

Implementation of the “Enforcement” Directive
on the Posting of workers in Italy

- The **Decree n. 136** dated **17.07.2016** was published in the Official Journal on July 21st 2016 (Gazzetta Ufficiale della Repubblica Italiana n. 169) and entered into force the following day; it transposes Directive 2014/67/EU dated 1 May 2014 concerning the enforcement of the Directive 1996/71/EU – “Posting of workers in the framework of the provision of services”.
- The so-called “Enforcement directive” establishes a common framework for a set of provisions, measures and control mechanisms necessary to better and more uniform implementation, application and enforcement of Directive 96/71/EC. It also introduces measures to prevent and sanction any abuse and circumvention of the applicable rules.
- The Decree n. 136/2016 replaces the Decree n. 72/2000, which transposed the Directive 96/71/EC; it also applies to employment agencies established in another Member State that post workers to Italy.
- The Decree fully applies to the whole road transport sector, including road cabotage.
- **Articles 1, 2 and 4** of Decree n. 136/2016 set up general rules on the temporary posting of workers, including the terms and the conditions of employment applicable in the host State to posted workers during the period of posting.
- The terms and the conditions of employment include:
 1. maximum work periods and minimum rest periods;
 2. minimum paid annual holidays;
 3. minimum wage, including overtime;
 4. conditions of hiring-out of workers;
 5. health and safety in the work place;
 6. protective measures for specific categories of workers (pregnant women, children and youth);
 7. equal treatment for men/women and other provisions on non-discrimination.
- **Article 3** of the Decree identifies the elements to secure the authenticity of the posting, with reference to both the staff leasing company (which must run activities other than those of mere management of workers) and the working conditions. In case of non-genuine posting, the worker is considered as an employee of the person/company which provided the service. Article 3 also introduces sanctions to

the posting company and to the person/company which has used the service. These sanctions include an administrative fine of 50 euro a day per employee (with a minimum of 5,000 EUR and a maximum of 50,000 euro). In case the non-genuine posting involves minors, the penalty is the imprisonment (up to 18 months) combined with a fine of 50 euro a day per employee, which can be increased up to 6 times.

- **Article 5** sets rules for the defense of rights of posted workers, who can lodge complaints and engage in proceedings (both through the Administrative and the Criminal Courts).
- **Article 10** sets the obligation for the company which posts workers to Italy to inform the Italian Ministry of Labor within the 24 hours preceding the start of the posting and by communicate all possible changes related to the posting within 5 days. The communication sent to the Ministry of Labor has to include the following information:
 - Identification data of the posting company;
 - Number and data of the posted workers;
 - Starting date and final date of the posting and its duration;
 - Place where the services are accomplished;
 - Identification data of the hosting company;
 - Type of service;
 - Data and residence of the designated person/company in charge for receiving/sending relevant documents;
 - Data of the person/company responsible for relationships with the Social Partners.
 - The number of the authorization allowing the temporary agencies to perform their activities.
- A Ministerial Decree will define – according to paragraph 2 of article 10 of decree 136 – the modalities for communication (this Ministerial Decree was signed by the Minister of Labor and its registration is ongoing).
- During the period of posting and up to 2 years after its ending, the posting undertakings - or the temporary agencies in case of staff leasing – are obliged to:
 - keep in the archives the job contract (translated into Italian), pay checks, documents attesting the start and the duration of the daily working time, documents attesting the applicable legislation of social security. In case of violation of those obligations, there is a fine (from 500 to 3,000 euro) for each worker;
 - appoint a representative, with an address in Italy, in charge of sending and receiving documents and records. Failing that, the seat of the posting undertaking is considered

the place where the person/company using the service has its registered office or residence. If that representative is not appointed, a fine (from 2,000 to 6,000 euro) is provided;

- designate, during the posting, a contact person empowered of the relationship with the relevant social partners to promote collective bargaining with the obligation to be available in case of a request of the social partners. Also in case that contact person is not designated a fine (from 2,000 to 6,000 EUR) is provided.

- The Decree also contains provisions concerning inspections to be carried out by the Italian National Inspectorate of Labor.