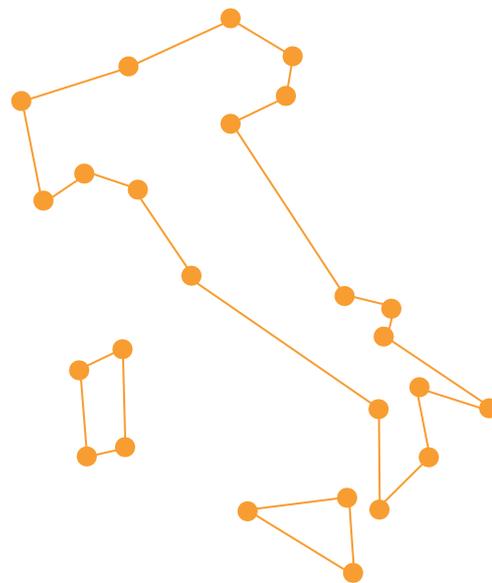




COUNTRY
STUDY



ITALY

Transnational Monitoring and Enforcement of Posted Work: The Case of Italy

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National enforcement capabilities

In Italy the administrative body responsible of controlling the application of the Directive on posted workers is the National Inspectorate of Labour which is subordinated to the Ministry of Labour and Social Affairs. However, there are no specific actions dedicated to secondment monitoring. The National Inspectorate of Labour carries out ordinary controls which do not specifically regard posted workers, but all workers employed by the firm inspected. Its functions are defined by the Legislative decree 149 (14/09/15): supervisory activities on work, contributions, compulsory insurance, social rules, health and security in workplaces, occupational diseases, work related injuries; training of inspectors; prevention and promotion activities of legality aimed at contrasting irregular work; in the road transport sector, realization and coordination of inspection activities on work relations; studies and analysis on irregular work. However, as some scholars highlight, labour inspection services are facing a major crisis in many countries (Liao, Chiang 2012; Weil 2008). Similarly, Italy is facing a long and deep crisis mainly due to the lack of financial and human resources affecting the quantity and the quality of inspection services.

The chronic lack of resources has pushed the executives of the labour inspectorate to rationalize inspection accesses by reducing the random monitoring and directing controls to those sectors that historically suffer a high level of labour irregularity according to the different territorial areas. The strategy of targeted controls is also demonstrated by the high level of irregularities found: According to the Italian National Labour Inspectorate (INL 2017¹) annual report, during 2016 there were about 191.000 firm inspections with a rate of irregularities about 60% (Table 1).

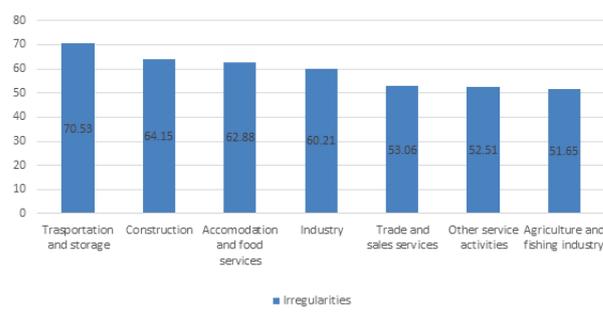
Table 1: Inspections and irregularities

Total companies inspected	Total irregular companies	Total irregular workers	Total undeclared workers
191.614	120.738	186.027	5.007

Source: Ispettorato Nazionale del Lavoro (2017) Rapporto annuale dell'attività di vigilanza in materia di lavoro e legislazione sociale anno 2016: <https://www.ispettorato.gov.it/it-it/studiestatistiche/Documents/Rapporti%20annuali/Rapporto-annuale2016.pdf>

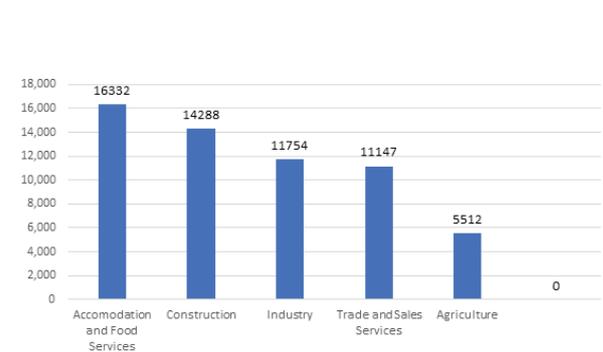
The majority of inspections were performed on the tertiary and service sectors (55%) followed by the construction sector (29%); industry (10%); and agriculture (6%), while the highest rate of the irregularities was found in the transportation and storage sector (Figure 1).

Figure 1: Irregularity rates and economic sectors



Source: INL (2017)

Figure 2: Irregular employment contract and economic sector



Source: INL (2017)

1. Ispettorato Nazionale del Lavoro (2017) Rapporto annuale dell'attività di vigilanza in materia di lavoro e legislazione sociale anno 2016: <https://www.ispettorato.gov.it/it-it/studiestatistiche/Documents/Rapporti%20annuali/Rapporto-annuale2016.pdf>

As emerged from interviews, the most relevant problem appears to be the labour inspectorate's lack of resources in terms of both financial resources and human resources. Concerning human resources, there is definitely a problem of shortage of inspectors, since the last hiring took place in 2006 (eleven years ago), and in that year they only hired 600 inspectors. But there is also a relevant problem connected to the age of inspectors, as the majority of them are in their 50's/60's or above. Now, the national staff is composed by 6,046 people, of whom 2 national executives and 88 sub-national managers. The wage increases according to position, experience and seniority. The base wage for new employee is circa 1,500€.

In addition to the lack of resources, the capabilities of the Italian system to enforce the Posting of Workers Directive are also limited because Italian inspection bodies are undergoing a complete reconfiguration, which started in January 2017. This reconfiguration has unified the labour inspectorate, the social security office (Inps) and the institution that manages the workplace accidents insurance (Inail). This could, of course, be beneficial in the long run, but at the moment this process is causing a lot of confusion (e.g. the new headquarters have still to be implemented).

Considering only the labour inspectorate before the unification of 2017, in 2016 operative inspectors were 2.538 (-77 units compared to 2015); technical inspectors were 280 (-12 compared to 2015) to which 343 police officers of the Italian Police for the labour protection were added (Carabinieri) (INL 2017). The Padua's case can explain the situation. The Padua's inspectorate staff is composed by 30 active inspectors, every inspector is able to carry out 60 procedures per year. This means that the office realizes between 1350 and 1600 inspections per year that cover less than the 5% of companies recorded in the province. Other inspectorates have an inspection capability even lower, around the 3%, because of the shortage of staff.

Another feature of the case of Italy that has to be taken into consideration is its regional divide. It is widely documented that Italy has two different economies and, understandably, this also affects the phenomenon of posting and its governance. For instance, while all the inspectors we interviewed in Northern and Central Italy were aware and affected by the posting of workers, in Naples they told us that in June 2017 they dealt with their first case of posting in the last five years (they were not even aware of the Enforcement Directive, and none of the inspectors wanted to take on the case, because it was seen as a big inconvenience).

Furthermore, Italy also seems to have a problem with its long processing times. The inspectors we talked to underlined that in the case of transport sector, it is particularly difficult to find unlawful conducts because the roadside inspections have to be executed by the police, and the cooperation between police and labour inspectorate is not always so smooth.

Another central element that has been highlighted is the linguistic problem, because, on the one hand, Italian inspectors and policemen do not always speak English, on the other hand, it often happens that foreign posted workers do not speak English themselves (or they pretend not to), so in many occasions it is impossible to go through with an inspection.



Transnational cooperation

According to the interviewed inspectors, transnational cooperation is poor, although recently strengthening administrative cooperation and information exchange has been implemented through the Internal Market Information (IMI) platform. The IMI platform is particularly important for verifying the company's operations and the number of requests across the platform is increasing. However, requests through IMI did not always run quickly and in some cases the information from abroad inspector is communicated even after the end of the posting. Moreover, an important element of transnational cooperation is that the Italian labor inspectorates usually do not deal with Italian workers that are posted in another European country, except of foreign colleagues' request.

Another form of collaboration of European inspectors is through the Committee of Senior Labor Inspectors (SLIC), which is a body set up within the DG Employment Committee and which brings together the heads of the inspectors of the all European countries. Once a year all European inspectors meet in a plenary session and twice annual other meetings on specific questions are organized.

For many inspectors, targeting posted workers is only a marginal aspect of the all inspections carried out. In the case of an important inspectorate for posted workers in northeast Italy, this is about 20 out of 1500 inspections carried out in one year. Inspectors point out that the argument of posted workers has been discussed mainly thanks to specific projects: Empower started in 2010 with the goal of monitoring the posting of the community; Transpo in 2011 was organized with Romania Inspectorate, concerning posted workers in the (road) transport sector. One general question emerged during interviews regarding the problems into transnational cooperation is the language, as many inspectors have basic knowledge only of English.

Box 1: A case of international cooperation

An interesting case of international cooperation highlighted by the labour inspectors of Padua's is that of a Chinese entrepreneur based in a neighbourhood in Padua who had posted workers in a construction site in Vienna. The Vienna inspectorate asked for information from colleagues in Padua through a document written in German that was informally translated thanks to the help of an inspector's daughter. In the document, the Vienna inspectorate asked for information about the company run by the Chinese entrepreneur because the inspection found an irregularity. However, when Austrian inspector returned to the construction site to notify the irregularity the company was no longer present, and therefore the Austrian inspectorate used the IMI platform to ask the Inspectorate of Padua to contact the firm and give them notice of this document. In fact, while in Italy it is necessary to report the posting in the 24 hours in advance of starting the job, in Austria, it must be communicated one week in advance. Moreover, while in Italy the penalty ranges from 500 to 1500 Euros in Austria the sanction is 4000 Euros. Before sanction the Chinese entrepreneur, the Austrian inspector gave 15 days to the Italian firm to justify.



Issues specific to the cross-border regulation of posting

The main issues concerning the cross-border regulation of posting take place in the transport and construction sectors, since they are the most affected by the posting of workers. According to the interviews with a representative of ANITA (National association of road transportation companies) and of ANCE (National association of construction companies) the cross-border problems regard the diversified transposition of the directive. Some examples are:

1. Austria wants all the paper translated in German;
2. Italy and France require the nomination of a representative in charge of keeping the documentation (e.g., employment contract, pay-slips, working hours details, employment offer letter, applicable social security details), while other countries do not want it;
3. In Italy the duration of certificate attesting employment contract, representative nomination and rules compliance is one week, while in France and Germany it is six months;
4. The A1 form is issued with different times, in Romania the office in charge takes six months, in Italy two months, in France one month and half;
5. Special Construction Workers' Funds exist only in some countries, so it is complicated to establish when employers must pay it in the destination country according to the rule of equal treatment of workers (to solve this problem there are some bilateral agreements between Italy-Austria, Italy-France, Italy-Germany).

The uneven application of the enforcement directive is particularly problematic for the road transport sector, given that it is based on the principle of the fast mobility. Workers are highly mobile and cross different countries, so companies must be able to deal with diverse legislations if they want to be regular.

The Enforcement Directive

The legislative decree no. 136/2016 transposed the Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers. One of the most important innovations introduced by the LD136 is the mandatory notification that must be sent by employers to the Ministry of Labour at least 24 hours before the secondment starts and any subsequent changes must be noted within five days of the event. This innovation is important for two reasons: first, it makes much more traceable and controllable the presence of posted workers; second, it makes available statistical data on posting in Italy (at the moment no data are available).

The situation following the Enforcement Directive is characterized by the political will to improve the controls. According to the official sources (INL 2017) in 2016 the controls on illicit externalizations of the labour process through subcontracts, secondment and supply contracts were increased. The general goal was the reduction of social dumping and the protection of workers. The result of the intensification of controls gave good results: inspections targeted 13,416 workers vs. 9,620 in 2015 (+39%).

The sectors more affected by illicit forms of externalizations were: services for the person or for the house (Ateco code S) with 1,325 violations (+276% in comparison with the previous year); transport and storage (Ateco code H), with 3,327 violations (+116%); manufacturing (Ateco code C) with 1,546 violations (+51%); constructions (Ateco code F) with 1,213 violations (+20%).

Moreover, the intention to increase the controls and their success in particular in the transport sector is confirmed by the agreement signed the 26th of February 2016, between the Ministry of Infrastructures and Transports and the Ministry of Interior aimed at improving the cooperation.



During 2016, inspection activities in the road haulage sector were particularly intensified due to some problematic issues, pointed out by local offices, related to cases of violation of labour and social security legislation and the irregular use of different employment contract forms. In this regard, the phenomena of posting and international temporary agency workers as well as the phenomenon of delocalization and subcontracting were subject to a specific inspection carried out in collaboration with other institutions responsible for supervising road transport, such as the Italian highway patrol.

The agreement among these different institutions provided the realization of a trial project based on joint inspections that were carried out between the 1st of September 2016 and the 30th of November 2016 in three regions: Veneto, Emilia Romagna e Puglia. Inspectors controlled 371 companies and 378 workers (25% foreigners): 57 drivers did not have the documentation concerning the work contract; 116 drivers (more than 30%) were under subcontracts and 12 (3%) were posted workers.

Padua was one of the Veneto counties selected for collaboration with other apparatus of the state. In this case the inspections were carried out along with police. The inspection concerned both the truck and the employee's employment relationship. The inspectorate had previously received reports that some Italian companies forced workers to resign and then the same workers were hired by a Romanian service agency continuing to carry out the same job for the Italian firm. However, during these inspections nothing has been noted. The audit verified that overall remuneration was adequate, while irregularities emerged as regards the hour of driving that were significantly higher than allowed by Italian legislation.

However, according to our interviews this period is also characterized by a high level of confusion on rules and their applications in the different EU countries. It seems that both labour inspectorates and employers are trying to understand how to fulfil the new legislation and in the meantime, there is a sort of interruption of controls. This happens in

particular in the road transport sector, since it is the most affected by innovations introduced by directive (especially for what concerns cabotage). Indeed, organizations like ANITA are developing advice services for their members and clients aimed at supporting them to comply with manifold rules on posted workers.



Conclusions

This report analysed the action of the Italian labour inspectorate in relation to the issue of transnational posting of workers, highlighting limits and potentialities in fighting against irregularities and abuses in labour relationships. The main points are summarised in Table 2.

Table 2: Main problems emerged in the Italian case of labour inspections and posting of workers

Normative, legal and cooperation issues:	<ul style="list-style-type: none"> Different timelines for transposing European directives by Member States; Different legislation of the European Member States; Overlap between the concepts of national and transnational posting; Chaos and delays due to the reorganization of the Italian National Labour Inspectorate; Long terms for checking the A1 model; Insufficiency of the A1 model and lack of integration with bilateral agreements between Member States;
Inspection problems	<ul style="list-style-type: none"> The lack of financial and human resources of labour Old age of inspectors; Territorial differences between North and South (posted workers are more present in Northern regions than Southern regions); Difficulties in widespread monitoring due to the Italian economic structure characterized by small and medium-sized companies; The large part of inspection regards big companies, but irregularities are more frequent in small businesses; Language barriers; No competence covering outgoing posted workers; No inspections on housing conditions; IMI system seems to be insufficiently able to share information and to check non-national firms;

On the one hand, the Italian case confirms the ILO's concerns about the frequent inability of labour inspectorate to carry out their functions mainly because of the inadequacy of financial and human resources (ILO 2006). On the other hand, this report points out the lack of administrative, legislative and technical tools as well as the weakness of international cooperation in addressing the abuses in the posting process. Although the recent growth of the posting of workers has been rather sustained, drawing the attention of European and Member States legislators, the phenomenon has not been considered a priority by the Italian labour inspectorate. Therefore, no ad hoc actions or specific monitoring arrangements have been implemented to deal with irregularities. Regional differences in the use of posting instruments and the widespread use of other contractual and labour irregularities seem to play a significant role in the selection process of labour inspectorate priorities.





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