



**POWBRIDGE**

Bridging the gap between legislation  
and practice in the posting of workers



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workers**

**POW-BRIDGE**

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**Bridging the gap between legislation and practice in the posting of  
workers:  
Italy Country Report**

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## Executive Summary

- The long-term impact of the 2008 crisis led to a growth in employment in the service sector, a process of further deindustrialisation and the spread of increasingly precarious forms of work, which also include the employment of both incoming and outgoing posted workers.

- In 2018 Italy was the fourth sending country with 169,774 postings mainly received by France, Switzerland, Germany, Spain and Austria. Construction is one of the sectors where Italy is specialising as sending country, due to the effects of 2008 economic crisis on the internal market, which have pushed Italian construction companies to increasingly turn to export and to invest in the EU market.

- Over the years, the total number of incoming posted workers has varied and has been affected by the impact of the 2008 crisis on the Italian economy. It reached its peak in 2018, with 73,927 incoming postings. The main countries of origin of incoming posted workers are the neighbouring countries, like Germany, France and Austria, and main sending countries at EU level, like Romania and Spain.

- The Italian laws concerning posting and cross-border labour mobility are those that have implemented the EU Directives 96/71/EC, 2014/67/EU and 2018/957/EU. These regulations define the rights and obligations of posted workers, the rights and obligations of companies making use of posting and the limits of public authorities' mandate regarding: a) posting and cross-border labour mobility; b) temporary work agencies; c) social security; d) health insurance and coverage; e) company law.

- Regarding incoming postings, public authorities face challenges related to the delay in planning specific monitoring and inspection activities on posting, which have been introduced since 2018. Additional challenges derive from the overlap of various types of administrative and criminal offenses not necessarily linked to posting and the lack of collaboration of the competent authorities of some sending countries in the context of transnational cooperation.

- The main challenges encountered by companies posting to Italy concern the application of correct wage conditions, in cases where the items of the pay slip in the sending country and in Italy do not correspond, and in the case of building sector, where a part of the direct and indirect salary is paid through the construction fund. Further difficulties may arise in the area of health and safety in the workplace, due to language barriers and the need to adapt work organisation to different work contexts.

- Regarding incoming posted workers, the main challenges are related to the fact that they tend to report irregular or exploitative conditions to labour inspectors or trade unionists when it is late, due to language barriers and their weak contractual position vis-à-vis their employers. Language barriers also affect occupational safety and health of posted workers, increasing the risk of accidents due to poor or lack of understanding of the rules and procedures to be followed, especially if provided only in Italian.

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# 1 Introduction

The long-term impact of the 2008 crisis led to a growth in employment in the service sector, a process of further deindustrialisation and the spread of increasingly precarious forms of work, which also favoured the diffusion of the employment of both incoming and outgoing posted workers. The impact of the crisis on the national labour market has led to an increase in emigration from Italy, including forms of temporary migration and posting of workers: indeed, in 2018 Italy was the fourth sending country with 169,774 postings mainly received by the construction sector in France, Switzerland, Germany, Spain and Austria (Cillo & Perocco, 2020). Regarding the incoming posted workers, over the years, the total number has varied due to the internal demand, however it has reached its peak in 2018, with 73,927 incoming postings mainly from Germany, France, Austria, Romania and Spain, concentrated partly in high-skilled services and partly in the construction, transport and tourism sectors (Cillo, 2019; Cillo & Perocco, 2020).

Existing studies and the media have shown that irregularities affecting both incoming and outgoing posted workers and their rights are widespread, also leading to conditions of severe labour exploitation and circumstances in which workers' vulnerability makes it difficult to access protection and legal advice from trade unions and labour inspectors (Acciari & Bellobuono, 2019; Cillo, 2019; Cillo & Perocco, 2020). Focusing on the role of Italy as a receiving country, the POW-BRIDGE fieldwork showed that this situation is also linked to specific challenges emerged within the implementation of the posting of workers' legislation and its interplay with national rules and regulations on social security, health insurance, temporary agency work, and company law.

Specifically, the research found that incoming posted workers tend to report irregular or exploitative conditions to labour inspectors or trade unionists when it is late, because of language barriers and their contractual vulnerability. Additionally, language barriers increase the risk of accidents at work for posted workers due to poor or lack of understanding of the rules and procedures to be followed. As for public authorities, one of the main challenges concerns the delay in introducing specific monitoring and inspection activities, which have only been planned since 2018. Moreover, they face challenges related to the overlap of various types of administrative and criminal offenses not necessarily linked to posting and to the lack of collaboration of competent authorities of some sending countries in the context of transnational cooperation. Regarding posting companies providing their services in Italy, the main challenges are associated with the application of correct wage conditions and the occupational safety and health, where they face difficulties related to language barriers and the need to adapt work organisation to different work contexts.

The study aims to investigate how the Posting of Workers Directive and other EU regulations interplay with national rules and regulations on social security, health insurance, temporary agency work, and company law. The country case study identifies gaps between procedures (legal basis) and practices (experiences) in posting rule enactments in Italy.

The methodology combines secondary and empirical data. Secondary data are based on a literature review and national statistics. The analytical framework identifies national legislation, policy measures, government instructions and related regulations in various domains pertaining to posting and cross-border labour mobility. Documents under study include rights and obligations of posted workers, cross-border mobile workers, posting companies, etc. Empirical data are gathered from the view point of both employers as well as public authorities and social partners. Semi-structured interviews use a

vignette design to elicit insights from both view points on posting practices. The empirical data analysis follows qualitative thematic analysis that thematically organises and compares different interview responses to create a comprehensive picture of the situation and perceived challenges.

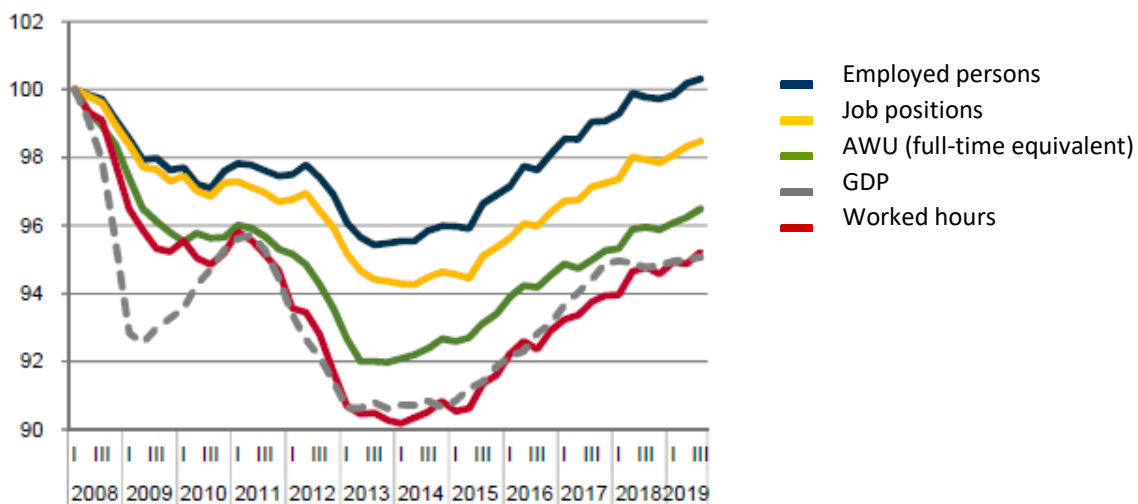
After the introduction, the report describes the country context and labour mobility and posting rates and trends in Italy (Chapter 2). Chapter 3 provides information about the methodology used for the analysis and the challenges and limitations of the method applied. Chapter 4 illustrates the research results, focusing on the regulatory framework, national implementation and enforcement, employer practices and challenges, and workers' protection. Finally, the report presents the synthesis and the conclusions (Chapter 5) and provides some policy recommendations (Chapter 6).

## 2 Country Context

### 2.1 Socio-economic overview

The 2008 economic crisis had severe effects on the Italian labour market both in terms of employment and in terms of working conditions, despite the slight recovery of the Italian GDP started in 2013 (Istat, 2020). Even if the employment level recorded in 2018 and 2019 exceeded the pre-crisis level (cf. Fig. 1), the Italian labour market has undergone a profound transformation that has accentuated the long-term changes already underway, such as the increase in dependent employment, the growth of employment in the service sector, the spread of fixed-term contracts and the growth of part-time jobs (mainly involuntary) (Istat, 2019a).

**Fig. 1: GDP, job positions, worked hours, employed persons, annual work units full-time equivalent**



Source: Istat 2020, p. 12.

Between 2008 and 2018 the number of self-employed workers decreased by 602,000 units, involving in particular specialised craft professions, while the number of employees increased by 735,000 units, involving in particular trade and tourism and unskilled professions (Istat, 2019a). The growth of employment in the service sector is concomitant with the already ongoing process of deindustrialisation in Italy, which is related to a persisting crisis of profitability, global dynamics of production restructuring and shifts in the international division of labour (Pradella, 2015). The loss of the most protected and unionised jobs in manufacturing and construction has reinforced the process of de-standardisation of employment relations, which has been also one of the main goals of austerity policies and labour reforms adopted since 2011<sup>1</sup> and the agreements signed since 2009 by employers' organisations and the main trade unions in order to reform the industrial relations' system (Cillo & Pradella, 2019).

<sup>1</sup> Since 2011 Italian governments have introduced 5 labour reforms: the article 8 of Law Decree No. 138 of 2011 introduced by the Berlusconi government, the "Fornero reform" of the Monti government (Law No. 92 of 2012), the "Legislative package on work" of the Letta government (Law No. 98 of 2013), the Jobs Act of the Renzi Government in 2014, the Law Decree No. 87 of 2018 introduced by the first Conte government.

The growth of employment recorded since 2013 has not corresponded to an increase in worked hours and annual work units (cf. Fig. 1) due to the substitution of full-time contracts with part-time contracts, which in 2018 involved 4.3 million workers (Istat, 2020, p. 25). Compared with the European Union data, Italy records a high incidence of involuntary part-time (2018: IT: 64.1%; EU-27: 23.4%), which mainly affects vulnerable workers employed in low-skilled jobs (particularly in the service sector) and workers with non-standard contracts (Istat, 2019a). Furthermore, during the last decade there has been a growth in fixed-term work, which has been only partially reduced by labour reforms aimed at increasing full-time contracts in exchange for tax and contribution reliefs for employers (Istat, 2020).

The growing casualisation of employment relationships has been accompanied by the widening of the gaps between various groups of the workforce, such as the generational gap, the gender gap and that between the regions of Northern and Southern Italy. The employment rate of young people (15-34 years) remains lower than the European Union average (2019: IT: 41.6%; EU-27: 58.7%), while the unemployment rate is almost double (2019: IT: 18.3%; EU-27: 9.5%) (Istat, 2020). As for the gender gap, it has been partially reduced by the impact of the crisis on the industrial sector, which caused job losses especially among the male workforce (Cillo & Pradella, 2019), however, it continues to be more pronounced than the EU-27 average<sup>2</sup>. As for the accentuation of territorial inequalities, Southern regions are having a slower recovery in employment and have higher rates of non-participation in the labour force and unemployment<sup>3</sup> (Banca d'Italia, 2020; Istat, 2020).

*Table 1: Overall labour market dynamics in Italy*

	2017	2018	2019
GDP real (annual growth in %)	+1.7%	+0.8%	+0.3%
Employment rate, population aged 15+ (%)	58.0%	58.5%	59.0%
Job vacancy rate (%)	N.A.	N.A.	N.A.
Unemployment rate, population aged 15+ (%)	11.2%	10.6%	10.0%
Average monthly gross wage (in EUR)	2,558	2,587	2,633
Monthly gross minimum wage (in EUR)	-	-	-

Source: Eurostat Database (2020).

## 2.2 Labour mobility and posting rates and trends

Since the 2008 economic crisis and the uprisings in North African countries of 2011 Italy has adopted restrictive migration policies that have reduced labour immigration from third countries. These measures, however, did not reduce immigration to Italy, pushing new immigrants to regularly enter Italy mainly through family reunification, asylum seeking and entries for students, seasonal workers and highly skilled workers (Idos, 2019; Cillo, 2021; Della Puppa & Salvador, 2015). In 2018, Italy counted 5,255,000 foreign citizens and 1,500,000 Italian citizens of foreign origin out of a total population of

<sup>2</sup> In 2008 the male employment rate was 75.3% in Italy and 77.2 in the EU-27, while the female employment rate was 50.6% in Italy and 61.9% in the EU-27. In 2019 the male employment rate was 73.4% in Italy and 79.0% in the EU-27, while the female employment rate was 53.8% in Italy and 67.3% in the EU-27 (Eurostat, 2020).

<sup>3</sup> In 2019 the employment rate was 66.6% in Central-Northern regions and 44.7% in Southern regions, while the rate of non-participation in the labour force was respectively 11.8% and 34.9% (Istat, 2020).



60,360,000 inhabitants (Idos, 2019). The population with foreign citizenship has both a higher employment rate and a higher unemployment rate than the Italian population<sup>4</sup>; is particularly concentrated in the sectors of agriculture (2018: IT: 3.5%; For: 6.4%), construction (2018: IT: 5.6%; For: 9.9%), and domestic work (2018: IT: 1.1%; For: 21.2%); and is overrepresented in unskilled professions (2018: IT: 8.2%; For: 33.3%) and in workman or artisan professions (2018: IT: 22.8%; For: 29.7%) (Idos, 2019).

*Table 1: General labour migration and posting trends in Italy in the last three years available*

	2016	2017	2018
Total number of emigrants <sup>a</sup>	157,065	155,110	156,960
Total number of immigrants <sup>a</sup>	300,823	343,440	332,324
Total EU migrants received <sup>a</sup>	62,693 (+37,894 IT)	61,096 (+42,369 IT)	57,369 (+46,824 IT)
Total TCN migrants received <sup>a</sup>	200,217	239,953	228,117
Share of immigrants of working age (20-64 years old) in % <sup>a</sup>	74,7%	73,6%	72,5%
Total number of outgoing posted workers (PDs A1)	114,515 <sup>b</sup>	152,528 <sup>c</sup>	169,774 <sup>d</sup>
Total number of incoming posted workers (PDs A1)	61,321 <sup>b</sup>	64,669 <sup>c</sup>	73,927 <sup>d</sup>
Labour market share of incoming posted workers	0.27% <sup>ab</sup>	0.28% <sup>ac</sup>	0.32% <sup>ad</sup>
Main countries of destination for posted workers	Switzerland, France, Germany, Belgium, Austria <sup>b</sup>	Switzerland, France, Germany, Austria, Belgium <sup>c</sup>	France, Switzerland, Germany, Spain, Austria <sup>d</sup>
Main countries of origin of posted workers received	Germany, France, Spain, Slovenia, Romania <sup>b</sup>	Germany, France, Spain, Slovenia, Romania <sup>c</sup>	Germany, Spain, France, Romania, Austria <sup>d</sup>

Source: a) Eurostat Database, 2020; b) De Wispelaere & Pacolet, 2017; c) De Wispelaere & Pacolet, 2018 ; d) De Wispelaere & Pacolet, 2019.

As for the emigration, the impact of the crisis on the Italian economy and the rise in unemployment are pushing a growing number of workers to emigrate to Central and Northern Europe both permanently and temporarily, re-proposing in a certain sense the pathways of emigration that developed after the Second World War, even if with different characteristics, like a more diverse social composition, a higher education level, a predominantly urban background, a more balanced gender composition and a growing number of onward-migrants (Gjergji, 2015; Idos, 2019). Between 2009 and 2018 Italy registered about 816,000 emigrants. The 157,000 persons that emigrated in 2018 included 40,000 foreign citizens and 30,000 Italian citizens of foreign origin (Istat, 2019b).

<sup>4</sup> In 2018 the labour force with foreign citizenship recorded an employment rate of 61.2% and an unemployment rate 14%, while the labour force with Italian citizenship recorded respectively 58.2% and 10.2% (Idos, 2019).

Temporary forms of labour migration from Italy also include the postings, which almost sixfolded between 2009 and 2018 (De Wispelaere & Pacolet, 2017, 2019). In 2018 Italy was the fourth sending country with 169,774 postings mainly received by France, Switzerland, Germany, Spain and Austria (Pacolet and De Wispelaere, 2019). Even though there are no data available on the sectors that employ outgoing posted workers, recent studies highlighted that construction is one of the sectors in which Italy is specialising as sending country. This phenomenon is linked to the effects of 2008 economic crisis on the internal market, which have pushed the businesses of the Italian construction sector to increasingly turn to export and to invest in the EU construction market (Cillo, 2021; Cillo and Perocco, 2020; Federcostruzioni, 2019).

As for the role of Italy as a receiving country, according to data on PDs A1, Italy is included among countries receiving between 50,000 and 100,000 posted workers yearly (Table 2). Over the years, the total number of posted workers received has varied and was affected by the impact of the crisis on the Italian economy, reaching its peak in 2018, with 73,927 incoming postings (De Wispelaere & Pacolet, 2019). The main countries of origin of incoming posted workers are the neighbouring countries, such as Germany, France and Austria, and the main sending countries at EU level, such as Romania and Spain.

### 3 Methodology

#### 3.1 Data collection

The data analysis utilises a mixed-methods approach combining secondary data with qualitative data sources. Secondary national data are based on a literature review and statistics. Primary data were collected in each country to assess the impact of different regulations on actual practices. The method used for the primary data collection was based on semi-structured interviews with representatives of public authorities, trade unions and employers' organisations. The fieldwork focused on the role of Italy as a receiving country, including some interviews with representatives of trade unions and employers' organisations in the construction industry, as it represents the main sector of employment of posted workers both at national and EU level. A particular feature of the qualitative interviews is the use of vignettes to elicit insights from both sides of the institutional relationship: posting employers and street-level bureaucrats/state agencies representatives on posting practices.

The fieldwork included ten interviews with labour inspectors, representatives of trade unions and employers' organisations at the national and local level, and public officials at the ministerial level. The qualitative data from interviews were collected by following a semi-structured interview template and were analysed by using qualitative thematic analysis. In an iterative effort, the different data interview responses were thematically organised and then compared with each other in order to create a comprehensive picture of the situation in question and of the perceived challenges.

*Table 3: Fieldwork details*

Fieldwork period	Mode of data collection	Specific sectors covered	Background of respondents
June – October 2020	Interviews face-to-face Interviews by phone	Industry Construction Transport	<p><i>Public authorities</i></p> <p>1 official of the Ministry of Labour and Social Policies</p> <p>1 labour inspector specialised in labour issues and social contributions (provincial level)</p> <p>2 labour inspectors specialised in labour issues (provincial level)</p> <p><i>Trade unions</i></p> <p>1 trade union officer (national level, construction sector)</p> <p>1 trade union officer (national level, transport sector)</p> <p>2 trade union officers (regional level)</p> <p><i>Employers' organisations</i></p> <p>1 representative of employers' organisation in the construction sector (national level)</p> <p>1 representative of employers' organisation in the industrial sector (provincial level)</p>

### **3.2 Analytic Framework**

The analytical framework comprised the identification of the national legislation, policy measures, government instructions and related regulations in various domains pertaining to posting, cross-border labour mobility, temporary agency work, social security, health insurance, company law and any other relevant regulation. Documents under study include rights and obligations of posted workers, of cross-border mobile workers, and of posting companies, as well as conditions for and incentives of cross-border service provision. The focus of the analytic framework was the role of Italy from the receiving perspective.

### **3.3 Challenges and limitations**

The main challenge and limitation of the fieldwork was related to gathering information on employers' perspectives and challenges, which was collected through interviews with representatives of employers' organisations, as accessing interviews with companies involved in the posting of workers was not possible due to the refusals from the employers that were contacted.

The interviews with trade union representatives were carried out with representatives at national and regional level, since often at the workplace level and at the local / provincial level there is no adequate knowledge of the phenomenon of the posting of workers and the reference point for providing assistance related to legislative and administrative procedures is at national level.

As regards the representatives of public authorities, some difficulties were related to the specific competences of the various inspection bodies, since they do not have the same tasks (and so specific knowledge) regarding: - the legal requirements and procedures of incoming/outgoing posting companies and posted workers; - contracts and working conditions; - occupational safety and health of posted workers; - taxation. For this reason, some answers were more detailed in some parts of the interview than in other parts.

Finally, the fieldwork was conducted during the COVID-19 pandemic and it was not always possible to collect interviews in a face-to-face manner as most of the experts were operating in smart-working mode. Consequently, most of the interviews were conducted by telephone or through online applications. On the one hand, this modality allowed to reach interviewees who otherwise would not have been available, on the other hand, it meant having less interaction linked to face-to-face meetings, such as exchanging opinions in an informal way.

## 4 Results

### 4.1 Regulatory Framework

The EU Directives on the posting of workers are implemented in Italy through the following laws:

- Legislative Decree No. 72/2000 transposes the Directive 96/71/EC;
- Legislative Decree No. 136/2016 transposes the Directive 2014/67/EU and repeals the Legislative Decree No. 72/2000);
- Legislative Decree No. 122/2020 transposes the Directive 2018/957/EU and integrates the Legislative Decree No. 136/2016.

In this section of the report, we discuss the regulatory framework on posting and other related laws in detail.

#### 4.1.1 Posting and cross-border labour mobility

The Italian laws concerning posting and cross-border labour mobility are those that have implemented the EU Directives.

##### 4.1.1.1 Working conditions and posted workers' rights

The Legislative Decree No. 72/2000 provided a broad protection compared to the EU regulation (Pallini & Pedersini, 2010). Following the repeal of this regulation, these provisions were confirmed by the Legislative Decree No. 136/2016, which establishes that sending companies must apply the same working conditions as provided for by laws, regulations or administrative provisions, as well as by collective agreements negotiated by the trade unions and employers' organisations comparatively most representative at national level, and applicable to workers who perform similar subordinate work in the workplace where posted workers carry out their activity<sup>5</sup>.

As the Italian legislation does not define the minimum wage, remuneration must be based on the most representative collective agreements, considering the Article 36 of the Italian Constitution, which establishes that "the worker has the right to a remuneration proportionate to the quantity and quality of his/her work and in any case sufficient to ensure a free and dignified existence for him/herself and his/her family". The Circular Letter No. 1/2017 of the National Labour Inspectorate<sup>6</sup> establishes that the remuneration of posted workers employed in Italy must include the following salary items: - the basic pay; - the pay adjustment, as the basic pay, to the contractual qualification; - allowances related to length of service (if related to the contractual classification in pay groups and/or the type of work performed); - the "superminimo"<sup>7</sup> (individual or for groups of workers if related to the contractual classification in pay groups and/or to the type of work performed); - the remuneration for overtime, night and holiday work; - the posting allowance (if compensating for the discomfort due to the employment in a workplace far from workers' usual residence); - the travel allowance.

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<sup>5</sup> Working conditions refer to: - maximum work periods and minimum rest periods; - minimum paid annual holiday; - minimum rates of pay (including overtime rates); - health, safety and hygiene at work; - working conditions and employment of pregnant women and nursing mothers; - conditions of hiring of workers by temporary work agencies.

<sup>6</sup> The National Labour Inspectorate issued the Circular Letter No. 1/2017 in 2017 with the aim of providing the necessary operational indications to the inspection bodies for a correct application of the sanctioning regime included in the Legislative Decree No. 136/2016. Cf. <http://www.dottrinalavoro.it/wp-content/uploads/2017/01/INL-circ.-n.-1-2017-distacchi.pdf>

<sup>7</sup> The "superminimo" is an extra allowance over the minimum pay.

The provisions on working conditions are confirmed by Legislative Decree No. 122/2020, which also establishes that, in the event of long-term posting, the sending company will apply to the posted worker “all the working and employment conditions envisaged in Italy by legal provisions and by national and territorial collective agreements stipulated by the comparatively most representative workers and employers’ organisations at national level, with the exclusion of the procedures and conditions for the conclusion and termination of the employment contract, the non-competition clauses and the supplementary pension at the category level”. Moreover, Legislative Decree No. 122/2020 recognises that the allowances paid to the worker for posting are considered “part of the salary and are not paid as reimbursement of travel, board and lodging expenses actually incurred as a result of posting” and that the reimbursement of these allowances will be made “by the employer to the posted worker in accordance with the regulations governing the employment relationship in the country of establishment of the sending company”.

According to the Legislative Decree No. 136/2016, posted workers that were and are sent to Italy can assert their rights relating to working conditions and employment at administrative and judicial level.

The regulation on working conditions and the provisions of national collective agreements do not apply in case of initial assembly work or first installation of goods, provided for “in a contract for the supply of goods, indispensable for putting the supplied goods into operation and performed by the qualified or specialised workers of the supply company, when the duration of the works, in relation to which the posting was ordered, is not longer than eight days”. The activities carried out in the construction sector are excluded from this exception (Legislative Decree No. 136/2016).

#### *4.1.1.2 Posting Companies Rights and Obligations*

With regard to posting companies that send their employees to Italy, in addition to the obligations regarding working conditions and remuneration, the Legislative Decree No. 136/2016 establishes that these companies are obliged:

- to communicate the posting to the Ministry of Labour and Social Policies within 24 hours of the day before the posting begins and to communicate all subsequent changes within five days<sup>8</sup>;
- to preserve a series of documents translated into Italian in case of inspections up to two years from the end of the posting period, which include: the employment contract, salary statements, information on daily working time, documents reporting the effective payment of salary, portable document A1, documents on the public registration of the employment relationship, and the certificate relating to the applicable safety legislation;
- to appoint a contact person electively domiciled in Italy in charge of sending and receiving documents. Failing that, the headquarters of the posting company is considered to be the place where the registered office or the recipient of the service resides;

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<sup>8</sup> The communication of the prior posting statement must include: the identification data of the sending company; number and personal data of posted workers; start date, end date and duration of the posting; place of performance of the services; identification data of the receiving company; type of services; personal details and elected domicile of the contact person in charge of sending and receiving documents; details of the contact person in charge of representing and maintaining relations with the social partners interested in promoting second-level collective bargaining; in case of posting via temporary work agency, the number of authorisation for the activity of temporary work agency.

- to appoint a contact person that represents and maintains relations with the social partners interested in promoting second-level collective bargaining, with the obligation to make him/herself available in the event of a reasoned request from the social partners.

The Ministerial Decree of 10 August 2016, issued by the Ministry of Labour and Social Policies, integrates the Legislative Decree No. 136/2016 and provides indications for the modalities of transmission of the mandatory communication for companies that send their employees to Italy.

#### 4.1.1.3 *Public Authorities Mandate*

According to the Legislative Decree No. 136/2016, public authorities are in charge of identifying situations of possible fraud, abuse and avoidance in case of posting. The inspections aimed at determining the authenticity of the posting are based on the control of a series of elements relating to the sending companies<sup>9</sup> and a series of elements concerning working conditions of posted workers<sup>10</sup>. These controls can be carried out unilaterally or in collaboration with the competent authorities of the sending countries.

After verifying both the elements relating to the sending company and the elements relating to working conditions of posted workers, if the inspections of public authorities show that the posting in favour of a company established in Italy is not authentic, the worker is considered in all respects to be an employee of the company that used the provision of services. Public authorities can sanction sending and receiving companies with an administrative penalty that varies in relation to the number and days of employment of workers on non-authentic posting, and with a prison sentence if the posted workers are minors. Furthermore, public authorities can sanction sending companies with an administrative penalty if they do not respect the obligations concerning the mandatory communication of posting, the preservation of documents translated in Italian regarding the employment contract of posted employees, the appointment of a contact person electively domiciled in Italy in charge of sending and receiving documents, and the appointment of a contact person that represents and maintains relations with social partners.

Moreover, according to the Legislative Decree No. 136/2016, the National Labour Inspectorate may request the competent authorities of the sending country to notify administrative or judicial measures and may request the recovery of the pecuniary administrative sanctions.

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<sup>9</sup> Public authorities control the following elements regarding the sending company: - the place where the company has its legal and administrative headquarters, - the place where the company is registered in the Chamber of Commerce, Industry, Crafts and Agriculture or in a professional register; - the place where the workers are employed and the place from which they are posted; - the regulation applicable to contracts concluded by the posting company with its customers and workers; - the place where the posting company carries out its main economic activity and its administrative staff are employed; - the number of contracts executed or the amount of turnover achieved by the undertaking in the sending Member State.

<sup>10</sup> These elements include: - the content, nature and methods of carrying out the work activity and the employee's remuneration; - the fact that the worker habitually carries out her/his activity in the sending Member State; - the temporary nature of the work carried out in Italy; - the start date of the posting; - the fact that the worker has returned or is expected to return to work in the sending Member State; - the fact that the sending employer provides for the travel, board or lodging expenses of the posted worker and the methods of payment or reimbursement; - any previous periods in which the same activity was carried out by the same or by another posted worker; - the existence of the certificate relating to the applicable social security legislation.

The Circular Letter No. 1/2017 provides the necessary operational indications for a correct application of the rules concerning the mandate of public authorities included in the Legislative Decree No. 136/2016.

#### 4.1.2 Temporary agency work

Legislative Decree No. 136/2016 establishes that temporary agencies that send posted workers to Italy must apply the same working conditions that are mandatory for posted workers and are subject to the provisions of the Article 35 of the Legislative Decree No. 81/2015 and subsequent amendments, which concern the contracts for the provision of temporary work services for temporary agencies based in Italy. Article 35 establishes that for the entire duration of the mission to the user undertaking, temporary workers hired by temporary agencies have the right, for the same tasks performed, to economic and regulatory conditions overall not lower than those of employees of the same level of the of the user undertaking. According to the Legislative Decree No. 136/2016, the user undertaking based in Italy, to which posted workers are sent via temporary agency, is required to inform the posting agency of the working and employment conditions that apply to posted workers.

As for the administrative requirements, Legislative Decree No. 136/2016 establishes that temporary work agencies that send their employees to Italy are exempt for providing the authorisation to carry out the activity of providing temporary work services released by the Italian Ministry of Labour and Social Policies if they demonstrate that they operate under an equivalent administrative measure, issued by the competent authority of the EU Member State where they are based.

#### 4.1.3 Social security

Posting companies that send their employees to Italy must pay social security contributions in the sending country and posted workers will receive social security treatment according to the regulation of the sending country. Sending companies must request the Portable Document A1 from the competent authorities in the country where the employees are insured and, according to the Legislative Decree No. 136/2016, they must preserve this document for inspection throughout the posting period and up to two years after its end, by providing paper or electronic copy in Italian. According to the Legislative Decree No. 122/2020, if the duration of the posting period exceeds 12 months, sending companies must request an extension of the document to the competent authorities of the sending country up to 6 months, and if this is not granted, they must register the posted workers to the Italian social security system.

According to the Legislative Decree No. 136/2016, in case of non-authentic posting, Italian public authorities consider the posted worker to be an employee of the Italian company that used the provision of services and, consequently, the worker will be registered to the social security system in Italy, imposing the payment of social contributions at the expense of the Italian company. The sending and receiving companies are punished with a pecuniary administrative sanction of 50 euros for each worker employed and for each day of employment. In any case, the amount of the fine cannot be less than 5,000 euros or more than 50,000 euros. If non-authentic posting concerns minors, the sending and receiving companies are punished with the penalty of imprisonment for up to eighteen months



and with a fine of 50 euros for each worker employed and for each day of occupation increased up to six times.

The Circular Letter No. 1/2017 provides the necessary operational indications for a correct application of the rules concerning social security and the mandate of Italian public authorities included in the Legislative Decree No. 136/2016. If the investigation by public authorities reveals a case of non-authentic posting, in which the posted worker must be considered as an employee of the Italian company that used the provision of services, the authorities must activate the specific procedure for cancellation / denial of the PD A1 and quantify the administrative penalties and the contributions<sup>11</sup> in the inspection report, transmitting it to the National Social Security Institute (Istituto Nazionale di Previdenza Sociale, INPS). INPS will disavow the PD A1<sup>12</sup>, enrol the worker in the Italian social security system and recover contributions and administrative penalties. The total of the administrative penalties is determined on the basis of the amounts established by the Legislative Decree No. 136/2016 and is collected regardless of whether the PD A1 denial procedure has started.

#### 4.1.4 Health insurance and coverage

Posting companies that send their employees to Italy must pay the health insurance in the sending country. Posted workers must request the European health insurance card, which will guarantee them the healthcare coverage during their stays in Italy. According to the Legislative Decree No. 122/2020, if the duration of the posting period exceeds 12 (or 18) months, sending companies must register the posted workers to the Italian health insurance system.

According to the Legislative Decree No. 136/2016, in case of non-authentic posting, Italian public authorities consider the posted worker to be an employee of the Italian company that used the provision of services and, consequently, the worker will be registered to the health insurance in Italy, imposing the payment of contributions to the Italian company. The Circular Letter No. 1/2017 provides the necessary operational indications for a correct application of the rules concerning health insurance and coverage and the mandate of Italian public authorities included in the Legislative Decree No. 136/2016.

The recovery of contributions for health insurance is included in the procedure for recovering social security contributions (c.f. par. 4.1.3). In addition to the administrative sanctions imposed in the event of non-authentic posting, sending and receiving companies can be punished with administrative or penal sanctions if they have not complied with the general legislation concerning occupational safety and health that applies in the receiving country<sup>13</sup>.

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<sup>11</sup> The recovery of contributions includes both the social security contributions related to the pension system and the contributions for the health insurance.

<sup>12</sup> As specified by the Circular Letter No. 1/2017, the PD A1 is considered binding for the Italian public authorities until their eventual withdrawal by the State that issued them or until the decision of the EU Administrative Commission specifically consulted by the receiving State.

<sup>13</sup> Health, safety and hygiene on the workplace are regulated by the Legislative Decree No. 81/2008, which defines the obligations of employers and employees.

#### 4.1.5 Company law

The implementation of the posting of workers directives interacts with company law concerning the joint liability. According to the Legislative Decree No. 136/2016, posting companies operating in Italy as contractors or subcontractors are subject to Article 29 of Legislative Decree 276/2003<sup>14</sup>, which establishes that the client is jointly and severally liable “with the contractor, as well as with each of the possible subcontractors, within the limit of two years from the termination of the contract, in order to pay the workers the remuneration, including the severance indemnities, as well as social security contributions and insurance premiums due in relation to the period of execution of the contract, excluding any obligation for civil sanctions for which only the person responsible for the non-fulfilment is liable”.

With regard to temporary agencies that send posted workers to Italy, according to the Legislative Decree No. 136/2016, they are subject to the provisions of the Article 35 of the Legislative Decree No. 81/2015, which concern the contracts for the provision of temporary work services for temporary agencies based in Italy. This Legislative Decree establishes that the user undertaking is jointly and severally obliged with the supplier to pay the workers the wages and to pay the related social security contributions, without prejudice to the right of compensation towards the supplier.

#### 4.1.6 Other relevant regulation

The provision of services in the context of contracts and sub-contracts is governed by the Procurement Code (Legislative Decree No. 50/2016 and subsequent amendments). The Procurement Code contains some rules that are relevant for posting contractors and subcontractors, such as the Article 35, which establishes the amounts of the thresholds of public contracts relevant at EU level that must be published EU-wide, on the ‘Tenders Electronic Daily’ (TED) platform. Moreover, the Article 213 attributes to the National Anti-Corruption Authority (Autorità Nazionale Anticorruzione, ANAC) the role of supervision and control of public contracts and the activity of regulating them, in order to prevent and combat illegality and corruption.

Furthermore, with regard to public procurement, the Law No. 55/2019 limits the part of the contract that the bidder is authorised to subcontract to third parties to 50%<sup>15</sup>.

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<sup>14</sup> Article 29 of Legislative Decree No. 276/2003 concerns the procurement in Italy.

<sup>15</sup> The Procurement Code limited this part to 30% in order to combat the phenomenon of infiltration of the public procurement sector by organised crime. However, in 2019 the European Court of Justice judged that “a restriction on the use of subcontracting such as that at issue in the main proceedings cannot be regarded as compatible with Directive 2014/24” (cf. Case C-63/18, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=7CFFB980A85C07A88768521A39FEA3AF?text=&docid=218281&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1327087>).

Table 4. Rules and regulations on posting in the national context<sup>16</sup>

	Law/Regulation	Posting Workers Rights	Posting Companies Rights and Incentives	Posting Companies Obligations	Public Authorities Mandate
Posting-specific or cross-border service provision regulations	<ul style="list-style-type: none"> <li>- <i>Leg. Decree No. 136/2016</i></li> <li>- <i>Leg. Decree No. 122/2020</i></li> <li>- Ministerial Decree of 10 August 2016</li> <li>- Circular Letter No. 1/2017</li> </ul>	<p>Posted workers sent to Italy must have the same working conditions applicable to workers performing similar subordinate work in the workplace where posted workers carry out their activity. Working conditions are defined by laws, regulations or administrative provisions, as well as by collective agreements negotiated by the trade unions and employers' organisations comparatively most representative at national level.</p>	N.A.	<p>Posting companies that send their employees to Italy must:</p> <ul style="list-style-type: none"> <li>- communicate the posting to the Ministry of Labour and Social Policies within 24 hours of the day before the posting begins and to communicate all subsequent changes within five days;</li> <li>- preserve the following documents translated into Italian in case of inspections up to two years from the end of the posting period: the employment contract, salary statements, information on daily working time, documents reporting the effective payment of salary, portable document A1, documents on the public registration of employment relationship, the certificate relating to the applicable safety legislation;</li> <li>- appoint a contact person electively domiciled in Italy in charge of sending and receiving documents;</li> <li>- appoint a contact person that represents and maintains relations with the social partners interested in promoting second-level collective bargaining.</li> </ul> <p>Posting companies that send their employees to Italy must apply the same working conditions applicable to workers who perform similar subordinate work in the workplace where posted workers carry out their activity. Working conditions are defined by laws, regulations or administrative provisions, and collective agreements negotiated by the trade unions and employers' organisations comparatively most representative at national level.</p>	<ul style="list-style-type: none"> <li>- Territorial Labour Inspectorates (DTL)</li> <li>- National Social Security Institute (INPS)</li> <li>- National Institute for Insurance Against Accidents at Work (INAIL)</li> <li>- Finance Police</li> <li>- Carabinieri for the Protection of Labour</li> </ul>

<sup>16</sup> The rules in italics refer to the legislation that has implemented the EU Directives.

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<p><b>Temporary Agency Work regulations</b></p>	<p>- Leg. Decree No. 136/2016 (integrated with provisions of Leg. Decree No. 81/2015) - Leg. Decree No. 122/2020</p>	<p>Posted workers sent to Italy by temporary agencies have the same working conditions that are mandatory for posted workers and, as temporary workers, have the right to economic and regulatory conditions overall not lower than those of employees of the same level of the of the user undertaking, for the same tasks performed.</p>	<p>N.A.</p>	<p>The receiving company in Italy is required to inform the sending agency regarding working and employment conditions that apply to posted workers. Temporary work agencies that send their employees to Italy must demonstrate that they are authorised to provide temporary work services by the competent authority of the EU Member State where they are based.</p>	<ul style="list-style-type: none"> <li>- Territorial Labour Inspectorates (DTL)</li> <li>- National Social Security Institute (INPS)</li> <li>- National Institute for Insurance Against Accidents at Work (INAIL)</li> <li>- Finance Police</li> <li>- Carabinieri for the Protection of Labour</li> </ul>
<p><b>Health insurance and coverage</b></p>	<p>- Leg. Decree No. 136/2016 - Leg. Decree No. 122/2020 - Circular Letter No. 1/2017</p>	<p>Posted workers must request the European health insurance card, which will guarantee them the healthcare coverage during their stays in Italy. If the posting period exceeds 12 (or 18) months, sending companies must register the posted workers to the Italian health insurance system.</p>	<p>N.A.</p>	<p>Posting companies that send their employees to Italy must pay the health insurance in the sending country. In the event of non-authentic posting, posted worker is considered to be an employee of the Italian receiving company and, consequently, the worker will be registered to the Italian social security system, imposing the payment of social contributions to the Italian receiving company.</p>	<ul style="list-style-type: none"> <li>- National Institute for Insurance Against Accidents at Work (INAIL) - National Social Security Institute (INPS)</li> </ul>
<p><b>Social security regulation</b></p>	<p>- Leg. Decree No. 136/2016 - Leg. Decree No. 122/2020 - Circular Letter No. 1/2017</p>	<p>Posted workers will receive social security treatment according to the regulation of the sending country. If the posting period exceeds 12 months and the extension of the PD A1 is not granted, posted workers must be registered by their employers to the Italian social security system.</p>	<p>N.A.</p>	<p>Posting companies that send their employees to Italy must pay social security contributions in the sending country. If the posting period exceeds 12 months, sending companies must request an extension of the PD A1 up to 6 months, and if this is not granted, they must register the posted workers to the Italian social security system. The PD A1 must be preserved for inspection throughout the posting period and up to two years after its end.</p>	<ul style="list-style-type: none"> <li>- National Social Security Institute (INPS)</li> <li>Controls on PD A1 can also be carried out by:</li> <li>- Territorial Labour Inspectorates (DTL)</li> <li>- National Institute for Insurance Against Accidents at Work (INAIL)</li> <li>- Finance Police</li> <li>- Carabinieri for the Protection of Labour</li> </ul>
<p><b>Company law</b></p>	<p>- Leg. Decree No. 136/2016 (integrated with provisions of Leg. Decree 276/2003 and Leg. Decree No. 81/2015)</p>	<p>In the event of non remuneration, the principle of joint and several liability applies to the client(s) that used the provision of services of the sending employer.</p>	<p>N.A.</p>	<p>The client is jointly and severally liable with the contractor and possible subcontractors, within the limit of two years from the termination of the contract, in order to pay the remuneration and related social security contributions and indemnities to incoming posted workers. This obligation applies also in case of incoming postings via temporary work agencies.</p>	<ul style="list-style-type: none"> <li>- Territorial Labour Inspectorates (DTL)</li> <li>- National Social Security Institute (INPS)</li> <li>- National Institute for Insurance Against Accidents at Work (INAIL)</li> </ul>

<p>Any other relevant legislation</p>	<p>- Procurement Code (Legislative Decree No. 50/2016) - Law No. 55/2019</p>	<p>N.A.</p>	<p>N.A.</p>	<p>In case of public procurement, public contracts relevant at EU level must be published EUwide, on the 'Tenders Electronic Daily' (TED) platform.  Public contracts are supervised and controlled by the National Anti-Corruption Authority (Autorità Nazionale Anticorruzione, ANAC) in order to prevent and combat illegality and corruption.  In case of public procurement, the part of the contract that the bidder is authorised to subcontract to third parties is limited to 50%.</p>	<p>National Anti-Corruption Authority (Autorità Nazionale Anticorruzione, ANAC)</p>
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## 4.2 National implementation and enforcement

### 4.2.1 Institutional Framework

The institutional framework involved in the implementation and enforcement of the national regulation on the posting of workers comprises:

- the *Directorate General for Labour Relations and Industrial Relations of the Ministry of Labour and Social Policies* is responsible for the application of the rules governing labour relations, including the posting of workers, and is responsible for the national website <http://distaccoue.lavoro.gov.it/>;

- the *National Labour Inspectorate* (Ispettorato Nazionale del Lavoro, INL) is supervised by the Ministry of Labour and Social Policies and operates through the Interregional Labour Inspectorates and the Territorial Labour Inspectorates (Direzione Territoriale del Lavoro), which are responsible for controlling over postings and determining the authenticity of the posting by examining a series of elements relating to the sending companies and a series of elements concerning working conditions of posted workers<sup>17</sup>. Moreover, the National Labour Inspectorate has an advisory role for posted workers and sending and receiving companies;

- the *Finance Police* (Guardia di Finanza) is supervised by the Ministry of Economy and Finance and collaborates with the National Labour Inspectorate for monitoring issues related to economics, finance and tax system;

- the *Carabinieri for the Protection of Labour* (Comando Carabinieri per la Tutela del Lavoro) collaborates with the National Labour Inspectorate in order to ensure compliance with occupational health guidelines and accident prevention regulations and to prevent labour exploitation, and operates under the coordination of the Interregional Labour Inspectorates and the Territorial Labour Inspectorates;

- the *National Institute for Insurance Against Accidents at Work* (Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro, INAIL) is the public body responsible for safeguarding workers against physical injuries and occupational diseases and for the payment of accident allowances in the event of an accident occurred to the posted workers;

- the *National Social Security Institute* (Istituto Nazionale di Previdenza Sociale, INPS) is the main social security institution of the Italian public pension system and is the public body that takes over if a non-authentic posting is ascertained, following which the posted worker is considered as an employee of the receiving company.

### 4.2.2 Enforcement Agencies Practices

The interviews with labour inspectors highlighted that the monitoring activities usually take into consideration the documentation regarding the posting (e.g. the mandatory communication of posting, Portable Documents A1, the employment contract of posted employees, the appointment of the contact person(s)...) and the specific elements relating to the authenticity of the posting. Moreover, as emerged from the interview with an official of the Ministry of Labour and Social Policies, since 2018 the National Labour Inspectorate has planned specific monitoring of posted work as part of

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<sup>17</sup> Cf. the footnotes of the paragraph *Posting and cross-border labour mobility – Public mandate*.

the inspection activities aimed at counteracting undeclared and irregular work and fighting against tax evasion and tax avoidance. This monitoring activities are based on the data obtained from the database of mandatory communications of posting established following the Legislative Decree No. 136/2016.

Inspections find irregular practices relating to:

- the documentation necessary for posting (lack of PDs A1, irregularities regarding the mandatory communication, irregularities regarding the employment contract...);
- the payment of wages (partial payment of salary, non-payment for overtime, night work and holiday employment, non-correspondence with the hourly remuneration established in Italy, non-correspondence with the items of the payslip established in Italy, wage deductions for accommodation and travel...);
- working conditions (overtime beyond the limits permitted by law both daily and weekly, no breaks, no holidays...);
- housing conditions;
- occupational safety and health (lack of information and training with regard to OSH risks in the workplace, inadequate personal protective equipment, inadequate collective protection means...);
- the payment of social contributions, health insurance and taxes in the sending country.

According to the interviewees, the cases of non-authentic posting are mainly related to undeclared employment of posted workers (e.g. undeclared work after the dismissal in Italy), postings through letterbox companies, hiring of workers who usually reside and work in Italy, temporary agency work without the mandatory authorisations in the sending country.

If irregularities are found during the inspections, the public authorities sanction sending and/or receiving companies with administrative penalties and/or prison sentences. Additionally, in case of non-authentic posting, public authorities activate the procedure for the cancellation / denial of PDs A1 and consider the posted worker to be an employee of the Italian company that used the provision of services, in order to recover the non-payment of social security contributions in the sending country.

#### 4.2.3 Enforcement through Transnational Cooperation

As emerged from the fieldwork, transnational cooperation occurs both through the Internal Market Information system and through direct contact between labour inspectors of the sending and receiving countries who have already collaborated in the past. An official of the Ministry of Labour and Social Policies also reported that in recent years there has been a strong effort to use the IMI platform more widely in the National Labour Inspectorate, extending access also to inspectors of the National Institute for Insurance Against Accidents at Work, the National Social Security Institute and the Carabinieri for the Protection of Labour.

Transnational cooperation takes place through the Internal Market Information (IMI) system mainly in the context of:

- controls relating to sending companies (e.g. request for missing documentation to the competent authorities of the sending country, verification of the administrative position of the sending company in order to verify the authenticity of the posting, control relating to the payment of tax, social security contributions and health insurance in the sending country...);

- the notification of an administrative or judicial order imposing a penalty;
- the recovery of sums due for administrative sanctions;
- the collaboration in judicial investigations concerning postings from Italy or to Italy.

Posting information exchanges by recipient Member State through the IMI system indicates that in 2020 Italy has sent 131 requests regarding: information (49); request to send documents (37); request to recover penalty/fine (20); notification of a decision (19); urgent requests (6)<sup>18</sup>. As reported by labour inspectors, in some cases the IMI system works with delay, making it difficult to obtain information especially in relation to investigations concerning temporary contracts where it is essential to collect information on sending companies and posted employees as quickly as possible. For this reason, if previous transnational cooperation contacts already exist, in some cases the necessary information is requested directly from the competent authorities of the sending country.

#### 4.2.4 Enforcement Agencies Challenges

The research has shown that one of the difficulties encountered by labour inspectors is related to language barriers that affect both controls on sending companies and controls on posted workers (e.g. the contact person does not speak Italian/the labour inspector does not speak English). In particular, as regards interviews for investigations with workers, labour inspectors reported that, when the interaction is very difficult, they sometimes ask for the assistance from other institutions that can provide interpreting services of language mediators. Other challenges may arise from the delay with which posted workers report non-compliance with the legislation concerning remuneration and working conditions, which can prevent the necessary investigations, especially if the sending company has already ended the service provision contract.

As for transnational cooperation, labour inspectors reported that the competent authorities of some countries delay in answering questions or provide unclear answers (e.g. on the correspondence between the salary items of the payroll in the sending country and in the receiving country). Finally, both trade unionists and labour inspectors indicated the need to increase the staff of labour inspectorates and provide for a greater number of controls.

### 4.3 Employer practices and challenges

#### 4.3.1 Employer practices

As emerged from the fieldwork, sending employers can access information and assistance regarding legal requirements and procedures through the website in Italian and English prepared by the Ministry of Labour (<http://distaccoue.lavoro.gov.it/en-gb/Thematic-Areas>; <http://distaccoue.lavoro.gov.it/it-it/Aree-Tematiche>). Through this website employers can access information and instructions regarding their duties when sending posted workers to Italy, including:

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<sup>18</sup> Cf. [https://ec.europa.eu/internal\\_market/imi-net/statistics/2020/10/posting-of-workers/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/statistics/2020/10/posting-of-workers/index_en.htm)



- the communication of the prior posting statement through the form UNI\_DISTACCO\_UE, which must be completed through the website <https://www.cliclavoro.gov.it/><sup>19</sup> within midnight of the day before the posted worker starts to provide the service<sup>20</sup>;
- the documents translated into Italian to be preserved in case of inspections up to two years from the end of the posting period, which include: the employment contract, salary statements, information on daily working time, documents reporting the effective payment of salary, portable document A1, documents on the public registration of the employment relationship, and the certificate relating to applicable safety legislation;
- the appointment of a reference person with domicile in Italy in charge of sending and receiving mandatory documents and statements;
- the appointment of a legal representative in charge of connecting social partners with the sending company in the event of a collective negotiation.

The website <http://distaccoue.lavoro.gov.it> also indicates the legislation to be applied as regards working conditions, occupational safety and health, and the conditions of accommodation for posted employees in Italy, and offers information on the remuneration, which must be based on national collective bargaining agreements negotiated by the most representative trade unions and employers' organisations. The website includes a section with the sectoral minimum wage for the three main sectors of employment of posted workers (construction industry, engineering and metalworking sector, transport) and provides the link of the website of the National Council of Economy and Labour, where posting companies can access to the archive of the national collective bargaining agreements currently in force.

Labour inspectors, trade unionists and employers' representatives reported that sending companies can ask for information on the existing regulation and clarification regarding the posting procedures and their duties in Italy to the provincial labour inspectorates, to employers' organisations and to employment consultants or accountants specialised in posting legislation. Sending companies can also ask assistance from the receiving company, in particular with regard to the documentation that directly involves it.

Regarding employers' practices, the fieldwork has revealed a situation in which there are both companies that apply the existing regulation, and companies that seek to circumvent the rules on working conditions and remuneration, to gain an unfair competitive advantage. As reported by a representative of the Ministry of Labour, in several cases the incoming posting companies adopt national collective bargaining agreements that do not correspond to the parameters established by the most representative collective agreements in order to lower wages and introduce worse working conditions.

In many cases there is a problem of the correspondence between the salary items of the payroll in the sending country and in the receiving country. As highlighted by various trade unionists and labour inspectors, these differences are used by companies to lower the labour costs by paying a part of the

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<sup>19</sup> This website contains an English section of FAQs regarding the procedure for completing the form UNI\_DISTACCO\_UE (<https://www.cliclavoro.gov.it/Aziende/FAQ/Pagine/Posting-of-workers.aspx>).

<sup>20</sup> The website is managed by the Ministry of Labour and the data on postings are made available to the National Labour Inspectorate (INL – Ispettorato nazionale del lavoro), the National Social Insurance Agency (INPS - Istituto nazionale della previdenza sociale) and the National Institute for Insurance Against Industrial Injuries (INAIL - Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro).

salary through reimbursements for expenses or travel allowances, thus avoiding paying the correct sum of social contributions and taxes.

Moreover, in the Italian construction sector a part of the salary and certain services related to training and health and safety at work are provided through the construction fund. Italy signed bilateral agreements for the mutual recognition of the registration to the construction funds with Austria, France and Germany. However, the research has shown that in many cases posting companies based in countries without bilateral agreements do not register with the construction fund in the province where they are sending their workers, and therefore reduce part of the salary of workers and compete unfairly with other companies.

#### 4.3.2 Employer challenges in applying posting rules

As emerged from interviews with employers' organisations and a representative of the Ministry of Labour, sending companies may find it difficult to access information regarding the procedures to be completed before the posting, in particular when they contact the provincial offices of the labour inspectorates for clarification, since not all the staff speak English and, in some cases, public officers have not received a specific training regarding the posting of workers.

As regards payment and taxation, one of the main difficulties encountered by foreign companies sending posted workers to Italy concerns the applicable remuneration under the Italian regulation<sup>21</sup> because it is defined on the basis of national collective bargaining agreements. As reported by various respondents, in Italy there are more than 800 national collective bargaining agreements: companies should adopt the wages and working conditions defined by the collective agreements signed by the most representative employers' organisations and trade unions. They can also adopt other collective agreements within the sector of employment of posted worker sent to Italy, however the gross remuneration must be equal to or higher than the gross remuneration established by the most representative collective agreements.

With regard to occupational safety and health, respondents reported that one of the main difficulties that posting companies can encounter is the adaptation of their work organisation to the standards required in different work contexts, which can be made difficult both for organisational problems (fragmentation of work) and linguistic barriers, and which can negatively affect occupational safety both for the posting company's employees and for all workers employed in a specific workplace. Other issues may occur in the event of an accident at work, as companies and workers may encounter difficulties due to the fact that they must contact various institutions that are often organised differently from the sending country.

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<sup>21</sup> The EU Directive 2018/957 has been implemented with the Legislative Decree No. 122/2020 approved on 15 September 2020.

## 4.4 Worker Protection

### 4.4.1 Mechanisms for worker protection: institutional, social partners

The interviewees indicated as the main source for information on posted workers' protection the website in Italian and English prepared by the Ministry of Labour (<http://distaccoue.lavoro.gov.it/en-gb/Thematic-Areas>; <http://distaccoue.lavoro.gov.it/it-it/Aree-Tematiche>). Through this website posted workers can access information:

- on their duties and rights when sent to Italy (documents required as posted worker, working conditions, occupational safety and health, conditions of workers' accommodation...);
- on national collective bargaining agreements negotiated by the most representative trade unions and employers' organisations, including a section with the sectoral minimum wage for the three main sectors of employment of posted workers (construction industry, engineering and metalworking sector, transport);
- on the contacts of the provincial offices of labour inspectorates, where they can ask information on their rights and report violations of the existing regulation<sup>22</sup>.

Additionally, posted workers employed in Italy can ask information on their rights and report violations of the existing regulation to labour inspectors during workplace inspections or during appointments at the provincial offices of labour inspectorates. Labour inspectors can initiate investigations on working conditions of posted workers starting from the reports or complaints of the workers themselves, or from the reports of different subjects (e.g. workers employed by other companies, other employers, public authorities who are investigating other issues, like the finance police...). If necessary, information about employers is requested from the labour inspectorates in the sending country via the IMI system. When legal obligations are not respected, the labour inspectorate will notify a report for the regularisation of non-compliance and the employer must provide proof of the regularisation within 45 days of notification of the report.

Regarding the role of trade unions, the research has shown that they offer assistance and protection to posted workers in various ways:

- by providing general information on working conditions in Italy through trade unions' delegates in the workplace;
- by providing general information on working condition through leaflets in various languages;
- by providing information on posting regulation through provincial or regional union officers who have specific training on these issues;
- by providing legal assistance in case of conciliation with employers or in case of labour disputes. In addition, Italian trade unions cooperate with trade unions of the sending countries in order to collect information on employers, violations regarding the payment of social contributions...

Finally, trade union officers reported that posted workers employed in the construction industry can access the website <https://www.constructionworkers.eu><sup>23</sup>, which offers information in 30 different languages regarding: working conditions in the receiving countries; workers' rights with regard to trade

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<sup>22</sup> The link in the English website addresses to the website of the National Labour Inspectorate, which provides information in Italian.

<sup>23</sup> The website is managed by the European Federation of Building and Woodworkers and is funded by the European Commission (DG employment).

union's affiliation in the receiving country; contact details of trade unionists with expertise on the posting of workers. In case of labour rights' violations, incoming posted workers can ask the assistance of the legal offices of Italian trade unions, both during conciliations and judicial processes. In case of voluntary conciliation between the employer and the employee, the union legal office negotiates a compensation for the posted worker and provides to file the report of the conciliation at the provincial headquarters of the Territorial Labour Inspectorate (Direzione Territoriale del Lavoro). If the representatives of the employer and employee do not reach a conciliation, or the rights violated cannot be subject to conciliation<sup>24</sup>, the union legal office provides assistance both in the context of civil and criminal trials.

#### 4.4.2 Challenges to worker protection: access to information, legal support and trade union representation

The research has shown that labour inspectors and trade unionists find it very difficult to receive complaints from posted workers because they often wait for the situation to resolve, before contacting public authorities or trade unions and asking for assistance. According to a trade unionist of the construction sector, this delay in reporting violations, which often makes it more difficult to collect evidence against employers, is due to the fact that posted workers are not adequately informed about their rights, and to the fact that they are in a position of blackmail, as they fear losing their jobs if they start a job dispute.

The access to information and legal support is also influenced by language barriers. As emerged from the interviews, trade unions usually overcome this obstacle through union officials of immigrant origin, who speak the same languages used by posted workers and who received specific training relating to the posting of workers. In the case of public authorities, labour inspectors reported that they often try to interact with posted workers using the English language, however, the internal staff of the labour inspectorates is mainly of Italian origin and it is very rare that they are able to speak the same languages of posted workers. In some cases, labour inspectors reported that they sometimes ask for the support of interpreting services provided by other institutions, such as municipalities, which use language mediators to facilitate access to social services or education for the immigrant population. In the case of the labour inspectorate of the province of Venice, this service is provided by the unity against human trafficking of the social services (Social Protection Service and Anti-Violence Centre).

Language barriers also affect occupational safety and health of posted workers, increasing the risk of accidents due to poor or lack of understanding of the rules and procedures to be followed, especially if provided only in Italian.

With regard to social security contributions, a trade unionist of the construction industry reported that in case of incoming posted workers from Eastern European countries, Italy provides better social security services and provisions, and this generates unequal treatment with respect to workers hired directly by Italian companies. Specific problems regarding health protection may arise in the event that posting companies that are sending workers to Italy have not paid social security contributions in the

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<sup>24</sup> Conciliations' procedures can not be activated in case of violations of criminal law (e.g. working conditions based on severe labour exploitation or forced labour) or to negotiate the waiver by the employee of her/his future rights.

sending country. In this case, posted workers receive medical treatments in the emergency room at the Local health units.

Other challenges to the protection of the rights of posted workers are related to transnational cooperation of public authorities. With regard to investigations, some labour inspectors reported that they encounter difficulties in receiving information from the labour inspectorates of some sending countries, even when requests are made through the IMI system. Additional difficulties are related to postings through letter box companies, which make it complicated to recover unpaid salaries and social contributions.

In addition, in recent months, access to information and legal support has also been negatively affected by the Covid-19 pandemic, because labour inspectorates have been obliged to schedule appointments with posted workers, while previously, especially in the preliminary stages, meetings took place in a more direct and informal way.

## 5 Synthesis and Conclusions

The research findings highlight that in Italy the implementation and enforcement of national rules on the posting of workers pose many challenges in the case of incoming postings. These challenges can affect various fields, such as posting and cross-border labour mobility, temporary work agencies, social security, health insurance and coverage, company law, and mainly derive from irregular practices concerning the rights and obligations of posted workers, the rights and obligations of companies making use of posting and the mandate of the public authorities.

The main challenges encountered by companies posting to Italy concern the application of correct wage conditions, as the applicable remuneration under the Italian regulation is defined on the basis of national collective bargaining agreements at sectorial level, which number more than 800 and include agreements signed between non-representative trade unions and employers' organisations. Additionally, sending employers may encounter difficulties when the items of the pay slip in the sending country and in Italy do not correspond and in the case of the construction sector, where a part of the direct and indirect salary is paid through the construction fund. Further difficulties may arise in the area of health and safety in the workplace, due to language barriers and the need to adapt work organisation to different work contexts.

The main challenges for posted workers are related to the fact that they may be forced to accept irregular or exploitative conditions and tend to report them to competent authorities or trade unions when it is late, due to language barriers and their weak contractual position vis-à-vis their employers. Language barriers also affect occupational safety and health of posted workers, increasing the risk of accidents due to poor or lack of understanding of the rules and procedures to be followed, especially if provided only in Italian.

Regarding the enforcement of national regulation on incoming postings, public authorities face challenges related to the delay in planning specific monitoring and inspection activities on posting, which have been introduced since 2018. Additionally, they have to face challenges derived from the overlap of various types of administrative and criminal offenses not necessarily linked to posting and the lack of collaboration of the competent authorities of some sending countries in the context of transnational cooperation.

The research findings indicate that the enforcement of posting regulation in Italy leaves ample room for social dumping practices, due also to the lack of knowledge of this phenomenon, especially in the territories that have been less affected by incoming postings, and the scarcity of means of labour inspectors, linked to the budget cuts that this area has undergone and to a late rationalisation of access to data on posting companies and posted workers (cf. also Cillo, 2019). The effects of this context are paid for above all by incoming posted workers, who are forced to undergo exploitative working conditions when they are providing their services and to receive worse social security services and provisions compared to Italy, especially when they are employed by sending companies from Eastern European countries. Finally, it should be emphasised that the administrative and criminal irregularities noticed by public authorities and trade unions during incoming postings are often intertwined with irregularities involving also Italian receiving companies that concern other areas of labour legislation and are part of a wider use of undeclared and underdeclared work, which contributes to spreading precariousness and worsening working conditions for all workers.

## 6 Policy Recommendations

The policy recommendations on how the gaps between legislation and practice and the challenges in enforcing posting and other related regulations could be addressed are grouped according to the governance level and stakeholder level:

### ***Governance level/national level***

*Improve access to information:* the POW-BRIDGE research showed that one of the major difficulties encountered by posted workers and posting employers in accessing information on their rights and duties is linked to language barriers and to the fact that the national website on the posting of workers provides information only in Italian and English. Therefore, it is recommended to introduce informative materials in all the languages of the sending countries and to make more use of collaborations with public bodies that can provide interpreting services during inspections.

*Extend knowledge of the posting of workers' phenomenon:* the POW-BRIDGE research showed that the Ministry of Labour and Social Policies has improved access to knowledge relating to the phenomenon of posting of workers, introducing specific guidelines for the investigation of it. It is recommended to consolidate this practice and to provide for the establishment at the provincial level of specialised task forces also in the areas where this phenomenon seems to be less present.

*Strengthen inspection activities:* the POW-BRIDGE research showed that labour inspections on the posting of workers' phenomenon are conditioned by the scarcity of means due to the budget cuts that this area has undergone. It is recommended to increase the public funds allocated to labour inspectorates to improve controls not only in the area of the posting of workers, but in all areas that concern violations of workers' rights.

### ***Governance level/EU level***

*Improve transnational cooperation:* the POW-BRIDGE research showed that in some cases the investigations on violations of posting regulation are conditioned by the delays with which the competent authorities of the sending states provide the requested information. It is recommended to improve cooperation between Member States, possibly establishing permanent transnational task forces involving the competent authorities of the major sending and receiving countries.

### ***Stakeholders level/Employers' organisations***

*Improve access to information:* the POW-BRIDGE research showed that in some cases, employers from sending countries have difficulty in finding information relating to the regulation on working conditions applicable in Italy, in particular as regards remuneration. Italian employers' organisations are recommended to make guidelines available in the main languages of the sending countries.

### ***Stakeholders level/Trade unions***

*Improve access to information:* the POW-BRIDGE research showed that posted workers have often difficulty in finding information relating to the regulation on working conditions applicable in Italy. Italian trade unions are recommended to make guidelines available in the languages of the all the Member States, as it is already the case with the construction sector. It is also recommended to

strengthen the practice of employing trade union officers specialised on posting issues and able to speak the main languages of the sending countries.



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