



Italian authorities' challenges in the monitoring of the posting of workers*

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Introduction

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Italy is playing a double role in the posting of workers, as it is one of the countries that annually receives between 50,000 and 100,000 postings and has recently become one of the main sending countries. This double role of Italy is closely linked to the transformations induced by the economic crisis of 2008, which made the Italian market less attractive for foreign investments and pushed Italian companies towards a process of increasing internationalisation, which also included a greater use of posting workers as a means of providing services within the European Union (EU) internal market.

Keywords: posted work, Italy, public authorities' mandate, posting regulation enforcement

Even if Italy is not one of the main receiving countries, the spread of the posting of workers, especially in some sectors and in some regions, has posed numerous challenges to the public authorities, particularly in the monitoring and control activities and the protection of posted workers. This policy brief focuses on the main difficulties encountered by the Italian public authorities at the workplace/sectoral level, the national level, and the transnational level using the information and data collected in the frame of the POW-BRIDGE project (2020-2021), which aimed at identifying the gap between legislation and practice in the posting of workers. The brief is based on insights gathered through 10 interviews conducted with Italian public authorities and social partners between June and October 2020.

After presenting the main trends related to labour migration and the posting of workers in Italy, this policy brief identifies the challenges faced by Italian public authorities when dealing with the posting of workers and provides recommendations to improve the effectiveness of monitoring activities and the support provided to posted workers.

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Labour migration and postings: the Italian case

According to data on portable documents A1 forms (PDs A1), Italy is among the countries receiving between 50,000 and 100,000 posted workers yearly (Table 1). 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 most important countries of origin of incoming posted workers are the neighbouring countries, such as Germany, France and Austria, and the principal sending countries at the EU level, such as Romania and Spain.

One of the factors that have influenced the number of incoming postings to Italy, contributing to keeping it low compared to the old Member States of Central and Northern Europe, is the large presence of immigrant workers. Indeed, over the last few decades, migratory phenomena towards Italy have become increasingly relevant for their economic and social impact and their importance in the context of the public debate. One of the main areas of origin of the migrant population is Eastern Europe, particularly the new Member States of the European Union (such as Romania) and candidate countries of the Western Balkans (such as Albania). The restrictive migration policies adopted after the 2008 economic crisis and the uprisings in North African countries of 2011 have reduced labour immigration from Third Countries and, at the same time, have pushed new immigrants to regularly enter Italy mainly through family reunification, asylum-seeking and entries for students, seasonal workers, and highly skilled workers (Centro Studi e Ricerche 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 60,360,000 inhabitants (Centro Studi e Ricerche IDOS, 2019). Other factors that contribute to limiting the phenomenon of incoming postings are the impact of the 2008 economic crisis on the Italian economy, which made the Italian market less attractive for foreign investments, and the existence of highly flexible contracts and the structural presence of undeclared work, which allow Italian companies to recruit workforce according to the needs of the production cycle without resorting to the transnational labour market of postings (Cillo, Forthcoming).

As for 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 permanently or temporarily. This phenomenon is 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 immigrants who choose to emigrate from Italy to other EU countries (Gjergji, 2015; Idos, 2019).

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

	2016	2017	2018
Total number of emigrants ^a	157,065	155,110	156,960
Total number of immigrants ^a	300,823	343,440	332,324
Total EU migrants received ^a	62,693 (+37,894 IT)	61,096 (+42,369 IT)	57,369 (+46,824 IT)
Total TCN migrants received ^a	200,217	239,953	228,117
Share of immigrants of working age (20-64 years old) in % ^a	74.7%	73.6%	72.5%
Total number of outgoing posted workers (PDs A1)	114,515 ^b	152,528 ^c	169,774 ^d
Total number of incoming posted workers (PDs A1)	61,321 ^b	64,669 ^c	73,927 ^d
Labour market share of incoming posted workers	0.27% ^{ab}	0.28% ^{ac}	0.32% ^{ad}
Main countries of destination for posted workers	Switzerland, France, Germany, Belgium, Austria ^b	Switzerland, France, Germany, Austria, Belgium ^c	France, Switzerland, Germany, Spain, Austria ^d
Main countries of origin of posted workers received	Germany, France, Spain, Slovenia, Romania ^b	Germany, France, Spain, Slovenia, Romania ^c	Germany, Spain, France, Romania, Austria ^d

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

Temporary forms of labour migration from Italy also include posting, which has increased almost sixfold 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 highlight that construction is one of the sectors in which Italy is specialising as sending country. This phenomenon is linked to the effects of the 2008 economic crisis on the internal market, which have pushed the businesses of the Italian construction sector to increasingly turn to export and invest in the EU construction market (Cillo, 2021; Federcostruzioni, 2019).



As emerged from the Pow-Bridge project, even if Italy is not one of the principal destinations for posted workers, this does not mean that it is exempt from the trend established at the European level of using the posting of workers as a tool to face a downward competition between companies and as a lever to reduce labour costs and obtain greater flexibility in the work organisation. Similarly to what happened in Central and Northern Europe, this trend has mainly manifested itself in the construction and transport sectors and has posed numerous challenges to the public authorities in charge of monitoring the application of existing legislation, particularly for the protection of conditions of posted workers.

The Italian public authorities' mandate and its challenges

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/EU¹ 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.

Public authorities are in charge of identifying situations of possible fraud, abuse and avoidance in cases of posting

According to 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 elements relating to the sending companies and elements concerning the working conditions of posted workers. These controls can be carried out unilaterally or in collaboration with the competent authorities of the sending countries. Public authorities can sanction sending and receiving companies with an administrative penalty if the regulation relating to the sending company and working conditions of posted workers is not applied. Moreover, according to 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.

The main challenges faced by Italian public authorities during the implementation of the regulation on the posting of workers concern the workplace/sectoral level, the national level, and the transnational level.

1 The elements to be monitored are those established by the Directive 2014/67/EU.

- *Challenges at workplace/sectoral level*

One of the main difficulties encountered by labour inspectors is related to language barriers that affect monitoring activities both on sending companies and posted workers (e.g. the contact person does not speak Italian/the labour inspector does not speak English)². 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, however, a continuous interpreting service is not guaranteed.

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 and makes it more difficult to collect evidence on illegal or fraudulent employers' practices, especially if the sending company has already concluded the service provision contract. This delay in reporting violations is because posted workers are not adequately informed about their rights and that they are in a position of dependence, as they fear losing their jobs if they start a job dispute.

Additionally, public authorities may face difficulties to control the different regulation concerning working conditions applicable in the various countries. For instance, according to the existing regulation and collective agreements applied in the construction sector, a part of the salary and certain services related to training and health and safety at work are provided through the paritarian social fund³. In the case of postings from Austria, France and Germany, Italy has signed bilateral agreements for the mutual recognition of the registration to the construction funds, thus simplifying the control activities of public authorities. However, 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 monitoring is made more complicated. Similar challenges can arise when there is not correspondence between the salary items of the payroll in the sending country and in the receiving country and companies use it to lower the labour costs or to avoid paying the correct sum of social contributions and taxes in the sending country.

2 This is also confirmed by previous research on the impact of language barriers in enforcing OSH standards and labour rights in general for posted workers (Zólyomi and Danaj, 2019).

3 The national collective bargaining agreement of the Italian construction sector has established a paritarian social fund ("Cassa Edile") managed by the social partners, which fulfil a complementary role to the existing governmental structures in the areas of vocational training, health and safety, social allowances in case of death or permanent disability due to an extra-professional accident, social allowances for long-lasting irreversible illness and so on. Italy has signed bilateral agreements for the mutual recognition of the registration to the paritarian social funds of the construction sector with Austria, France, and Germany.



The Covid-19 pandemic has negatively affected the possibility for labour inspectorates to provide information and legal support to posted workers

Finally, in recent months, the Covid-19 pandemic has negatively affected the possibility for labour inspectorates to provide information and legal support to posted workers. Indeed, the safety measures adopted against contagion have reduced the chances of talking with workers only during inspections in the workplace or during formal appointments organised in the offices of the labour inspectorates, while, in the pre-pandemic phase, meetings took place more directly and informally, especially in the preliminary steps.

- *Challenges at national level*

The Pow-Bridge research highlighted that the enforcement of the existing regulation on the posting of workers is conditioned by the limited resources allocated to the monitoring process carried out by labour inspectorates. Indeed, many cases of fraudulent practices are not investigated because there are not enough staff to carry out systematic inspections and because the temporary nature of the posting requires prompt intervention by public authorities. Additionally, “staff shortage would slow down the investigation of complex cases, as the whole process of investigation is then slower, considering the broad agenda that law enforcement bodies must handle. Staff shortages affect waiting times for controls or obtaining answers from public authorities” (Danaj et al., 2021, p. 33).

Understaffing also implies that only at the national level there is a public body composed of members with different backgrounds (e.g. financial police, labour inspectorates) specialized in the enforcement of the posting regulation, while public authorities at the regional/provincial level have to deal with these issues as part of their ordinary monitoring activities. Furthermore, only recently, after the transposition of the Directive 2014/67/EU, a specific training campaign relating to the posting of workers has been launched, which implies that before there were trained personnel only in the provinces most affected by the incoming postings in Northern and Central Italy. Additionally, this delay has also affected the quality of transnational cooperation in the case of outgoing postings registered in provinces not usually affected by incoming postings.

The system used to determine working conditions of posted workers contributes to making more difficult the monitoring activities

The enforcement activities of public authorities are also influenced by the difficulties experienced by posted workers and posting companies in accessing the national website on the posting of workers, as it provides information only in Italian and English. Furthermore, the system used to determine working conditions and the remuneration of posted workers contributes to aggravating and making more difficult the monitoring activities of the public authorities, as these conditions are based on the national collective bargaining agreements signed at the sectoral level, which in the case of Italy are more than 800. Even if the national website offers information on the national collective



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, engineering and metalworking, transport), in many cases sending companies adopt the parameters of non-representative agreements to lower wages and have more flexible working conditions.

- *Challenges at transnational level*

At the transnational level, public authorities can face challenges in monitoring the enforcement of the posting regulation and ensuring the protection of the rights of posted workers that are related to transnational cooperation. Concerning 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. These difficulties become exacerbated when they are related to postings through letterbox companies, which need prompt intervention and cross-border cooperation, as in this context it is more complicated to recover unpaid salaries and social contributions. 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.

**Joint investigations
involving public
authorities in the
sending and receiving
countries are not always
possible**

Transnational cooperation can also be influenced by the fact that public authorities of different member states may have a non-coinciding mandate, not only at the transnational level but also among the various public authorities in the individual Member States. In this case, a joint investigation involving different public authorities in the sending and receiving countries would be necessary, however, this is not always possible due to many reasons, such as the lack of resources, the lack of trained staff, etc. Indeed, "transnational joint inspections are relatively rare, but do occur; however, they are mostly ad hoc, or project-based and therefore lack sustainability" (Danaj et al., 2021, p. 29).

Policy recommendations

The Pow-Bridge research highlights that the enforcement of the regulation on the posting of workers has opened many challenges for Italian public authorities at the workplace/sectoral level, the national level, and the transnational level.

At the workplace level, the challenges arising from language barriers can be addressed by providing a permanent interpreting service available to public

authorities upon request and introducing a system of recruiting new staff in which knowledge of foreign languages is an essential prerequisite. Regarding the difficulties that posted workers may encounter in accessing the assistance services provided by labour inspectorates, it is recommended to organise a permanent awareness-raising campaign addressed to posted workers and to introduce a protection system for workers that report violations both in the sending and receiving countries.

At the national level, the most significant measure to be adopted is to invest more in inspection services, by expanding the staff, increasing the means available for monitoring and controls, and organising specific training courses on the posting of workers even in the provinces that have not yet experienced the phenomenon. It is also recommended to improve the national website on posting by providing the required information for employers and workers in all EU languages. Regarding fraudulent practices related to working conditions and remuneration to be applied for incoming postings, it is necessary to establish clearly and definitively which national collective bargaining agreements must be applied in each sector.

At the transnational level, it is recommended to the European Commission and all Member States to expand the use of the IMI system and to introduce measures requiring all countries to guarantee responses quickly. It is also recommended to strengthen the role of the European Labour Authority in organising concerted and joint inspections by ensuring that it has the right to enforce labour and social security legislation at the cross-border level. Regarding the role of Italy, it is recommended to the Ministry of Labour and Social Policies to extend cross-border collaboration by setting up specific teams of public authorities in charge of permanently following cases related to transnational mobility and organising joint inspections, if necessary.

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