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POSTING OF WORKERS

PRACTICAL GUIDE

for Employees



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About the Project

The international project STEP UP – “Stepping up the European cooperation and communication among Public & Private organizations for the PROTECTION of posted worker's rights” is focused on the phenomenon of transnational posting of workers and aims to verify the application of recent European regulations in the field of labour migration, entrepreneurial behaviour and the concrete role played by inspection bodies.

STEP Up PROTECTION is managed by universities in 5 European countries and takes place between 2020 and 2022.

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1. Introduction

Posting of workers, which has been widely used on the labour market of the European Union in the recent decades, is a unique legal and social phenomenon of the Union. As it is known, the existence of the European Union and the functioning of the single market is ensured by the fundamental principles: freedom of establishment, freedom to provide services and free movement.

The freedom to provide services includes the right of undertakings to provide services in the territory of another Member State and to post their own workers temporarily to the territory of that Member State for that purpose.

The legal basis for the posting of workers in the European Union is Article 56 of the Treaty on the Functioning of the European Union, in accordance with which restrictions on the freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

Posting is a specific form of cross-border labour mobility necessary to ensure the freedom to provide services. Whereas companies can provide services not only in the Member State where they are established but also in other Member States, they must have an opportunity to send out their employees to another Member State to carry out the tasks required.

It should be noted, however, that the posting of workers has been and still is regarded as controversial primarily because it is difficult to find the right balance between the protection of workers, their employment guarantees and the competitive conditions of companies.

In line with its commitment to remove obstacles to the free cross-border movement of services and ensure equal conditions for business as well as the protection of employee rights, the European Union adopted a special directive for the posting of workers – the Posting of Workers Directive. The Directive established a set of “hard core” minimum terms of employment and working conditions (such as maximum work periods, minimum paid annual holidays, minimum rates of pay, health and safety at work, etc.) which must be respected in accordance with the host state principle. For the rest of the employment relationship, the labour law rules of the sending country continued to apply.

As new Member States have joined the European Union over time and the European Treaties have been revised, the labour mobility situation has changed considerably and the European Union has reformed the legal regulation of posting of workers in order to:

- create a level playing field for cross-border service provision with the least restrictions possible;
- protect the rights of posted workers by ensuring equal social rights in order to prevent unfair treatment and the creation of a low-cost workforce.

For this purpose, the following Directives have been adopted:

1. Directive 2014/67/EU – the **Enforcement Directive** which creates a common legal framework for identifying the real extent of posting and allows for a more uniform implementation, application and enforcement of common standards. The Directive also clarifies the definition of posting and defines the responsibilities incumbent on Member States to verify compliance with the Posting of Workers Directive, especially in sectors with a greater risk of malpractice, such as construction or road haulage. The Directive seeks to ensure better cooperation between the national authorities in charge of posting (such as labour inspectorates), by enforcing the obligation to respond to requests for assistance and setting time limits for responses to information requests. It also provides for the possibility to have the administrative penalties and fines imposed on service providers by one Member State enforced and recovered in another Member State.

2. Directive (EU) 2018/957 revising and amending the 1996 Posting of Workers Directive – the **Revised Posting of Workers Directive**. This Directive establishes that: (i) posted workers shall be subject to the rules on remuneration in the country they have been sent to (this could either be set by law or by certain collective agreements); (ii) employers shall have to pay for travel, food and accommodation; (iii) defines the concept of long-term posting – at the expiry of 12 months, it shall be considered that an employee has been posted for a long time (with a possible extension of this time period for six months after the service provider submits a reasoned notification) and he/she shall be subject to almost all the labour rules of the host country; (iv) temporary employment agencies shall guarantee posted workers the same conditions that apply to other temporary workers hired in the country they have been sent to; (v) enhanced cooperation to tackle fraud and violations in the area of posting.

Facts and figures

The issue of posted workers is relevant all over the European Union. Each Member State of the European Union is involved in the ensuring of rights and application of guarantees for posted workers. Although the share of posted workers represents only 0.4% of the EU's total workforce, the recent period suggests that these figures are likely to increase. For example, there was a major increase in the number of posted workers between 2010 and 2016 when the number of posted workers in the European Union has increased by as much as 69%.

The issue of posted workers is in particular relevant for certain business areas. Most of the posted workers work in the construction sector – 45%, in the manufacturing industry – 21.8%, in the services sector – 29.4%, in agriculture and fisheries – 1.5%.

It is also possible to single out individual EU Member States which either send out their workers to other states very often or receive a large proportion of posted workers. In the recent years, Germany, France and Belgium have been the host countries receiving most of the posted workers (50% of all the workers posted), while Poland, Germany and Slovenia have been the countries that send out most of the posted workers.

Information about the workers hosted and posted by each EU Member State and about the states that send out and host most of the posted workers is available on the website of the European Parliament: <https://www.europarl.europa.eu/news/en/headlines/society/20171012STO85930/posted-workers-the-facts-on-the-reform-infographic>

2. Posted worker – definition

“Posted worker” means a worker who, for a limited period, carries out his/her work in the territory of a Member State other than the State in which he/she normally works (Directive 96/71/EC, Article 2(1)).

Posting of employees includes the following cases:

Situation	Subcontracting	Transfer within a company	Temporary agency work
Description	An employee is posted to perform work for which a contract has been made between the posting company, i. e. the employer, and the contractor. The employee performs work on behalf of the posting company and under the direction of its management.	An employee is posted to work for a company located in another member state and belonging to the same group of companies.	An employee is posted to another state for use by another company. The employee’s own employer is a temporary employment agency.

Important!!!

Posting is always temporary. The undertaking can only post workers for a limited time, and an employment relationship must exist for the entire posting.

In order to assess whether a worker is actually employed in one state (for example, Romania) and carries out temporary work functions in another state (for example, Italy), the following criteria are considered:

- (1) the work is carried out in a foreign state for a ***limited period of time***;
- (2) after completion of the work or the provision of services for which the worker was posted, he/she ***returns for permanent work to Romania***;

(3) *the employer who posts the worker reimburses the expenses relating to the posting* (travel, accommodation, meals, and other costs).

Do you know that?

Workers who are temporarily sent to work in another Member State, but do not provide services there, are not posted workers. Such situations are called “business trips” and such workers are not covered by the Posting of Workers Directive. For example, a worker travels for business (when no service is provided), attends a conference, a business meeting, fair, training courses and etc.

3. European Union and national legal acts

- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (the IMI Regulation).
- Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
- Articles 12, 13 and 16 of the Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
- Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.
- Legislative Decree no. 136 of 17 July 2016.
- Decree of 6 August 2021 n. 170 of the Ministry of Labour and Social Policies

4. Working conditions in the host country

The working conditions set out in the Posting of Workers Directive to be ensured for posted workers in the host country:

(1) *Maximum work periods and minimum rest periods* – the employee working in a company of the host country shall be ensured the same work and rest periods as applicable in the host country.

In Italy - In compliance with the provisions of Legislative Decree no. 66/2003: normal working hours are usually 40 hours a week (up to a maximum of 48); the worker, every 24 hours, is entitled to 11 hours of continuous rest (unless the work is characterized by periods of work split during the day) and is entitled,

every 7 days, to a rest of at least 24 consecutive hours.

(2) **Minimum paid annual leave** – for the time period worked by a posted worker in a foreign company, he/she shall get at least the minimum paid annual leave guaranteed in that foreign country or a proportionate part of the paid annual leave for the time period worked.

In Italy - Without prejudice to the provisions of the applicable collective labour agreements, the paid annual leave must be used for at least two consecutive weeks, if requested by the worker, in the year in which such holidays accrue and the remaining two weeks within the following 18 months at the end of the year in which it matures. The aforementioned minimum period of four weeks cannot be replaced with the payment of holidays accrued and not taken, except in the event of termination of the employment relationship (Article 10 of Legislative Decree no. 66/2003). However, the employer has the right to decide the period of annual leave, according to the needs of the company and the interests of the worker (Article 2109 paragraph 2 of the Civil Code).

(3) **Remuneration**, including overtime rates (this requirement does not apply to supplementary occupational retirement pension schemes) – it should be noted that the initial Posting of Workers Directive required that the minimum remuneration shall be ensured. After the Revised Posting of Workers Directive comes into force, remuneration shall include all the constituent parts of remuneration mandatory and applicable to local employees under national laws or universally applicable collective agreements from the first working day of the posted worker in the host country, i.e. the principle of equal pay for equal work at the same workplace shall apply.

In Italy, there are no collective agreements with erga omnes effect that regulate the salaries applicable to the various working activities.

(i) The discipline of remuneration with regard to quantitative profiles, methods and calculation criteria is determined by collective bargaining. National collective bargaining, moreover, ensures a minimum level of remuneration for workers, while individual autonomy is referred to for an improvement in the remuneration standards already established collectively (so-called super-minimum system). The role of jurisprudence in the interpretation of art. 36 of the Constitution, on the subject of sufficiency and proportionality of remuneration is also very important. On the contrary, ordinary legislation is often limited to regulating the forms and methods of compliance. At present there are no legal minimum wages' regulation in Italy.

Important!!! The posted worker's employer must guarantee that the amount paid to the worker during posting is at least equivalent to the remuneration determined according to the rules the host Member State. The comparison between the amount actually paid to the worker and the amount payable according to these rules of the host Member State must be based on gross remuneration (i.e., pay before contributions, deductions or taxes) rather than on separate constituent parts of the remuneration.

Points to note! The host Member State does not have an obligation under Directive 2014/67/EU to indicate the actual remuneration to be paid. Member States must provide information on the terms

and conditions of employment, including the constituent elements of remuneration to be applied to the workers posted to their territory. However, it is employer's responsibility to establish in each individual case how much a posted worker must be paid based on this information.

(4) ***Health, safety and hygiene at work*** – posted workers shall be ensured the same safety and health conditions during their work in the host company as those ensured for permanent workers according to work conditions and other specifics.

In Italy - (i) issues relating to safety and health at work are governed, in particular, by Legislative Decree no. 81/2008.

(ii) Working conditions that are free from risks to health and safety must be guaranteed.

The workplace must comply with health and safety legislation. Workplaces must be organized in such a way that workers are protected from possible accidents and diseases. Workers' health, mental and physical conditions must be taken into account during the preventive organization of the workplace. Every risky workplace must be indicated, where required, also using the signs required by law. Only work equipment and devices that comply with the quality standards and requirements identified by the legislation on health and safety at work must be used in the workplace.

(iii) Workers must carry out the work assigned only after a specific training and information, with the main burden on the employer to provide it.

(iv) Posted workers must be informed about the present (or even potential) risks in the posting company and must be trained on how to work safely in that specific workplace, even if they have already been instructed and trained in the workplace where they usually carry out the activity.

(v) The right of Information also concerns the employees of the posted undertaking responsible for providing first aid, organizing rescue operations and evacuation in case of emergencies, natural disasters or fire service, etc.

5) ***Protective measures with regard to the terms and conditions of employment for pregnant women or women who have recently given birth, for children and young people*** – posted workers shall be ensured the same work safety and health conditions, the terms and conditions of an employment contract and related conditions (for example, additional breaks, shortened working time, longer paid leave, etc.) during their work in the host company as those applicable to permanent workers of these categories.

In Italy - (i) the legislative protection envisaged during pregnancy and puerperium, also with regard to the issue of health and safety in the workplace (art. 6 et seq), is provided for in legislative decree 26 March 2001 no. 151 in conjunction with legislative decree no. 81/2008.

(ii) The Italian Constitution recognizes specific protection with articles 34 and 37 for work performed by minors (equal pay with adult workers for the same performance). The specific discipline on the matter is contained in law 17 October 1967 n. 977 which imposes, with exceptions for artistic, cultural, sporting, advertising and entertainment activities, the ban on night work (from 10pm to 6am or from 11pm to 7am) and other special provisions regarding the maximum limit for working hours to intermediate rest periods (more frequent in case of dangerous activities) and to the period of paid annual leave.

(iii) The judgment of fitness for work in case of disability is binding for both employer and employee. With the exceptions of specific collective provisions, there are no general preclusions so that people with disabilities can be called to work overtime or during the night.

(6) ***Equality of treatment between men and women, and other provisions on non-discrimination*** – posted workers may not be subject to any discrimination or treated less favourably during their work in the host company as a result of their personal or private circumstances not related to work skills.

In Italy - Article 37, paragraph 1, of the Italian Constitution establishes that "Women who work have the same rights and, for the same work, the same wages as the male worker".

The matter is now regulated by the legislative decree 11 April 2006 n. 198 "Code of equal opportunities".

The Code affirms the principle of equal treatment and equal opportunities between women and men, establishing that it must be ensured in all fields of employment: access to work, professional career, professional training, working conditions, remuneration, social security benefits, etc.

The law distinguishes between direct discriminations (Article 25 paragraph 1), relating to acts and behaviors that produce "a detrimental effect by discriminating against male or female workers on the basis of their sex", with the consequence that "a person is treated less favorably", and indirect discriminations (Article 25 paragraph 2), relating to apparently neutral acts and behaviors but which "put or can put workers of a given sex in a position of particular disadvantage compared to workers of the opposite sex".

Discrimination is equated with harassment (art. 26) and sexual harassment (art. 16), or unwanted behaviors that violate the dignity of the worker by creating "an intimidating, hostile, degrading, humiliating or offensive situation" in the workplace.

Of particular importance is the prohibition of discrimination relating to remuneration (Article 28). Italian law prohibits any discrimination, direct or indirect, concerning any aspect or condition of wages, with regard to the same job or a job to which an equal value is attributed.

Workers who considers themselves discriminated may have recourse to special judicial proceedings, in order to obtain the cessation of the illegitimate behavior and the removal of its effects. Discrimination can be proven by the appellant, also with statistical data, suitable for establishing the presumption of the existence of a discrimination; it will then be up to the employer to prove the non-existence of discrimination.

The rules governing gender discrimination also apply to any other type of discrimination based on religion, personal beliefs, disability, age, nationality and sexual orientation, based on the provisions of Legislative Decree no. 216/2003, issued in implementation of the European Directive no. 78/2000, in order to implement the principle of equal treatment with regard to employment and working conditions.

(7) ***Working conditions of temporary workers*** – a temporary employment agency shall ensure that posted temporary workers are subject to at least the basic employment conditions which would apply to such workers if they were recruited by the user undertaking to occupy the same workplace, including all the collective agreements applicable on the company level.

Important!!! The temporary work user undertaking shall inform the temporary employment agency about the employment terms and conditions it applies for working conditions and remuneration.

In Italy - The legislative decree 17 July 2016, n. 136 as regards temporary workers, expressly refers to art. 35, paragraphs 1 and 2, of Legislative Decree 81 of 2015 but it is believed that other regulations are also applicable in the event of a transnational posting

- For the entire duration of the posting, posted workers are recognized economic and regulatory

conditions that are generally not inferior to those of the user's employees who perform the same duties and are classified at the same level. To this end, art. 10 bis of Legislative Decree 136/2016 provides that the user undertaking based in Italy is required to inform the temporary employment agency about the working conditions and employment applied to employees.

- An additional guarantee for temporary workers is the provision of joint liability between the temporary work agency and user company for remuneration and other social security contributions. The posted worker, therefore, can either contact the agency or the user company for the satisfaction of their credits.
- The user company forced to pay wages or other social security contributions may take revenge against the temporary employment agency.
- Temporary workers have the right to use welfare and public services enjoyed by the other not posted employees employed in the same production unit, excluding those whose enjoyment is conditional on membership in specific associations or on the achievement of a specific seniority of service.
- Workers have the right to exercise with the user, for the duration of the posting, their collective rights, as well as to participate in meetings of trade unions, etc.

(8) ***Conditions of workers' accommodation, where provided by the employer for workers away from their regular place of work*** – a new guarantee for posted workers set out in the Revised Posting of Workers Directive. In such a case, the employer shall ensure to posted workers the same accommodation conditions as required by national law or practice to the regular staff of the company when sent to a different location.

In Italy - The law and collective bargaining do not normally provide for a specific and additional discipline on this point.

(9) ***Allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons*** – the employer shall reimburse the travel, board and lodging expenses for a posted worker in accordance with legal acts and/or practice applicable to employment relations in the home Member State. The amounts payable (or the expenses reimbursable) by the employer in relation to travel, board and lodging expenses are not regarded as part of the remuneration. They shall be paid or reimbursed in addition to the salary.

In Italy: Italian law and collective bargaining do not provide for a specific discipline on this point, in addition to the provisions of Legislative Decree no. 136/2016. However, the application of the provisions governing the institution of business travel, provided for by the national collective labour agreement signed by comparatively most representative trade unions at the national level for the metalworking sector, signed by the trade unions CIGL, CISL and UIL on February 5, 2021, and valid for the period 2021-2024 could be highlighted.

The contractual regulation of “business travel” provides that workers sent to perform their work outside the office, establishment, laboratory or construction site for which they were hired or to which they were transferred, are entitled to a reimbursement of the expenses incurred relating to meals and accommodation, to the extent indicated by collective agreements.

Alternatively, it is possible to replace, even partially, the reimbursement of expenses with a

specific travel allowance for meals and accommodation, to the extent indicated by the same collective agreements.

Furthermore, in order to provide for normal working hours at the place of travel destination, the worker is entitled to compensation for the travel time, subject to the approval of the undertaking, to the extent specified by the same collective agreements.

The reimbursement of expenses or travel allowance are due for all the duration of the travel, including holidays and days of possible suspension of work due to illness and injury or other causes beyond the control of the worker.

Important!!! The posting employer shall ensure non-discriminating working conditions to the worker compared to those guaranteed to the regular employees of the host country. That means that a posted worker is actually subject to the labour law of the country of his/her permanent employment (the employment contract with his/her permanent employer remains in force during posting) as well as to the legal acts of the country where he/she has been posted for work. If legal regulation differs, the employer shall ensure the most favourable working conditions for the employee.

5. Information to posted workers

You will have the status of a **posted worker** during posting and will be entitled to the same **working conditions and rights** as applicable to the workers of the host country. The posting employer is responsible for ensuring to you all the above-referred rights and guarantees of posted workers.

Do you know that?

It is the posting employer who shall find out what working conditions and guarantees should be applied in the host country. It is the responsibility of your permanent employer. Normally employers get all the information necessary from their business partners or representatives of the company where their workers are sent. In the case of posting of temporary workers, the receiving employer must be active and supply all the relevant information to the temporary employment agency.

Under Article 5 of the Enforcement Directive 2014/67/EU, host Member States have the obligation to create and maintain updated a national website containing the information on the terms and conditions of employment applicable to workers posted to their territory. This information must be made generally available free of charge, in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means and in formats and in accordance with web accessibility standards that ensure access to persons with disabilities. The website should include, where possible, links to existing websites and other contact points, in particular, the relevant social partners.

Each EU Member State shall have at least one **contact point** to provide detailed information on the posting of workers abroad. Such contact points shall also cooperate and exchange information, monitor working conditions during posting and take subsequent actions if any violations of the rules are suspected.

Links to the **contact point** of a specific country and its information are available here:

http://europa.eu/youreurope/citizens/national-contact-points/index_en.htm?topic=work&contacts=id-611492

In Italy - The National Labour Inspectorate is the main body that deals with cross-border cooperation in the field of transnational posting of workers, providing information, stipulating specific memoranda (e.g. the one between Italy / Romania in May 2022) and responding to requests from other foreign inspection bodies: <https://www.ispettorato.gov.it>

In accordance with Article 4 of Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, before posting an employee to work in another state, the employer shall provide the following written information:

- (i) the duration of the employment abroad;
- (ii) the currency to be used for the payment of remuneration;
- (iii) where appropriate, the benefits in cash or kind attendant on the employment abroad;
- (iv) where appropriate, the conditions governing the employee's repatriation.

It should be noted that Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union will come into force as of 1 August 2022 (this Directive will replace the above-referred Directive 91/533/EEC) and, in accordance with its Article 7, before posting an employee to work abroad, the employer shall provide him/her with written information about:

- (i) the country or countries in which the work abroad is to be performed and its anticipated duration;
- (ii) the currency to be used for the payment of remuneration;
- (iii) the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State;
- (iv) where applicable, the benefits in cash or kind relating to the work assignments;
- (v) where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;
- (vi) the link to the official national website developed by the host Member State containing information about the rules of labour law applicable to posted workers;
- (vii) information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation.

6. Social partnership and collective bargaining

Although the Directives on posting do not directly obligate social partners – trade unions and employer organisations – to participate in the processes relating to posting, their role is, nevertheless, very important.

Posted workers may request information and advice from trade unions both in the company of their permanent employment and in the host company. The activities and the degree of engagement of trade unions in separate states and even in individual companies differs considerably. Do not be surprised if there is no trade union active in a company. In such a case, seek contact with trade unions operating on the industry, territorial or even national level. Contact details of trade unions are normally available on the internet and you should search for them. You may also look for

information and contact details on the website of the trade union active on the European Union level: <https://www.etuc.org/en>

In Italy: Information on trade union organizations and the contact details of their representatives are usually available on the websites.
For an overview and for the references of the Social Forces represented at the National Council of Economy and Labour (CNEL) see: <https://www.cnel.it/Chi-Siamo/Le-Forze-Sociali/Archivio>.

It is likely that, during posting, you will be contacted by a representative of the trade union or works council of the host company who will be in the position to provide you with useful information, advice, and assistance. You should also be active, look for contacts with workers' representatives and consult them on all issues of concern.

Collective bargaining. As required by the Directive, the following collective agreements shall be applied to posted workers (except temporary workers who are subject to all the collective agreements effective in the host company):

- those which have been made universally applicable by the competent national authorities; those which are generally applicable to all similar undertakings of the geographical area, profession or sector concerned or which have been concluded by the most representative social partners at national level and which are applied throughout the national territory. Such collective agreements shall be applied where:
 - national undertakings in a similar position are subject, in the place in question or in the sector concerned, to the same obligations as cross-border undertakings;
 - national undertakings are required to fulfil such obligations with the same effects as cross-border undertakings.

The host country shall determine which collective agreements meet the above-referred criteria and should be applicable to posted workers. This information must be published on the single official national website containing information about the working conditions applicable to posted workers. The Member States, however, have no obligation to publish the texts or summaries of such collective agreements. Therefore, do not avoid contacting not only the employer but also trade unions, in particular those which operate in the country of the host employer, on this issue in each specific case.

In Italy: In the Italian legislation there are no collective agreements (or arbitration awards) considered universally applicable and the collective labour agreements are binding only for employers belonging to the associations that have signed such agreements.

7. Rules of social security of posted workers

The workers posted for temporary employment to another EU Member State continue using the social security system of the country they have been employed before posting – pay social insurance contributions and are entitled to social security benefits.

The employee posted to another EU Member State normally retains social insurance in the country of his/her permanent employment provided that the period of posting to another state does not exceed 24 months and provided that that the employee has not been posted to that state in order to replace another employee.

The employer who posts an employee for work in another state must request a special Certificate A1, which is issued by the social security authority of the country where the employees have insurance. Certificate A1 confirms that the posted employee has been registered in the social security system of the employer's country and that he/she does not have to pay any contributions in the host country.

Certificate A1 confirms that the employee temporarily employed in another Member State has insurance in the country where the company of his/her permanent employer has been registered and where he/she has permanent employment.

Certificate A1 is not, in itself, a permit to post an employee. It only confirms that the posted employee continues participation in the social security system of the state of his/her permanent employment. The employee who does get such certificate or its copy from the employer does not experience any negative consequences. Where the employer fails to hand over Certificate A1 to the employee before posting and the employer of the host country or its authorities request it during posting, the employee should immediately make this known to his/her employer. The employer, in its own turn, should immediately contact the responsible social security authority of its country.

Important!!! Certificate A1 shall in all cases be the responsibility of the employer who sends out a posted employee. In the meantime, Certificate A1 is issued in paper format, one copy whereof is normally given to the employee.

In Italy, the form to be used to apply for the A1 form is available online. The application for the posting of workers must be sent to INPS electronically according to the instructions provided with Circular 11 June 2019 no. 86, while for the posting of self-employed workers the transmission methods are those indicated with message 20 January 2016 no. 218.

Medical assistance. If medical assistance is necessary in the host country, the posted worker can get it in the same way as any other worker of that country. The costs of medical assistance shall be paid by the country where the person has health insurance.

Accessibility of medical assistance in the host country is ensured by the document held by the employee – European Health Insurance Card.

Important!!! If you have not obtained the European Health Insurance Card in advance, in order to get medical assistance services in another EU Member State, you may submit Certificate A1. If you do not have this document as well, immediately contact the health insurance authority of your state.

8. COVID-19 and posted workers

After the outbreak of the COVID-19 pandemic, the European Commission outlined the relevant information for mobile workers – “COVID-19 information for frontier workers and posted workers”.¹ As far as posted workers are concerned, this document notes that:

(1) irrespective of the COVID-19 situation, all employment guarantees for posted workers continue to apply during posting. However, all posted workers must comply with the restrictions imposed in the host country as a result of COVID-19 (for example, isolation, remote work, etc.);

(2) if there is a need for social insurance benefits as a result of COVID-19, such benefits would be granted in the Member State where social insurance contributions are paid rather than in the host Member State;

(3) if you have been sent to work in another Member State before the outbreak of the COVID-19 pandemic, the period of your posting will continue as stated in Certificate A1 and you will have insurance coverage in the Member State where your permanent employer is established;

Points to note. In case you leave the host state during your posting temporarily and want to return to the place of your employment (e.g., after a temporary visit in the place of your residence or holidays in another state), you may be subject to the COVID-19 prevention restrictions in place in your host country at that time (for example, national restrictions for entry into the country for persons who are arriving from other states or from affected regions). Therefore, before leaving the host Member State where you have been posted, inquire with the relevant authorities if you will have an opportunity to return. If, nevertheless, you are refused entry into the state and, as a result, are unable to continue posted work, your permanent employer should contact the authority which has issued Certificate A1.

(4) If you are a posted worker and are planning to start your activities after the end of the COVID-19 pandemic, the beginning of your posting period may be postponed as a result of restrictions on the entry into the country imposed by particular states. In such a case, your employer should contact the competent authority of the Member State which has issued Certificate A1 for additional instructions.

In Italy, on March 31, 2022, the state of emergency ended and since that date there are no restrictions regarding the mobility of workers. On the other hand, it is also true that information about COVID-19 situation can change, therefore, it is always advisable to check the most recent and relevant information with regard to the specific period of interest.

¹ europea.eu/youreurope/citizens/files/Covid_FrontierPostedWorkers_it.pdf

9. Defence of violated rights of posted workers

Member States must ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, also in the host Member State. Member States must allow trade unions and other third parties to engage, on behalf or in support of the posted workers or their employer, and with their approval, in any judicial or administrative proceedings with the objective of enforcing the rights or the obligations stemming from the Posting of Workers Directives.

In Italy, pursuant to Article 7, par. 1, letter c) of Legislative Decree no. 136/2016, and as reiterated also on the website of the Ministry of Labour and Social Policies (which, in this sense, specifies the contact details of the territorially competent body with a specific link), any unlawful situation can always be reported to the territorial offices of the National Labour Inspectorate, which shall initiate the necessary supervisory activities *ex officio*.

Furthermore, article 5 of Legislative Decree no. 136/2016 – "Defence of rights" – allows the posted worker, even after returning to the country of origin, to apply – directly or through trade union representatives or a lawyer (while trade union organizations are normally excluded from taking direct legal action on behalf of one or more workers) – to the Italian administrative or judicial authority to sue the employer and lodge a claim against the posting company (which, under its direction, provides the workforce) and/or the posting company (where the worker performs the service) all the rights accrued during the posting period as recognized by national and European legislation. By way of example, the posted worker has the right – but is not obliged – to bring the matter before the Italian court, but can alternatively either turn to the court of the place where the seconding company is located or the court of the last place where he habitually (and *ab origine*) carried out his work

10. More information

1. European Commission official information on Posted Workers:

<https://ec.europa.eu/social/main.jsp?catId=471>

2. National liaison offices and authorities:

https://europa.eu/youreurope/citizens/national-contact-points/index_en.htm?topic=work&contacts=id-611492

3. National Labour Inspectorate of the Republic of Italy: <https://www.ispettorato.gov.it>

4. Posting of workers before national courts:

https://www.etui.org/sites/default/files/202101/Posting%20of%20workers%20before%20national%20courts_2020.pdf

5. The international project STEP UP – “Stepping up the European cooperation and communication among Public & Private organizations for the PROTECTION of posted worker’s rights”:

<https://stepup-protection.com/about-project/>

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