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# Posting in the construction sector

Useful information for workers and companies

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# General information

## What does posting mean?

Under Directive 96/71/EC (as amended by Directive 2018/957/EU) and Regulation (EC) 883/2004, the notion of 'posting of workers' is used to define rules applicable in case of temporary mobility of workers in the framework of a provision of services in the European Union.

Requisites for posting are the existence and the prosecution of an employment relationship between an employer, to be normally established in a EU Member State (sending undertaking), and an employee therein habitually employed, who is sent to a company established in another EU Member State (host undertaking) to provide a service for a limited period. The two companies shall be linked by a contractual relation (for instance in case of subcontracting of works), by participation in the same group, or by a contract for the provision of temporary work, in case of posting by a temporary work agency.

As a rule, posted workers remain attached to the social security institutions of the sending country, but they have right to the remuneration defined in legislation and in collective agreements of the country where they temporarily go to work (referred to as the country of destination or the 'host country'). They have also right to the application of protections there entailed under several matters, if more favourable, including:

- a) maximum work periods and minimum rest periods;
- b) minimum paid annual leave;
- c) remuneration, including overtime rates, and excluding supplementary occupational retirement pension schemes;
- d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment agencies;
- e) health, safety and hygiene at work;
- f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- g) equality of treatment between men and women and other provisions on non-discrimination;
- h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;
- i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

In Italy, applicable rules are defined in Legislative Decree no. 136/2016 and following amendments ([here](#) the consolidated version in Italian). By implementing a faculty entailed by Directive 96/71/EC, national legislation entails, among others, a stronger protection for workers posted by temporary work agencies, who shall be granted the same treatment of workers in force at the host undertaking performing similar tasks.

In addition, pursuant to Legislative Decree no. 104/2022, implementing Directive EU 2019/1152, the employer shall inform workers posted abroad in writing and before the beginning of posting on: changes affecting the employment relationship; the country/ies of destination and the expected length of work; consequent additional benefits and changes in the remuneration; the currency of payments; specific indemnities for posting and modalities of reimbursement of travel, subsistence and accommodation expenses; conditions for repatriation (if entailed); address of the institutional web-site on posting of the host country.

# Which declarations shall be made to public authorities?

In case of posting, companies must submit a preliminary declaration before the beginning of works abroad to the authorities of the host country. In line with Directive 2014/67/EU, this declaration includes details necessary to identify the company and workers involved, the place of works, and other complementary information. Following the principle of freedom to provide services in EU, this declaration is not subject to any formal authorisation.

At [this web-page](#), you can find the national web-sites on posting, usually available at least in English language, and where information on working conditions, useful contacts and templates of the declaration can be found.

Furthermore, in order to certify compliance with the minimum criteria necessary for maintaining affiliation in the sending country during works abroad as per Article 12 of Regulation (EC) 883/2004, companies must ask the release of the 'A1 form' to social security authorities of the sending country, possibly before posting.

You can find the competent authority for each EU country, as well as for other countries covered by the regulation (Iceland, Liechtenstein, Norway, United Kingdom, and Switzerland) in [this file](#).

It is possible to remain affiliated with social security authorities of other non-EU countries on the basis of existing bilateral agreements, available for Italy at [this link](#) (in Italian).

In other residual cases, for instance in case of posting from other non-EU country or in case of posting lasting more than the length of 24 months entailed by Article 12 of Regulation (EC) 883/2004, workers shall be affiliated as a rule to social security authorities of the host country (INPS and INAIL in the case of Italy).

# What is the maximum duration of posting?

According to Directive EU 2018/957, the requisite of 'limited duration' of posting shall be assessed on the basis of the actual circumstances, for instance in the light of the nature of the implemented activities, or of the assumption that the worker will resume activities in the sending country after the completion of the service abroad.

Anyhow, Directive EU 2018/957 introduced a specific limit to the application of the host country's labour legislation only for selected matters. According to the new rules, in case posting exceeds 12 months (so-called 'long-term posting'), posted workers are entitled to the full set of labour law applicable in the host country, net of procedures, formalities and conditions for the conclusion and termination of the employment contract (including non-competition clauses), and of supplementary occupational pension schemes. Upon a motivated notification to the authorities of the host country, the sending undertaking can postpone the application of long-term posting rules up to a maximum of 18 months from the beginning of posting.

Instead, for what concerns social security, article 12 of Regulation (EC) 883/2004 entails affiliation to the social security institutes of the sending country in case the expected duration of posting does not exceed 24 months, as long as workers are not sent to replace other personnel. Upon request, the competent authorities of the sending and of the host countries can agree on longer periods in the interest of concerned persons (article 16).

Finally, in terms of taxation of posted workers' remuneration, relevant information shall be sought in bilateral conventions to avoid double taxation. Usually, these agreements adopt the so-called 183-days rule, which maintains taxation in the sending country provided the period spent abroad does not exceed 183 days over a taxable year. You can find the conventions entered by Italy [here](#).

## Which other procedures apply for workers from third countries?

Posting of a third country citizen (i.e., non-EU national) to Italy is allowed upon request of ‘nulla osta’ to the ‘Sportello Unico per l’immigrazione’ of the local Prefecture office (more information is available [here](#), in Italian). In case the third country worker has already a valid work permit in another EU country, the company can avail of a simplified procedure by submitting the M2 form.

## Which support can workers and companies access in the host country?

Directive 2014/67/EU set forth several measures to facilitate access to information on posting and enforcement of related protections.

In particular, the European Union asked Member States to implement multilanguage national web-sites on posting and to appoint a contact person in their Liaison Offices to handle requests of information.

Furthermore, the Directive ensures the possibility for posted workers to start proceedings via the responsible administrative and judicial bodies of the host country, even after the end of posting. In addition, in case of dispute, the parties can choose to be represented by a trade union or by an employers’ organisation of the host country.

You can find references to useful sources and contacts in the ‘[To know more...](#)’ section below.

Among others, we suggest the web-site [www.constructionworkers.eu](http://www.constructionworkers.eu), hosting information on protections and trade unions of the construction sector of different EU countries, and the web-sites of the European social partners of the construction sector, where it is possible to find the main social partners active at Member State level.

We also advise to contact trade unions/employers’ organisations of the sending country to seek for possible dedicated information and counselling services.

## Which are the main sanctions entailed in case of breach of legislation on posting?

According to European rules (Directive 2014/67/EU), host country authorities shall sanction the failure to submit the preliminary declaration of posting. For what concerns companies posting to Italy, Legislative Decree no. 136/2016 set forth a sanction ranging between € 180 and € 600 per concerned worker (article 12).

Beyond sanctions applying to the sending undertaking for violations of terms of employment applicable in Italy, the client, the host undertaking, and possible other intermediate subjects in the subcontracting chain are bound to joint liability clauses in case of failure to pay social security contributions and remuneration, therefore including contributions to sectoral funds (article 4, comma 4).

In case of non-genuine posting (article 3), for instance making use of letterbox companies, the Italian legislation imposes the host undertaking to hire the posted worker. In addition, a sanction targets both the sending and

the host undertaking for an amount equal to € 50 for each concerned worker and for every day of work, and, anyway, for a total amount between € 5,000 and € 50,000. In case posting is implemented with the purpose of circumventing protections granted by law or by collective agreement, the sending and the host undertaking are sanctioned with the detention up to three months or with the payment of € 100 per each concerned worker and for every day of work (so-called fraudulent labour intermediation – article 18, comma 5-ter of Legislative Decree no. 276/2003). The penalty is increased by 20% in case of recidivism, and its total amount ranges, in any case, between € 5,000 and € 60,000.

# Posting and relationships with the sectoral funds of the construction sector in Europe

## What are sectoral funds for construction workers?

In Italy, as in other European countries, like Austria, Germany and France, a system of intermediation of construction workers' wages is in place by means of sectoral funds, thought to guarantee income stability despite the temporariness of contracts in the sector or sudden interruption of work due to adverse weather conditions.

Net of some differences in their territorial organisation, governance model and benefits, these sectoral funds manage, via payments made by employers, some elements of remuneration, like holiday pay and thirteen month pay, as well as benefits and services for covered workers, like care services and opportunities of vocational training.

## What are Casse Edili/Edilcasse and CNCE?

As far as Italy is concerned, starting from 1946 a network of sectoral funds for the construction sector has been established, inspired by the local experience of the sectoral fund of Milan, founded back in 1919.

Nowadays, the network is present throughout the country with 112 funds active at local level and managed by social partners on a paritarian basis. These paritarian organisations are called Casse Edili or Edilcasse, depending on the governance structure.

CNCE is the national paritarian organisation tasked of guidance, monitoring, and coordination of Casse Edili/Edilcasse. It cooperates with similar funds active abroad, and, pursuant to Italian legislation, it manages tools to tackle undeclared work in collaboration with different public institutions.

Casse Edili/Edilcasse administer several wage elements targeting construction workers, including holiday pay, seniority pay, thirteen month pay, as well as contributions to vocational training schools (Scuole Edili), where it is possible to attend courses on occupational safety and health necessary to work in the sector, to complementary pension funds (Prevedi, Previdenza Cooperativa and Fondapi), and to the sectoral complementary health fund Sanedil.

The duty upon companies operating in the construction sector to register at and contribute to Casse Edili/Edilcasse is enshrined in the sectoral collective agreements (CCNL), as well as in subsequent pieces of legislation and by-laws, which acknowledged their main benefits as part of remuneration and their functions in terms of social protection and assistance.

For what concerns foreign undertaking posting workers to Italy, the duty of registration at Casse Edili/Edilcasse is enshrined directly in article 4 of Legislative Decree no. 136/2016, and later amendments, entailing the

application of sectoral and territorial collective agreements signed by trade unions more representative at national level for matters to be aligned with Italian provisions, including remuneration.

The Ministry of Labour and Social Policies confirmed this principle with the answer to request 24/2007 of 3 September 2007.

Later on, the Memorandum of Understanding signed by the Ministry and by social partners of the construction sector on 9 April 2014 reiterated the duty for foreign companies operating construction works in Italy to register their workers to the sectoral fund and contribute to the latter. At the same time, the Memorandum recognised the entitlement of CNCE to sign exemption agreements with foreign sectoral funds provided: (i) the exemption is reciprocal, and (ii) workers benefit from similar protection in the sending country.

To know more on bilateral agreements signed by CNCE, you can see this [short report](#).

## In case of posting to Italy, when is registration at the Cassa Edile/Edilcassa sectoral fund due?

Registration at Cassa Edile/Edilcassa is due for all blue-collar workers falling within the construction sector, as per the Italian sectoral collective agreements (so-called CCNL), and regardless of the duration of posting.

Companies and workers can use the new single multi-language forms to register at Cassa Edile/Edilcassa. The forms are available at [this link](#) in the following languages: Italian, English, Albanian, Polish, Romanian, Slovenian, and Spanish.

The forms shall be submitted to the Cassa Edile/Edilcassa competent in reason of the actual place of works.

Please, find relevant contacts for each Cassa Edile/Edilcassa at [this link](#) (in Italian). Workers can also contact the fund for information on the offered benefits and services.

Companies paying similar contributions to sectoral funds active in Austria (BUAK), France (CIBTP), Germany (SOKA-BAU), and San Marino (Cassa Edile Sammarinese) can avail of a reciprocal procedure of exemption by contacting their fund in the country of origin before the beginning of the posting period. The absence of irregularities in due contributions is a precondition for the exemption to apply.

# To know more...

## Information on posting and mobility in the European Union

[Your Europe – Posted workers](#): Information portal of the European Union addressing posting, including links to the national web-sites on posting developed by authorities of EU Member States.

[Italian national web-site on posting](#): The national web-site developed by the Ministry of Labour and Social Policies with information useful for companies posting workers to Italy.

[Constructionworkers.eu](#): Web-site developed by the European Federation of Building and Woodworkers (EFBWW) providing schematic information in more than 30 languages about the terms and conditions of employment applicable in the construction sector across EU and in some extra-EU countries.

[Soka-Bau – Posting](#): The web-page of the German sectoral fund for construction workers addressing workers and companies seeking for information on posting to Germany.

[ELA](#): The web-site of the European Labour Authority, tasked with support to cooperation among EU Member States in the domain of labour inspections and coordination of social security, as well as with the supply of information on rights and duties of workers and companies in case of posting abroad.

[General Directorate of Employment, Social affairs, and Inclusion](#): Web-page of the European Commission on EU-level policies concerning: labour, social protection and workers' mobility.



## European social partners

[EFBWW](#) - European Federation of Building and Woodworkers

[FIEC](#) – European Construction Industry Federation

[EBC](#) - European Builders Confederation

[AEIP](#) - European Association of Paritarian Institutions