Ministerie van Justitie en Veiligheid, Wijziging au-pair beleid, brief aan de Tweede Kamer, 8 november 2021

<sup>52</sup> Interview De Lange (Academic expert on EU labour migration) 17 February 2022.

<sup>53</sup> Focus group discussion 16 March 2022.

<sup>54</sup> Arbeidsvoorwaarden -en omstandigheden: terms and conditions of employment or employment and working conditions.

<sup>55</sup> As laid down in statutory/administrative provisions and/or collective agreements (including the 'hard core' provisions).

<sup>56</sup> Article 2 (4) WagwEU; Article 2a (5) Wet op het algemeen verbindend en het onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten (Wet avv).

<sup>57</sup> Interview Bruynen (Netherlands Labour Authority), 10 February 2022.

<sup>58</sup> Idem.

<sup>59</sup> Focus group discussion 16 March 2022.



that had no access to much privacy, e.g. lived in rooms of which doors could not be locked, had to share rooms et cetera. What makes their situation even more precarious is that the labour inspectorate has almost no competence to monitor the work conditions in a private household.

### 5.3 employees duties and the scope of services

Live-in care givers are hired to take care of an elderly person, a chronically or terminally ill person. Most of the duties relate to assisting in the general daily living tasks (washing, dressing, preparing/providing food, doing groceries, household chores, keeping an eye). In case a person needs specialised medical interventions (e.g. stoma care, IV medication, tube feeding) then the care giver needs to be registered in the Dutch Qualification system for care (BIG registration) which is unlikely for posted TCNs. In fact, nurses and doctors among refugee populations in the Netherlands who have years of working experience in their country of origin, have a hard time being qualified in the Dutch care system.<sup>60</sup> In practice it means that they must start from scratch making many decide to start work in a different sector.

## 6. Conclusion from the research phase

The main conclusion from the research phase is that in the Netherlands the posting of workers to provide live-in care is the exception rather than the rule. Many actors in the Netherlands are of the opinion that the Posting of Workers Directive is not suitable for the provision of live-in care by TCNs in the Netherlands, which is remarkable as in other EU countries the posting of workers is used at a large scale to provide live-in and possibly other care services. Many actors, including the Ministry of Social Affairs and Employment, the Netherlands Labour Authority, the Immigration and Naturalisation services, academic experts on labour mobility, think that the Posted Workers Directive is not designed to offer live-in care services. The character of the work (not temporary but long-lasting care unless with terminally ill patients, not necessarily specialised) makes posting of workers, according to them, unsuitable. Therefore, the general sentiment in the Netherlands is that other avenues than the Posting of Workers Directive should be sought/created in order for TCNs to provide these type of services and to deal with the shortages in the care sector in the near future. These other avenues are currently not yet available. As a result, due to the shortages in the labour market in general, and in the care sector specifically, relevant actors started to explore the ways in which these shortages can be met. Therefore, some argue that the posting of TCNs in the care sector can become a valuable possibility for the future<sup>61</sup>

### 6.1 Nuances of undeclared work or unregistered stay

What should be realised is that live-in care work is particularly interesting for (undocumented) third country nationals in the Netherlands.<sup>62</sup> In fact, the share of undocumented TCNs providing (live-in) care is larger than the posting of TCNs in the care sector.<sup>63</sup> According to a 2020 estimate of numbers of irregular migrants, conducted by Utrecht University at the behest of the Research and Documentation Centre (WODC: Wetenschappelijk Onderzoek- en Documentatiecentrum), the number of aliens residing illegally in the Netherlands in the period 2017-2018 was approximately somewhere between 23,000 and 58,000 persons.<sup>64</sup>

### 6.2 Changing patterns of supply and demand for live-in care services

Currently the Netherlands is confronted with increased shortages in the care sector. This has resulted into recent initiatives by commercial partners (recruitment agencies) to bring personnel from outside the EU (mostly Asian countries where there is arguably an overcapacity of healthcare personnel) to the Netherlands through various constructions. While we do not see this trend in relation to live-in care services specifically, it can be witnessed in relation to personnel shortages in hospitals and care institutions.<sup>65</sup> The recruitment agency Otto Workforce is exploring setting up such an initiative to train Filipino nurses in the Philippines to work in the Netherlands. Their training not only includes working with the same machines as Dutch nurses do, but also includes training in culture and language. Their pilot will first focus on IC nurses. The initiative by the recruitment agency Yomema to let Indonesian nurses come on an intern and study program, is another opportunity that is utilised to still be able to work with Indonesian nurses in the Netherlands.

<sup>60</sup> Interview Frijling (Healthcare 4 Internationals) 10 February 2022; Interview De Lange 10 February 2022, Interview Pharos

<sup>61</sup> Focus group discussion 16 March 2022.

<sup>62</sup> BIG-registration is obligatory for 13 healthcare professions. The BIG register is a legal, online and public register for Professions in Individual Health Care (Beroepen in de Individuele Gezondheidszorg). Only healthcare professionals who are registered in the BIG register, may use the protected professional title and may independently perform the reserved actions associated with the profession

<sup>63</sup> Focus group discussion 16 March 2022.

<sup>64</sup> <https://www.government.nl/latest/news/2020/12/16/estimates-of-numbers-of-illegal-immigrants-show-downwards-trend>

<sup>65</sup> Interview Otto Workforce (10 February 2022); Otto Workforce, Ziekenhuizen kijken uit naar plan Otto; IC personeel uit Azië AZIË (21 December 2021), <https://www.ottoworkforce.com/ziekenhuizen-kijken-uit-naar-plan-otto-ic-personeel-uit-azie/>



The personnel shortage in the care sector is alarming. Commercial recruitment agencies want to be able to deploy nurses outside the EU, but this is subject to strict rules. Care institutions call on the government to relax the rules of the immigration service and the UWV.

Experts on the other hand warn to not leave it up to commercial recruitment agencies to arrange for the TCNs to be employed in the care sector, but rather call on the relevant Ministries to calculate the shortages and develop specific programs to proactively meet the needs in the care sector.

### 6.3 Work and pay conditions of EU-citizens and TCNs caregivers

While TCNs caregivers who are posted in the Netherlands are entitled to the same labour conditions as their EU counterparts, the reality is that many of them do not know what they are entitled to. This allows for bad willing employers to take advantage of this situation.

For third country nationals, the recognition of diplomas is not guaranteed, whilst comparable diplomas of EU citizens are recognised. Some collective agreements stipulate special provisions (for housing, travel, or medical expenses) for workers not living permanently in the Netherlands.

All employees are entitled to the Dutch statutory minimum wage that consists of a basic wage and a number of allowances, e.g., for shift work and irregular working hours. Some income components, such as overtime pay or expense and end-of-year allowances, are not included in the calculation of the minimum wage.

As far as social security is concerned, a foreign service provider must notify the Social Insurance Office in advance about where, when and with which employees work is performed in the Netherlands. The notification concerns a proof of registration in the national social security system, an A1 statement or other proof of documents on the payment of social security contribution in the country of issuing, the name of a contact person established in the Netherlands, and the name of the person responsible for paying wages. The coordination of social security is equal to the situation with EU citizens, in this respect that the social security applies of the country where the A1-form was issued.

Overall, there is disagreement whether posting of workers is beneficial for the workers. While some stress the risks of abuses are (with sham constructions/letterbox practices) and the distortion of competition, others see the use of A1 declaration as lawful and find that more should be done to deal with the breaches.

## 7. Problems and obstacles in posting of TCNs caregivers

When live in TCN caregivers need to perform medical interventions, the qualification system in the Netherlands might pose an obstacle to posting. In the Netherlands only those persons who are registered in the BIG system are allowed to perform medical interventions. Posting of live-in TCN caregivers that need to perform specialized medical interventions is difficult in the Netherlands, as the Dutch qualification in care requires a person to be BIG registered. This might be one of the reasons why posting of TCNs is limited in the Netherlands.

The posting of TCNs live-in care givers leads to various precarious working conditions.

- Third-country workers posted via another Member State are more likely to be low-skilled and dependent on their employer for obtaining a visa/work permit. Like all labour migrants at the bottom of the labour market, they are thus more vulnerable. They also sometimes pay recruitment fees, as a result of which they start with a debt. Because of their background and language barriers, they are often unaware of their rights and obligations. This makes them extra vulnerable to underpayment, deception, long working hours and other forms of abuse.
- The fact that the service provider is not established in the Netherlands and the TCN worker comes from outside the EU/EEA or Switzerland makes the enforcement of labour laws, such as the Minimum Wage and Minimum Holiday Allowance Act (Wml), the Working Hours Act (Atw), time-consuming and complex.
- Because the work is performed behind closed doors in private homes, the workers are shielded from control, making their situation more precarious than regular working situations where the labour inspectorate has more extensive mandate to control.
- Providing 24/7 care according to rules and regulations would require (with a full-time contract of 40hours) a minimum of 5 persons to be appointed on a week basis (3\*8 hours shifts on a day, is 21 shifts\*8hours a week). In a recent report the Dutch Labour inspectorate mentioned not being paid all working hours in 24/7 care, as one of the constructions companies use to reduce labour costs. The labour inspectorate indicated that this could lead to a reduction of labour costs of 20 to even 60 percent.<sup>66</sup> In a recent report, the Netherlands Labour authority stated "A specific form of a cost-reducing construction is 24-hour care. Here, there are situations in which presence is

<sup>66</sup> Ministerie Sociale Zaken en Werkgelegenheid, 'Rapportage Inspectie SZW: Kostenvoordelen en Arbeidsuitbuiting, 15 november 2021, 29544-1080, p. 3 [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2021Z20334&did=2021D43507](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2021Z20334&did=2021D43507).



required, but there are no payments in return. This results in a low hourly wage. Because of the longer availability, the estimated cost advantage in 24-hour care is greater than elsewhere”.<sup>67</sup>

- Also, Portable Document A1 are being misused by companies to pay lower social security contributions by employers.

## 8. Best practices and policy recommendations

There should be more clarity about the rules that apply to the TCN caregivers while posted. That would protect workers more. People do not always know or understand which rules apply. People do not know that there is a minimum wage law, that there are working time rules, that there might even be a collective labour agreement applicable. It can be found, but knowing it, making it your own and standing up for your rights is a challenge. This is particularly relevant for TCNs.

In addition, increased outreach to migrant domestic workers employed in private settings should be prioritized to address risks of labour exploitation. Visits to individual employers' homes to assess conditions of domestic workers are rarely conducted unless there is strong evidence of abuse. When a private household is a workplace environment (as is the case with posted live-in care givers), the Netherlands Labour Authority should have more competences to monitor the observance of rules in relation to posting. The privateness of the household cannot be barrier to workplace enforcement as by hiring a person to provide live-in services, a person factually turns its household into a workplace. This should be met with more competences for enforcement of labour regulations, including posting to avoid abuses.

Further, it is importance to reduce the qualification barrier for TCN caregivers that need to perform specialised medical interventions by adopting the German approach (prove in practice and under supervision whether you have the skills, knowledge and expertise and then rewarded certification, rather than proving qualifications beforehand, which is impossible for labour migrants in general).

Generally, it is recommended that TCN domestic workers and live-in care givers should be enabled to enter Europe through formal labour migration processes. that decent and accessible labour schemes, including government-to-government agreements, should be advocated for and developed to enable workers to enter countries formally, which would to better monitor migrant domestic workers' employment conditions and wellbeing.

A positive development is that the European Commission in currently developing an EU Care Strategy. The health crisis caused by the coronavirus brought the work of formal and informal care workers center stage in policy debates related to working conditions, including issues of gender and work-life balance.

The strategy was announced in the letter of intent accompanying the 2021 State of the Union address of Commission President, Ursula von der Leyen. It should contribute to the implementation the European Pillar of Social Rights and the subsequent adoption of the Work-Life Balance Directive. The European Commission's work programme for 2022 foresees a Communication on a European care strategy, accompanied by the revision of the Barcelona targets and a proposal for a Council Recommendation on long-term care for Q3 of 2022.

Another positive development is that on 6th December, the European Council agreed its position on a Commission proposal for an EU law on adequate minimum wages. This decision paves the way for negotiations between Parliament and member states, possibly leading to the adoption of the directive as soon as Spring 2022. Adequate minimum wages can help to achieve more decent working and living conditions in the EU. However, it should be noted that many migrant workers are pushed to work irregularly and take undeclared jobs and might still have no access to decent employment and an adequate minimum wage.

Another A final important European development that might have impact is the fact that the European Council adopted beginning of March unanimously an implementing decision introducing temporary protection due to the mass influx of persons fleeing Ukraine as a consequence of the war. The Directive allows displaced persons from Ukraine to enjoy harmonised rights across the EU. These rights include access to the labour market. It is expected that companies will try to employ more Ukrainians in the Dutch care sector (as well as other sectors where shortages are high), due to which shortages might reduce, it might also lead to more Ukrainians being posted from other EU countries in the Dutch care sector. More research would be needed to see how TCN caregivers are recruited to the Netherlands and which agencies operate on the market, how new European developments related to sector have an impact, and it to further conduct research to the working conditions of these TCN caregivers.

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<sup>67</sup> Idem, p.5.





# postcare

Posting of third country nationals in care services  
the current state of play and scenarios for the future

