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# Expert Report

## Posting of employees to Italy



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## The definition of “posting of employees to Italy”

Pursuant to the (Italian) Legislative Decree No. 136/2016, one refers to the posting of employees to Italy, for example, from Austria or Germany, when:

***A employee, following his employers instructions (the foreign posting company) performs his working duties, for a specific time, in Italy.***

Consequently, one refers to the “posting of employees to Italy” in the case of:

- Effective **posting**, as set forth below:

*The employer (posting company), in its own interests, places a employee for a specific period of time at the disposal of another company (called host or user) and/or lets him perform his work there. The employee, therefore, does not work on behalf of the company that has posted him, but in favour of the one to which he has been posted;*

- **Field work**






*The employee works in favour of the posting company (assembly activities, supplies, business trips);*

- **Transfer** of employees to one of the company’s branches or to an associated company.

## Obligations

In order to post a employee to Italy (even in the case of cabotage), a number of documents must be submitted and communications sent. To this end, we attach a summary of all the services/activities required, underlining, in the first column, the services for which we can provide our support, and those, instead, which the interested party must perform himself, in his country of residence.



Who?	Service/Activity	Description
Client	Posting Agreement / Work Contract / Supply Agreement	These contracts constitute the legal basis, and contain the rules established to work in Italy.
Client	Certificate A1	In the case of posting, the employee continues to be insured for welfare purposes in the country where the posting company holds its registered office.
Client	Individual communications in the country where the company resides	If any communications have been envisaged, these must be prepared by the company itself.
	Registration with the Italian Ministry of Labour and Social Policies (please refer to the following page for more information)	The registration and communication process with the Ministry of Labour and Social Policies is very complex and the online platform is, in part, only available in Italian and English; consequently, the registration should be undertaken through our firm.
	Communication of the individual employees to the Italian Ministry of Labour and Social Policies, including identification of the contact person in Italy  The following data must be communicated: <ul style="list-style-type: none"> <li>• informations about the posting company</li> <li>• informations about the posted employee</li> <li>• informations about the company where the employee is being posted</li> <li>• reference person domiciled in Italy and authorised to represent the company against authorities</li> </ul>	We can do the registration and communication operations for you, although, even in this instance, data entry is complex and the online platform is, in part, only available in Italian and English.  By accessing the data held by the Italian Chamber of Commerce, we can, however, provide you with the data of the company where the employee is being posted.
	Reference person domiciled in Italy and authorised to represent the company against authorities; must ensure receipt/sending of documents	We can act as your reference and organise any necessary receipt or sending of documents from/to the authorities on your behalf, on condition that the registration/communication operations are also entrusted to us.
Client	Translation of the documents that must accompany the posted employee.	On request, we can provide the names of translating agencies with whom we have already worked.
Client	The employee must carry the prescribed paperwork with him/her	The documents must be exhibited during any inspections (a list will be provided when you engage us).
	Compliance with the law provisions in force in Italy concerning safety at the workplace, working hours, holidays, days off, the protection of minors, etc.	We can provide assistance if you require any information concerning law provisions on working hours and holidays, on condition that the registration/communication operations are also entrusted to us.
	Integration of wages (base salary, overtime supplements, severance pay) to avoid social dumping	We can make a comparison between the wages applied in the two countries, on condition that the registration/communication operations are also entrusted to us.
Client	Paperwork to be kept	All the documents must be kept for at least two years after the end of the posting date.

## Registration and communication of posted employees with the Italian Ministry of Labour and Social Policies

Starting from 26<sup>th</sup> December 2016, the posting and field work of employees, as well as their transfer for cabotage activities, to Italy, are subjected to registration on a specific online platform. Furthermore, an independent communication must be submitted for each posting. This communication is mainly aimed at checking and preventing social dumping. Consequently – besides the communication to the Ministry of Labour and Social Policies – salary adjustment, in particular, is also checked.

Companies that have their headquarters in a member state of the EU, and whose **employees work in Italy** (posting/field work or cabotage), are subject to the communication obligation. The posting company must send an online communication to the Ministry of Labour and Social Policies **at least one day prior to the employee's departure**.

The following categories must be communicated:

- **Employees and freelancers (if registered in the social security system)** who perform their work in Italy (posting, temporary secondment between the different branches of a company or a corporate group, temporary employment, field work);
- **cabotage transport** (beginning and ending of a transport in Italy) of goods and/or passengers.

The following activities are normally **exempt**:

1. business meetings without the provision of other services;
2. taking part at seminars/conferences without the provision of other services;
3. exhibitions or taking part at trade fairs/congresses/conferences and shows of a trade fair type, without the provision of other services, and without sales;

4. Participation/organisation of cultural events in the fields of music, dance, theatre or artistic craftsmanship, on condition that said activities are not already the subject of a working relationship;
5. taking part in sports competitions and international championships.


In the case of any legal obligations being breached, various **penalties** are envisaged, in different amounts, up to Euro 150,000.

## Our services on the subject of the posting of employees to Italy

We can offer the service of **registration** on the Ministry of Labour and Social Policies' platform, and with all the relative **communications**. In addition we act as your **reference in Italy**. Furthermore, we can make a **comparison between the wages** applied in the two countries, in order to avoid social dumping.

Please feel free to contact us for a first consultation that does not place you under any obligation and is free of charge. Your contact person is Mrs. Marina Huber.



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