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POSTING OF WORKERS

PRACTICAL GUIDE

for Employers



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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 figure

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. General framework of transnational posting

2.1. Notion of posting

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 the State from which he was posted***;
- (3) ***the employer who posts the worker reimburses the expenses relating to the posting*** (travel, accommodation, meals, and other costs).

Posting duration. Directive 96/71/EC applies to all postings irrespective of the duration of posting. Some provisions of the directive, however, are not applicable to short-term posting or allow host countries not to apply their rules to short-term posting:

(i) an exemption always applies in the case of initial assembly and/or first installation of goods, if the period of posting does not exceed 8 days. In this case, the rules on minimum paid annual leave and remuneration do not apply (however, this exception does not apply to the construction sector);

(ii) host countries may (after consulting social partners) decide not to apply the rules on:

– minimum paid annual leave and remuneration when the length of posting does not exceed one month within the time period of one year from the start of the posting;

– the rates of remuneration set out in collective agreements when posting takes place under service agreements or within a group of companies and the duration of posting does not exceed one month within the time period of one year from the start of the posting (however, this exemption is not applicable to temporary workers!);

– minimum paid annual leave and remuneration on the grounds that the amount of work to be done is not significant as defined in national legislation (however, this exemption is not applicable to temporary workers!);

(iii) host Member States may exempt from the requirement to submit declarations in the cases of short-term posting.

In Italy: (i) Article 4 paragraph 2 of Italian Legislative Decree no. 136/2016 provides for the exemption solely from the regulation – laid down by the applicable legislation and/or collective bargaining agreements – regarding the duration of paid annual leave and the remuneration, including increases for overtime work, as regards works for the initial assembly of goods, which are set out in the supply contract, are necessary for commissioning the goods, are performed by skilled workers of the supplier and take no longer than 8 days, unless such works are not included in the buildings works set out by Legislative Decree no. 136/2016 (for example, Excavation, levelling, erection, assembly and disassembly of prefabricated elements, layout or equipment, conversion, renovation, repair, etc), which, that being the case, they shall be subject to.
(ii) Regarding temporary agency work, the provisions referred to in article 35, paragraph 1, of legislative decree no. 81 of 2015 must be applied.

Long-term posting.

With the coming into force of the *Revised Posting of Workers Directive* as of 30 July 2020, the workers posted for periods longer than 12 months (or 18 months, following a motivated notification from the employer) are entitled to all the mandatorily applicable terms and conditions of employment of the host Member State, except the procedures and conditions for conclusion and

termination of the employment contract and the rules of supplementary pension schemes which are not applicable to long-term postings as well.

In Italy: the prior notification of posting is envisaged for foreign service providers (employers) or temporary work agencies who post their workers to Italy. Transnational postings within the same group of companies, or in favour of a branch / production unit or another recipient, and the missions of workers to a user company with headquarters or production unit in Italy must also be communicated in advance. This communication is governed by the decree of 6 August 2021 n. 170 of the Ministry of Labour and Social Policies.

- Below, the link to access and to get information:
<http://servizi.lavoro.gov.it>

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.

2.2. 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

3. Official reporting about posting of workers

The Enforcement Directive (Directive 2014/67/EU) allows, but does not require, host Member States who receive posted workers of the European Union to impose further administrative requirements and control measures.

3.1. Administrative measures applicable before or at the very outset of posting

Article 9(1) of the Directive allows the host Member State to impose the following requirements to be complied with not later than at the beginning of the posting:

(1) make a declaration to the responsible national competent authorities containing the relevant information necessary in order to allow factual controls at the workplace, including:

- (i) the identity of the service provider;
- (ii) the anticipated number of clearly identifiable posted workers;
- (iii) the person of liaison and the contact person;
- (iv) the anticipated duration, envisaged beginning and end date of the posting;
- (v) the address(es) of the workplace;
- (vi) the nature of the services justifying the posting;

(2) designate a person to liaise with the competent authorities in the host Member State;

(3) designate a contact person who can act as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State.

It should also be noted that the Directive also requires, in case the Member States impose the above-referred requirements, to make it possible to complete the procedures and formalities relating to the posting of workers at a distance and by electronic means.

Do you know that?

Although, as mentioned, the Directive allows collecting the above-referred information, all the Member States have actually made use of this possibility and introduced the relevant administrative measures in their law or practice for the cases when employees from other Member States are posted to companies established and/or operating in their territories. It should be noted that the Member States are required to communicate all the information about the administrative measures in place to the European Commission which, in its own turn, informs other Member States; moreover, anybody interested can get this information on the national website of each Member State.

Useful link:

Practically all Member States have put in place the electronic system for the prior declaration of posted

workers.

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

The Directive does not establish that directly, however, virtually all Member States oblige **the posting employer** to fill out the relevant declarations and inform the competent national authority. Thus, all legal and administrative information is published by competent authorities of the Member States on their websites not only in their national language but also in English and in other official languages of the Member States and, in some cases, also in the languages of third countries (normally considering the labour market situation, the states of origin of posted workers, etc.).

In Italy, the competent authorities are the Ministry of Labour and Social Policies and the National Labor Inspectorate as well as, for the sole purposes of the provisions relating to the recovery procedure of administrative sanctions, the judicial authority.

In Italy, the posting undertaking is obliged to communicate the posting to the Ministry of Labour and Social Policies within 24 hours of the day prior to the start of the posting and to communicate all subsequent changes within five days.

The communication of posting must contain the following information:

- a) identification data of the posting company;
- b) number and personal details of posted workers;
- c) start and end date and duration of the posting;
- d) place of performance of the provision of services;
- e) identification data of the posted undertaking;
- f) type of services;
- g) general information and elected domicile of the contact persons
- h) authorization for the exercise of the temporary work activities, where the authorization for temporary work agencies is required by the legislation of the State of establishment;
- i) in the case of chain posting, the details of the user company that sends workers to Italy.

This communication is governed by the decree of 6 August 2021 n. 170 of the Ministry of Labour and Social Policies. See also INL Circular no. 1659 of 29 October 2021.

The Labour Inspectorate will use information on posted workers to prevent violations of the rules on transnational posting and to monitor these employment relationships in Italy.

3.2. Administrative measures applicable during posting

The Enforcement Directive allows the Member States to impose an obligation on the host employer to keep or make available and/or retain copies, in paper or electronic form, of the employment contract or an equivalent document, payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided.

In Italy, pursuant to article 10 paragraph 3 of Legislative Decree no. 136/2016, during the period of posting and up to two years from its termination, the posting undertaking is obliged to keep - by preparing a copy in Italian - of the employment contract, of the pay slips, of the documents indicating the start, end and duration of daily working hours, the documentation proving the payment of wages (or equivalent documents), the public communication of the establishment of the employment relationship or equivalent documentation and the certificate relating to the applicable social security legislation.

4. Working conditions and guarantees in the host country

4.1. Working conditions

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.

4.2. Information to posted workers

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.

Important!!!

It is the posting employer who shall find out what working conditions and guarantees should be applied in the host country. That is your obligation. You have the right to get all the information necessary from your business partners, representatives of the company where you send your workers. In the case of posting of temporary workers, the receiving employer must be active and supply you, as the posting employer, with all the relevant information.

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 and responding to requests from other foreign inspection bodies: <https://www.ispettorato.gov.it>

4.3. 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>.

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.

Do you know that?

The posting employer may be approached by the trade unions of the host Member State to engage into a collective bargaining on working conditions for the posted workers. Therefore, Directive 2014/67/EU allows the host Member State to require the designation of a contact person through whom the relevant social partners may seek engagement in collective bargaining within the host Member State.

4.4. 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.

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.

4.5. 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 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.).

In Italy, On March 31, 2022, the state of emergency ended and, regarding the mobility of workers, there are no restrictions since that date.

In Italy, the vaccination for people over the age of 50 remains mandatory until 15 June 2022, but its compliance is not considered a requirement for carrying out work.

5. Inspections by competent authorities

The Enforcement Directive (2014/67/EU) states that coordination between the Member States’ competent authorities and cooperation at European level on combating fraud relating to the posting of workers should be strengthened. The Directive aims to improve the implementation and enforcement of Posting of Workers Directive in practice by setting a framework for measures and control mechanisms. The Enforcement Directive aims to improve the implementation, application and enforcement of the Posting of Workers Directive. For this purpose, the Internal Market Information System (IMI) is used. IMI plays a key role in supporting the strengthened administrative cooperation underpinning the Directive.

Important!!! The internal market information system (IMI) may be used only by **registered users**, i.e. only by representatives of competent national authorities.

General principles for mutual assistance of the Member States’ competent authorities are described in Article 6 which also introduces legal deadlines for replying to information requests. Article 7 describes the roles of the host Member State and the Member State of establishment in the

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

framework of administrative cooperation. To help ensure enforcement, Chapter VI of the Directive foresees mutual assistance between authorities, where needed, to notify decisions and recover administrative penalties and/or fines, through what is referred to as a uniform instrument generated via the IMI system.

The European Labour Authority (ELA) also takes part in the control of the posting of workers, coordination of cross-border cooperation and joint inspections. The ELA aims to facilitate information about workers' rights and support cooperation between Member States in cross-border enforcement of relevant Union law. For more about ELA, read:

https://www.ela.europa.eu/sites/default/files/2021-07/LT_Guidelines-for-concerted-and-joint-inspections.pdf

In Italy, compliance with labour laws, including in case of posted labour, is controlled by the National Labor Inspectorate (INL). The National Labor Inspectorate:

- (i) inspects whether there are no breaches of the rights and guarantees of the workers posted to Italy;
- (ii) carries out the monitoring of posted labour;
- (iii) carries out the control of accommodation space of seasonal and posted workers;
- (iv) carries out the control and prevention of illegal and undeclared work by foreigners.

Inspections of the workers posted to Italy are carried out on the initiative of Inspectorate (also at the request of foreign competent authorities). A decision on the genuine posting is made only with respect to the workers posted to Italy.

For more information, see: <https://www.ispettorato.gov.it>

6. Sanctions

Directive 2014/67/EU imposes on Member States to put in place appropriate and effective checks and monitoring mechanisms, on a non-discriminatory and proportionate basis. It also provides that Member States must have in place penalties applicable in the event of infringements of national provisions adopted pursuant to the Directive and must take all the necessary measures to ensure that they are implemented and complied with. The penalties provided for shall be effective, proportionate and dissuasive.

In Italy, pursuant to article 3 paragraph 4 of Legislative Decree no. 136/2016, in the hypothesis not authentic posting, the worker is considered in all respects to be employed by the undertaking who used the service.

Article 3 paragraph 5 of Italian Legislative Decree no. 136/2016 also establishes that, in case of fake posting, the posting undertaking and the user undertaking shall be sentenced to pay “an administrative pecuniary penalty of Euro 50 for each worker used and for each day of work. In no case shall the amount of the penalty be lower than Euro 5,000 or higher than Euro 50,000”. Giving evidence of even further strictness in punishing noncompliance with the EU legislation, where fake posting concerns underage workers, the posting entity and the user of the posted workers are sentenced to the criminal penalty “of arrest up to eighteen months and a fine of Euro 50 for every worker used and every day of work, which can be increased up to six times as much”.

Finally, pursuant to article 12 of Legislative Decree no. 136/2016, specific sanctions are envisaged in case of violation of administrative and information obligations.

7. 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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