WORKERS WITHOUT BORDERS

Commission(s) in charge of the Session/Workshop:

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National Report of Italy

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1. IMMIGRATION

1.1. Who needs a work permit to work in your country? Are there types of employees exempted (e.g., based on their nationality or type of work performed (business trips, etc)?

According to Article 5 of the Legislative Decree n. 286 issued on July 25th 1998 (hereafter, "**Immigration Law**") all non EU citizens (hereafter referred to as "**foreign citizens**"), in order to stay in Italy to work, need a working permit.

Every year the Governement determines the overall number of foreign citizens allowed to apply for a working permit (the so called "**Decreto Flussi**").

In principle, working permits are released by the competent offices (see below) only when the request submitted by the foreign citizen matches the offer as described in the Decreto Flussi (by way of example, in the s.c. Decreto Flussi for the year 2016 approximately 30,000 permits can be issued, of which, 13.000 for seasonal works, 1.500 for studying reasons, 2.400 for self employed workers, etc.) .

The exact procedure to be followed for obtaining the work permit in Italy is described below, under paragraph 1.2.1.

However, in compliance with Article 27 of the Immigration Law, some professions are exempted from the above mentioned procedure.

This exemptions impacts either the procedure to be followed (in some cases, for instance, the specific authorization issued by the competent Immigration Office is replaced by a communication that the employer addresses to the same offices as in the case of hiring a manager or Professors, as per Art. 27, paragraph 1 *ter* of the Immigration Law); or the number of employees allowed to work in Italy (thus exempting the *quotas* set by the Decreto Flussi, as in the case of highly qualified workers).

EU citizens can work in italy, if the period of stay is shorter than 90 days; if the envisaged period of stay is longer than 90 days, EU citizens shall register with the Registry Office (*Anagrafe*) of the city of stay, and provide evidence of the activity they are carrying on (Articles 7 and 8 of the Legislative Decree n. 30/2007, that implemented the EU Directive n. 2004/38).

1.2. Are there different types of work permits in your legal system? Are there work permits for highly educated/qualified employees? If so, what are the conditions and what is the procedure to be followed? Who needs to file for application and where? Which information and documents are to be provided to the competent authorities? What is the timing? What is the duration of the work permit? Can it be renewed? Is it possible to apply for permanent status after a certain period of time under the work permit?

1.2.1. Work permits – "general part"

Besides the above listed exeptions, both employees (A) and self-employed person (B) in order to carry out working activities in Italy shall apply for a working permit.

Please see beow a scheme summarizing the relevant procedures.

A. Employees:

- the employer shall apply to the competent immigration offices in order to obtain the s.c. *nulla osta,* that is the authorization by virtue of which the employee is allowed to carry out his

woring activity in Italy (the competent immigration offices are those located in the place where the activity will be carried out);

- upon submission of the application, the employer shall attach (i) the s.c. draft of the "*Staying Contract*" (*contratto di soggiorno*) that will be entered into with the foreign worker and (ii) evidence of the accommodation of the foreign worker in Italy (art. 22 of the Immigration Law);
- the competent immigration office will release the *nulla osta* within 60 days from the application of the employer;
- once the *nulla osta* is issued, the competent immigration office will communicate the authorization and the "Staying Contract" proposal to the worker's Country Italian Ambassey;
- the Italian Ambassy, will than release the visa (if necessary to enter in Italy);
- upon arrival in Italy (Article 5 of the Immigration Law), the foreign worker shall sign the "Staing Contract" and apply for the residence permit (that will be released, approximately, in the following 60 days).

B. Self-employed foreign person:

- shall apply to the local Italian Embassy or Consulate in her/his original Country in order to obtain a visa for self-employment: the visa shall be issued within 120 days and shall be used within the following 180 days; the local Embassy will also release the certification necessary to obtain the residence permit (art. 26 of the Immigration Law);

- upon arrival in Italy, the worker shall apply for the residence permit; he/she shall also file to the Immigration Office the documents showing his/her identity and that he/she has enough money to set up an activity

1.2.2. Work permits – the European Blue card directive

Legislative Decree n. 108/2012, implementing the EU Directive 2009/50/CE, has introduced a "simplified" and "special" procedure that applies to the so called "*qualified employees*".

Qualified employees are referred to as those workers (i) with high professional qualifications; or (ii) exercising in Italy a regulated profession meeting the requirements provided for by the EU Directive 2005/36, related to the mutual recognition among EU countries.

The hiring process shall be executed by way of an "on line"- procedure in which the employer shall: (i) submit a working proposal agreement whose duration shall be of at least 1 year; (ii) indicate the qualification owned by the "*qualified employee*"; (iii) indicate the annual gross salary of the worker (not be inferior to 24,789 euro).

The procedure and the relevant timings substantially recalls the ones described under this answer, lett. A.

At the and of the whole procedure, the competent immigration office will release to the employee a residence permit, called "*EU Blue Card*": the blue card has a two years duration (should the employee be hired by way of an undetermined period of time), or a duration equal to the one of the employment agreement, in the other cases.

A further simplified hiring procedure is provided for when the foreign employee has already been granted with a EU Blue Card for at least 18 months and whishes to obtain a new EU Blue Card in Italy. In this case, visa is not necessary and the *nulla-osta* will be required by the employer within one month from the entrance of the employee in Italy.

1.3. Is a separate residence permit required/granted via the work permit? Please explain.

Please refer to the answer under paragraph 1.2.1. The residence permit for working reasons is a part of the process for obtaining the working permit itself, and is granted upon the issue of the nulla osta.

1.4. Who can be sanctioned in case of illegal employment in your country (e.g., the employer, the employee, the host company, etc)? What are the sanctions (civil and/or criminal) in case of illegal employment?

Article 22, paragraph 12, of the Immigration Law sanctions illegal employment of foreign workers "hired" without the relevant working permit or whose working permit is expired. In these cases, the employer can be condemned to the payment of a fine (about 5,000 euro for each employee illegally employed) and with the imprisonment (from six months up to three years).

In case of illegal employment, in order to determine the overall amount of the social security charges and of the salary due to the employee, it is assumed that the overall duration of the employment relationship has been of – at least – three months, should both the employer and the employee give no evidence of a different duration (Legislative Decree n. 109/2012).

Besides these special provisions of Law, the employer is also subject to the general sanctions against the s.c. "illegal employment" provided for under Law n. 73/2002, as amended by the Legislative Decree n. 151/2015 (these sanctions are referred to each case of illegal employment, including therefore also the case of illegal employment of foreign workers).

The amount of the relevant sanctions changes depending on to the duration of the overall employment relationship (starting from 1.500 euro up to 36.000 euro) and is increased of the 20% in case the illegal employment refers to foreing workers.

1.5. Did your country implement the European Blue Card Directive 2009/50 EC? If so, please explain the scope, conditions, application process and validity of the blue card.

Please refer to answer 1.2 paragraph 1.2.2.

1.6. Did your country implement the European Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer? If so, please briefly describe and explain importance and impact.

It has not been implemented yet. The final term has been established on November 29th, 2016.

2. LABOUR AND EMPLOYMENT LAW

2.1. In your country, how is the applicable law governing the employment contract during the assignment period determined?

The parties can freely choose the Law applicable to the employment relationship; even in this case, however, the employee is entitled to enforce the "minimum requirements" provided for by the Law that would be applicable in the lack of any choice.

Considering an employment relationship regularly carried out within the Country, the law applicable in the lack of any choice would be the Italian one: Italy, infact, would be the place where the worker renders her/his tasks and/or where the employer is seated, thus being unrelevant the nationality of the employee.

However, it has to be recalled that, should the parties have not determined the Law applicable to the employment relationship, if the performance have a "major connection" with another Country, the employee can always claim the enforcement of the legislation of that Country (EU regulation 593/2008).

Please finally consider that the Law applicable to the employment agreement does not change

should the employee be temporary transferred to another Country (detachment and others).

2.2. Which local employment laws of your country are determined as mandatory minimum laws /minimum hardcore protective rules and working conditions? Please explain. Is there relevant case law?

Our legislation does not provide a list of mandatory minimum requirements related to the working conditions of the employees.
However, these "minimum requirements" can be obtained on the basis of the principles provided for by International Laws and by our Consitution.
In detail, the following principles provided for by our Constitution shall be mentioned:

- the salary of the employee must be proportional to the quality and to the quantity of his/her activities (Article 36 of the Constitution);
- it is necessary to establish the overall duration of the working activity (Article 36 of the Constitution);
- it is necessary to establish breaks and holidays as to allow the employee to recover his/her energies (Article 36 of the Constitution);
- it is necessary to determine the minimum working age, as well as specific measures in order to protect "young" workers (Article 37 of the Constitution);
- it is necessary to ensure that female employees are granted with the same treatment granted to male employees, also considering their role and functions within the family (Article 37 of the Constitution);
- dispositions related to individual and collective terminations.

2.3. Does your country foresee specific rules on the "lease of personnel"? Is there a principle prohibition of "Lease of personnel"? Please explain and provide examples. What are the sanctions and penalties? Is there a possibility to reduce the risk? Please explain. Is there relevant case law dealing with this matter?

The lease of personnel is generally prohibited according to the L. 1369/60.

However, in more recent years the Legislative Decree n. 276/2003, and – lately – Legislative Decree n. 81/2015 ruled specific cases of legal leases.

Lease of personnel can be carried out only by Agencies duly authorized by the Government, that can enter both open-ended agreements and fixed-term agreements.

In detail, the lease of personnel requires the signature of two different agreements: on one side, the employment agreement entered into by and between the employee and the Agency - "leaser"; on the other side, the lease of personnel agreement, entered into by and between the Agency - "leaser" and the user.

It is to remark that secific limits are provided for by the Laws and by the National Collective Agreements in relation to the maximum number of employees the user can lease.

Generally, should the lease of personnel be entered by way of an open ended agreement, the user can lease an overall number of employees not larger than the 20% of its permanent employees, but National Collective Agreement can set different tresholds; to the contrary, should the lease of personnel be entered by way of a fixed-term agreement, the relevant threshold of employees the user can lease will be determined by the National Collective Agreement.

Legislative Decree n. 81/2015 sanctions the s.c. "irregular lease of personnel", that occurs

everytime the parties do not comply with the Law.

Since the lease of personnel represents an exception to the "ordinary" employment relationship, strict rules and sactions are provided in order to ensure and guarantee the full protection of the leased employees (the lease of personnel shall be entered by way of a written form, the economical conditions shall be equal to those applied to the other employees of the user, etc.).

Consequently, should the lessor or the user breach those rules, the employee is entitled to ask to be recognized as a user's employee, and administrative sanctions included between 250 and 1250 euros will be applied.

Special rules are than provided in order to avoid the mistreatment of certain employees, whose social conditions often lead the employer to profit of their needs.

2.4. If you were asked by one of your clients to draft an assignment letter (secondment Agreement between the original employer in the home country and the employee), which clauses would you include? What should the assignment letter cover? Is this foreseen by a specific law or based on the case law? Please explain.

Our legislation does not provide any particular formality for the draft of an assignment letter.

However, it is advisable that the following elements are agreed upon and detailed in the letter:

- incentives that will be granted to the employee, also considering the place he will be assigned to;
- special incentives granted to the employee in order to aligne his salary to the cost of life in the please he will be assigned to;
- special incentives granted to the employee and related to the cost of the accomodation;
- special benefits granted to the employee and to his family and related to the round trip travel costs;
- social security charges'issues: to this respect, it would be wise clarifying that,should the employee be assigned to another EU Country for a period not longer than 5 years, the social security charges will still be paid in the "home" Country and not in the "hosting" Country (Article 2 of the EU Regulation n. 833/2004); this principle, however, does not apply if the period of assignement is longer than 5 years.

2.5. Please explain the applicable and most relevant rules in your country in case the employer wishes (1) to early terminate the assignment and (2) to terminate the employment relationship (e.g., is there a right to return? Should the assignment allowances be included in the calculation of the notice indemnity? Etc.) Is there relevant case law?

The assignment of the employee is conditioned to the interest of the employer to temporarily allocate its employee to a third subject.

The overall duration of the assignment period is therefore connected to the permanence of the interest of the employer to temporarily allocate the employee elsewhere; consequently, should the interest of the employer early terminate, the employee can be recalled to the home Country in advance.

In these cases, the assignment letter could even provide a further benefit that shall be paid to the employee in case of early recall to the home Country.

The earlier termination of the assignment period shall be promptly communicated to the competent local authority (*centro per l'impiego*).

3. SOCIAL SECURITY

3.1. Provide a short overview of the level of social security charges in your country. What are the employer social security contributions? What are the employee social security contributions? Is there a cap/maximum? Please briefly explain.

Social security charges in our Country are determined on the basis of the gross salary of the employees and are paid to the relevant authority (INPS) directly by the employer (who will then retain the amounts due by the employee from his salary).

In general, the employer shall pay an additional percentage which is approximately of 33% of the gross salary of the employees while the employee' salary is withheld of a percentage approximately equal to the 10% of the gross salary.

3.2. In case of assignment from outside the EEA to your country or from your country to a non-EEA countries, with what countries has your country signed a social security agreement?

In order to avoid the employer and the employees to pay twice the social security charges, both in the "home" Country and in the "hosting" Country, Italy has entered into several agreements with non EU countries.

All these agreements, partially derogate to the principle of territoriality, according to which social security charges should be paid in the Country where the activity is actually carried out and allow the payment only in Italy, although the performance is rendeted elsewhere.

As a consequence, both the employer and the employees are allowed to pay the social security charges only in the "home" Country.

As of now, Italy has entered into agreements with the following Countries: Argentina, Australia, Brasile, Canada-Quebec, Capo Verde, Corea, Israele, Jersey and Isole del Canale, Serbia, Kosovo, Montenegro, Bosnia Erzegovina, Macedonia, Principato di Monaco, Repubblica di San Marino, Santa Sede, Stati Uniti d'America, Tunisia, Turchia, Uruguay, Venezuela, Messico.

However, it is to further consider that some conventions do not prevent the hosting Country to require those "compulsory" social security charges that are not specifically included in the relevant agreements entered with Italy.

4. OTHER OBLIGATIONS AND FORMALITIES

4.1. Are there other relevant formalities and obligations in your country in case of assignments to your country? (e.g., prior notification to the authorities, drafting and keeping social documents, etc.)?

While the assignment of an Italian employee to another Country shall be communicated to the local competent offices (*centro per l'impiego*), the assignment of EU or foreign employees to our Country does not require any specific communications to Italian Authorities.

4.2. What are the penalties and sanctions in case these formalities and obligations are not complied with? Who can be sanctioned? Is there relevant case law?

Please refer to answer under point 1.4.

5. SOCIAL INSPECTION

5.1. Are cross-border assignments a priority in your country for the social inspection? Please explain.

Cross-border assignments are not considered a priority for the social inspection authorities. However, the presence of foreing workers certainly leads the competent authorities to carry out careful and deep inspections in order to verify the full compliance with the relevant Law provisions, as to ensure to the foreign workers the same protection and guarantees granted to the Italian employees.