

POSTING OF THIRD COUNTRY NATIONALS

MAPPING THE TREND IN THE CONSTRUCTION SECTOR

From Morocco and Tunisia to Belgium via Italy:
migration and posting of third country nationals

POLICY BRIEF



1. INTRODUCTION

Since the introduction of Directive 96/71/EC on the posting of workers and in particular following the enlargements of the European Union (EU) with the inclusion of the countries of South-East Europe, the EU and European Free Trade Association (EFTA) countries have experienced a steady growth in the posting of workers. This phenomenon mainly concerns citizens of the EU, however in recent years a growing number of postings has involved third-country nationals (TCN) that are employed by companies from the EU27 Member States.

This policy brief ¹describes the trend of the posting of workers from Morocco and Tunisia via Italy to Belgium and its drivers. It focuses also on the challenges and vulnerabilities of posted workers from Morocco and Tunisia and contains some recommendations for coping with the main problems that affect TCN posted workers.

Keywords

posted workers
construction sector
immigrant workers
labour rights

2. POSTED WORKERS FROM MOROCCO AND TUNISIA IN BELGIUM (VIA ITALY)

Over the last fifteen years Belgium has been one of the main destinations for posted workers, together with Germany and France. Indeed, according to the data provided by the LIMOSA system, between 2009 and 2018 the total number of individual posted workers received by Belgium has almost tripled, rising from 83,958 to 249,755 persons. In 2018 the total number of individual posted workers included about 20,000 third-country nationals, sent to Belgium from other EU member states without a Belgian work permit (Idea & Ecorys, 2011; De Wispelaere et al., 2020; MYRIA, 2019).

The growth of incoming postings has been absorbed particularly by the construction sector, which in Belgium has been less affected by the 2008 economic crisis with respect to other European countries, thanks to the investment in public infrastructures and residential construction. This sector has also recorded a growth in TCN postings, which

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involve workers from non-EU Eastern European countries, North Africa, Latin America, and Asia that are employed by companies from the EU27 Member States. The spread of this phenomenon has been facilitated by labour shortages within the Belgian construction sector and the adoption of a business model which tends to increase flexibility and decrease labour costs. Moreover, this phenomenon has been made easier also by the adoption of restrictive migration policies, which limit labour immigration only to highly skilled professions and force low-skilled workers to enter the Belgian labour market through temporary and precarious migration regimes, as the posting of workers or seasonal migration.

The labour market dynamics in the construction industry in Belgium have coincided with a transformation of the role of Italy as sending country. Over the last few years, in fact, Italian companies have increasingly sent workers to Central and Northern Europe, particularly to countries where the construction sector is having a good performance thanks to public or private investment. Indeed, Italian companies can offer lower costs and greater flexibility by employing a large reserve of skilled and unskilled workers on a just-in-time manner. This workforce includes also workers who lost their jobs because of the 2008 economic crisis, which resulted in the loss of 750,000 jobs in the Italian construction industry and its production chain and in nearly 400,000 layoffs in the construction sector in the strict sense.

As for posted workers from Morocco and Tunisia, this posting stream involves mainly immigrants who have resided in Italy for many years. After the 2008 economic crisis Italy has in fact adopted restrictive migration policies that have sharply reduced labour immigration from third countries, thus influencing the characteristics of the migratory status of TCNs employed by Italian sending companies. Moreover, historically the Italian construction industry has been one of the key sectors for the insertion of immigrant workers from Morocco and Tunisia. The 2008 economic crisis has severely affected migrant workers, both in terms of job losses and deteriorated working conditions, forcing them to accept to be posted in order not to lose their jobs. Therefore, the increased migratory and economic vulnerability of immigrant workers who have resided in Italy for many years is at the basis of the peculiarity of the posting stream involving posted workers originating from Morocco and Tunisia sent to Belgium via Italy.

3. CHALLENGES AND VULNERABILITIES OF POSTED WORKERS FROM MOROCCO AND TUNISIA

Posted workers from Morocco and Tunisia employed in the Belgian construction industry by Italian companies usually experience multifaceted vulnerabilities, which consist of problems related to:

- *irregularities regarding the documentation necessary for posting*, such as the Portable Documents A1 (PDs A1), the mandatory registration of posted workers to the LIMOSA system, the mandatory declaration of new employees through the DIMONA system;

- *irregularities regarding the contractual conditions imposed by their employers*, including the use of undeclared work in which TCN posted workers, with a regular residence permit in Italy, are sent to Belgium without any employment contract;
- *irregularities regarding social security contributions and tax payment*;
- *infringement of existing regulations on payments and salaries*, such as: disregard of minimum wages and collective agreements; payment according to the minimum standards of the sending country; non-payment for overtime, night work and holiday employment; wage deductions for accommodation and travel; restitution of a part of the salary to the employer...
- *infringement of existing regulations on working hours*, including working at night and on non-weekdays; overtime beyond the limits permitted by law; double shifts; no breaks; no holidays; work 6 or 7 days a week;
- *occupational safety and health (OSH) related problems* linked to language barriers and to different perception of OSH risks among people with different socio-cultural backgrounds, exploitative working conditions and unsuitable accommodation that further reinforce OSH risks for TCN posted workers, inadequate information and training, no proper protective equipment;
- *the existence of links with organised crime* involving some Italian sending companies that have worked in important public contracts within the infrastructures' construction in Central and Northern Europe.

Moreover, in most cases immigrant workers employed as posted workers are more vulnerable to forms of extreme exploitation due to their precarious migration status in Italy and to the fact that Italian legislation on labour migration links the validity of the residence permit to the employment contract and the access to social rights to the migration status. Indeed, the uncertainty of the migratory status pushes many TCN posted workers to accept worse working conditions and to postpone the request for assistance from trade unions or labour inspectors until the situation becomes truly unsustainable. Additionally, in the case of posted workers who have immigrated and have been employed in Italy for a long time, it should be taken into account that they have already suffered multiple discriminations in the Italian labour market and that, even when they have a more stable migration status, they can be in a socio-economic vulnerable position that influences the conditions under which they are employed as posted workers.

4. RECOMMENDATIONS

Recommendations at national and regional level

- Since the analysis of the labour market dynamics of the construction sector in Belgium has shown that labour shortages are a structural feature, it is recommended that the government introduce migration policies that favour the stabilisation of TCNs, even in case of low-skilled professions. This measure would make it possible to limit the social dumping effect deriving from the increasing use of postings and to improve posted workers' conditions by limiting the precarity connected to their mobile status.

- In the case of Italy, it is recommended that the government cancels restrictive migration policies, in particular the link between the duration of the residence permit and the employment contract, in order to mitigate the blackmail linked to the migration status.
- In order to combat the social dumping effect that derives from the differential between social contributions and tax levels of the sending and receiving countries, it is recommended that the EU introduces a single European taxation and social contribution system.
- In recent years both trade unions and labour inspectorates made several efforts to inform posted workers about their rights by providing information materials in various languages and employing staff with multilingual skills. It is recommended that they intensify this effort and to extend multilingual information also to TCN posted workers.
- With regard to Belgium and Italy, it is recommended that labour inspection services are strengthened. In the Italian case, it is also recommended that the Ministry of Labour creates multidisciplinary taskforces dealing with the posting of workers from a sending and receiving perspective.
- The Con3Post research shows that Italian and Belgian labour inspectorates regularly collaborate through the Internal Market Information (IMI) system. However, stakeholders who participated in the joint visits of the project Con3Post argued for the need further to improve this cooperation, for example by setting up transnational taskforces of labour inspectors specialised on posting issues. It is also recommended that the two countries promote transnational cooperation between justice authorities.
- The Con3Post research showed that Italian and Belgian trade unions regularly collaborate. However, stakeholders in our research expressed the need to further improve this cooperation, also including representatives of TCN trade unions.

Recommendations at workplace and industry-level

- Since the analysis of the transnational provision of services in the construction sector in Northern and Central Europe has shown that, in case of public procurement, the system of offers to the maximum discount is particularly widespread and affects working conditions of posted workers, it is recommended to set limits on the offers to the maximum discount.
- With regard to the cases of sending companies linked with organized crime, it is recommended to introduce whitelists that can be consulted at European level.
- With regard to the subcontracting system, it is recommended the EU introduces a common legislation that limits the number of subcontracting levels and that provides a more extended chain liability regulation.

- Since the management of health and safety challenges in the workplace is affected by language barriers, it is recommended that companies extend the existing efforts to provide information materials in various languages and to recruit supervisors with specific skills for the management of transnational workplaces.
- In order to encourage posted workers to report violations, it is recommended that trade unions or the paritarian social funds of the construction industry create a fund to support workers who lose their jobs in the event of a complaint or labour dispute.

5. REFERENCES

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