



## COUNTRY BRIEFING PAPER – ITALY

### POSTING OF WORKERS AND ITALY

According to data from the administrative declaration introduced by the Enforcement Directive 2014/67/EU<sup>1</sup>, Italy hosted 18,967 posted workers in 2017, 37% thereof from Romania.

Other countries follow with much lower figures. In particular, posting from extra-EU and extra EFTA countries covers an 11% share, Spain and UK account for 7% each, and Germany accounts for 5%.

All other countries remain below the 5% share, accounting for less than 1,000 workers.

As a sending country, based on administrative declarations from other EU countries, Italy sent 31,143 workers abroad in 2017. The largest flows are observed towards France, accounting for 60% of sent workers, followed from distance by Belgium (17%) and Austria (13%). Yet, these are only partial figures as many countries were unable to provide information.

Interestingly, when looking at data by nationality, the share of Romanian and extra EU workers posted to Italy reaches 39% and 13% respectively, and a number of 979 Italians are recorded (5%).

The most exposed sector seems to be Manufacturing (31%), followed by Transport and Storage (22%) (Construction comes only third with a 14% share). Other affected sectors are Accommodation and food service activities and Administrative and support service activities (7% each).

Whereas administrative declarations should provide a more comprehensive and accurate picture on posting than A1 data do, being compulsory, they may still underestimate the number of postings, having been only recently introduced.

In comparison, 64,669 A1 forms were released in 2017 for workers posted to Italy according to Article 12 of the Regulation (EC) 883/2004 (95% thereof concerning employees)<sup>2</sup>. The number increased to 73,927 in 2018 (employees accounting for a 94% share)<sup>3</sup>.

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<sup>1</sup> De Wispelaere, F. and Pacolet, J. (2018), *Posting of workers. Collection of data from national declaration tools - Reference year 2017*, European Commission, Brussels.

<sup>2</sup> De Wispelaere, F. and Pacolet, J. (2018), *Posting of workers Report on A1 Portable Documents issued in 2017*, European Commission, Brussels. For a comparison between the two sources and the differences concerning posting under the Posted Workers Directive and the social security domain (Regulation (EC) 883/2004), see also the Post-Lab Guidelines, available at: [http://www.fondazionebrodolini.it/sites/default/files/guidelines\\_en.pdf](http://www.fondazionebrodolini.it/sites/default/files/guidelines_en.pdf).

<sup>3</sup> De Wispelaere, F., De Smedt, L. and Pacolet, J. (2019), *Posting of workers Report on A1 Portable Documents issued in 2018*, European Commission, Brussels.

On the basis of A1 data for 2018, the main sending country is Germany (32%), followed by France (15%), Spain (14%), and Romania, albeit with only a 7% share.<sup>4</sup>

As a sending country, Italy issued 148,863 A1 forms in 2018 (addressing 85,376 individual workers), mainly to France (25%), Switzerland (24%), Germany (12%), and Spain (7%)<sup>5</sup>.

As far as sectors of employment of received posted workers are concerned, the comparison is limited by different sectoral aggregation. Yet, data available for 2017 suggest that the industry sector maintains the lion's share (53%, 22% when looking at construction alone), whereas, as to services, there are not outstanding differences with administrative data, except for accommodation and food service activities, which lag behind only at 1%<sup>6</sup>.

Poor information is available on the working conditions of posted workers. Annual reports by the National Labour Inspectorate provide figures concerning sanctioned cases of bogus posting of workers. In 2018<sup>7</sup>, the report highlighted cases of bogus posting in Northern Italy and in the manufacturing and construction sector. Qualitative evidence based on interviews with experts highlights the use of letterbox companies to save on social security contributions through posting, along with cases of non-compliance with the minimum rates of pay set by collective agreements<sup>8</sup>.

#### DEBATE ON POSTING OF WORKERS

The national legislation on posting of workers was reformed in 2016 with the implementation in Italy of the Enforcement Directive. As emerging from the parliamentary debate, and in particular, the debate in the Labour Committees of the Senate Chamber and of the Deputy Chamber, the topic was not particularly divisive<sup>9</sup>.

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<sup>4</sup> The shares of the main sending countries were not much different for 2017. Germany still represented the main sending country, albeit with a 26% share, followed by Spain (16%), France (14%), Slovenia (10%), and Romania (9%).

<sup>5</sup> In 2017, the main receiving countries were Switzerland (30%), France (24%), Germany (11%), Austria and Spain (7% each).

<sup>6</sup> Data are not available for 2018.

<sup>7</sup> Ispettorato Nazionale del Lavoro (2019), *Rapporto Annuale dell'attività di vigilanza in materia di lavoro e legislazione sociale. Anno 2018*, available at: [https://www.ispettorato.gov.it/it-it/in-evidenza/Documents/RAPPORTO%20ANNUALE%202018-\(testo\)%20signed.pdf](https://www.ispettorato.gov.it/it-it/in-evidenza/Documents/RAPPORTO%20ANNUALE%202018-(testo)%20signed.pdf).

<sup>8</sup> See: Sanz de Miguel, P., Ludicone, F., and Biletta, I. (2017), *Fraudulent contracting of work: Abusing the posting of workers (Belgium, Finland and Italy)*, Eurofound, available at: <https://www.eurofound.europa.eu/publications/information-sheet/fraudulent-contracting-of-work-abusing-the-posting-of-workers-belgium-finland-and-italy>.

<sup>9</sup> Minutes of the debate in the Committee of the Deputy Chamber are available at: <https://www.camera.it/leg17/682?atto=296&tipoAtto=Atto&leg=17&tab=3#inizio> . Minutes of the debate in the Committee of the Senate Chamber are available at: <http://www.senato.it/leg/17/BGT/Schede/ProcANL/ProcANLscheda35214.htm> .

Parties shared the commitment of the Directive to ensure proper application of the rules on posting. Debates in the Senate Labour Committee addressed the possibility to downsize administrative requirements for companies active in cross-border regions and in sectors featuring low risks of abuse, as well as the need for particular attention on sectors featuring high risks of social dumping, namely transport, logistics, and construction<sup>10</sup>.

The Labour Committee of the Deputy Chamber also suggested to set up an observatory composed by social partners, a proposal advanced by social partners themselves and eventually approved<sup>11</sup>.

At the same time, the Committees debated the reform of the Posting of Workers Directive 96/71/EC, which also met wide consensus. The Committees approved the resolutions proposed by the Democratic Party, which welcomed the reform while pointing out the need to monitor posting by temporary work agencies and some misalignments with domestic provisions on the application of collective agreements<sup>12</sup>. In particular, the Directive does not acknowledge the role of territorial or company level agreements, which actually have the same importance of the sectoral level in the Italian system and complement wage provisions themselves.

This is also the case of the construction sector, with territorial agreements adjusting contributions to sectoral funds and setting variable pay.

Among specific remarks, the resolutions suggested to reduce the threshold for the full application of the host country terms and conditions of employment (24 months, reduced to 12 in the version eventually approved).

Among (at the time) opposition parties, the Five Star Movement proposed a resolution which was not approved by the Senate Committee. The resolution proposed the full application of the host country labour law for postings lasting more than three months and wished for a wider engagement by EU institutions towards the setting of EU-wide provisions on minimum wages<sup>13</sup>.

The positions of social partners, as submitted to the Senate Committee<sup>14</sup>, basically welcomed the new provisions, while stressing possible improvements aimed at ensuring the principle of equal treatment.

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<sup>10</sup> See: [http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=976225&part=doc\\_dc-allegato\\_a:1](http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=976225&part=doc_dc-allegato_a:1).

<sup>11</sup> See: <http://documenti.camera.it/leg17/resoconti/commissioni/bollettini/html/2016/05/19/11/allegato.htm#data.20160519.com11.allegati.all00030>.

<sup>12</sup> The resolution of the Senate Labour Committee is available here: <http://www.senato.it/service/PDF/PDFServer/BGT/972553.pdf>. The resolution of the Deputy Chamber Labour Committee is available here: <https://www.camera.it/leg17/824?tipo=A&anno=2016&mese=05&giorno=12&view=filtered&commissione=11#>.

<sup>13</sup> See: [http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=972140&part=doc\\_dc-allegato\\_a:1](http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=17&id=972140&part=doc_dc-allegato_a:1).

<sup>14</sup> Observations submitted in the process of transposition of the Enforcement Directive are available here: <http://www.senato.it/leg/17/BGT/Schede/docnonleg/32335.htm>. Observations concerning the reform of the Posted Workers Directive are available at: [https://www.senato.it/Leg17/3679?procedura\\_commissione=191](https://www.senato.it/Leg17/3679?procedura_commissione=191).

The 24 month time lag for the full application of the host country labour law met rather transversal criticism<sup>15</sup>. Abuses of posting rules, also by temporary work agencies established in low-wage countries, were another common concern.

In this respect, organisations representing temporary work agencies stressed how the shift from the option to the obligation upon Member States to require equal treatment for temporary agency posted workers was a necessary step to ensure fair competition.

Finally, observations submitted by social partners often stressed the need to improve the accessibility and transparency of information for companies, as well as the cooperation between public authorities and between the former and social partners.

As stressed above, posting is mainly perceived by social actors as a possible trigger of unfair competition due to gaps in wages and social security contribution levels across the EU and difficulties in the enforcement of rules.

In this respect, the attention of political parties during parliamentary debates on the recent reforms at national and EU level was pretty much on risks due to the exceptions to the equal treatment principle and on fraudulent behaviours detected in some sectors.

Social partners also stressed how activities of cooperation both at domestic level and at cross-border level are key for the proper application of rules.

As concerns the domestic level, unions wish for the different enforcement bodies to share administrative declarations on posting, actually asking to also make them available to unions.

Employers' organisations also stressed the need to make information on rights and duties transparent and easy to access for companies and workers. In addition to the above, the largest organisation of construction companies, ANCE, remarked how the proper functioning of cross-border cooperation is particularly necessary for construction undertakings, which are required to register at the Construction Workers' Welfare Funds (Casse Edili) whenever not affiliated to similar bodies in the sending country.

In fact, although established as private bodies on the basis of collective bargaining provisions, affiliation to Casse Edili and the payment of the related contributions by construction undertakings are mandated by law as they guarantee a core part of the workers' wage (Christmas bonus, holiday pay, professional seniority pay, etc.).

The body coordinating their activities at national level, CNCE, has started a dialogue with the Ministry of Labour, which owns data on preliminary communication on workers posted to Italy, and with the National Labour Inspectorate, for initiating information sharing (see the box).

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<sup>15</sup> Among employers' organisations, Confindustria, representing mainly large and medium-sized enterprises, did not ask for a reduction of the period, deeming it able to foster competition, whereas RE.TE. Imprese Italia, covering small and medium enterprises, deemed the threshold too high and suggested to demand the setting thereof to EU-level sectoral social dialogue.

### Focus on administrative cooperation

Starting from 2008, CNCE has started cross-border information sharing activities on the basis of the bilateral agreements with similar funds active in Austria (Buak), France (UCF) and Germany (SOKA-BAU).

These agreements allow companies to maintain the affiliation with the sectoral fund of the country of origin during the period of posting. In turn, the fund informs the peer body in the host country on the regularity with due contributions, this way guaranteeing fair competition<sup>16</sup>. Through this system of information sharing, the sectoral funds can guarantee that sending companies are in compliance with the payment of minimum rates of pay, including contributions to sectoral funds. Therefore, data exchange between the Ministry of Labour, the National Labour Inspectorate and the CNCE is desirable to orient inspection activities and to counteract social dumping and unfair competition.

In addition, CNCE is already part of a digital platform releasing certificates necessary to access tenders, receive payments by public authorities, and authorise private works in reason of compliance with due payments to INPS, the National Institute for Insurance against Accidents at Work (INAIL), and Casse Edili<sup>17</sup>.

Social partners and public institutions have also taken part in a number of projects meant to promote cross-border cooperation in the field of posting.

Among others, it is worthy to recall the Empower project, by which the Italian Ministry of Labour and the Romanian Ministry of Labour created a Vademecum on posting for inspectors<sup>18</sup>.

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<sup>16</sup> Indeed, the agreements were stipulated after a careful analysis of the labour cost and its components in each of the signatory countries.

<sup>17</sup> The so-called DURC online. See also the ‘DURC online’ case study in the Post-Lab Guidelines, available at: [http://www.fondazionebrodolini.it/sites/default/files/guidelines\\_en.pdf](http://www.fondazionebrodolini.it/sites/default/files/guidelines_en.pdf).

<sup>18</sup> The document is available in English at this link: [https://www.tagliacarne.it/files/141031/vademecum\\_empower\\_eng.pdf](https://www.tagliacarne.it/files/141031/vademecum_empower_eng.pdf).