



Legal Migration Fitness Check

Evidence base for practical
implementation

Member State summary

Italy

Annex 2 IT

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Limited

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LEGAL NOTICE

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Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Italy**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant¹ for the following Directives and their respective national equivalent schemes, presented in the table below:

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme				Extra-quota permits for certain professionals	Extra-quota permits for certain professionals	
Options implemented?			Pupil Trainee Volunteer			

Main differences between EU statuses and the respective national parallel schemes

There are differences only between two EU statuses and the respective national parallel schemes: BCD and RD.

Regarding the first one, BCD, the national scheme²:

- does not require educational qualification (except for interpreters/translators and nurses) or professional experience;
- it does not set a salary threshold (for the EU Blue Card, Gross Annual Salary should not be less than €24.789);
- it is based on a system of recognised employers (which allows for simplified fast-track procedures);

¹ See ref document (EU summary) Under each phase, the following aspects are examined : **Legal transposition of the EU legal migration acquis**: including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these non-compliance issues affect the practical application of the Directive; **Practical application of the EU legal migration acquis**: overview of the main application issues/problems arising in the MS per each of the migration phases; **Differences between national statuses and the EU legal migration acquis**: substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

² See Art. 27, Legislative Decree (D. Lgs.) 286/1998 (*Testo Unico Immigrazione*) and Art. 40, Decree of the President of the Republic (D.P.R.) 394/1999.

- the maximum duration of the permit is shorter (up to 2 years + possible max extension of 2 more years) except for certain categories of HQWs (university professors and native-speaker lecturers, and nurses, who can be hired on open-ended contracts);
- it allows only for very limited mobility within the national labour market (a residence permit issued under Art. 27 D. Lgs. 286/1998 is bound to a specific working sector and to the employer who first hired the worker; the worker may change employer and permit/sector only after the first renewal);
- it does not allow to access permanent residence directly (a permit issued under Art. 27 needs to be converted into another permit in order to apply for LTR).

Concerning the RD³:

- the national scheme for university professors, researchers and native-speaker lecturers requires documentation proving the professional experience required to carry out the research activity
- it does not set a salary threshold (under the Directive scheme the monthly salary of the researcher must be at least twice the amount of social allowance in Italy = 836 euro per month and 10,852 euro per year);
- it is based on a system of recognised employers (which allows for accelerated procedures);
- differently from other categories of workers covered by Art. 27, university professors and native-speaker lecturers, can be hired on open-ended contracts and their authorisation to work will also have open-ended validity (Art. 40(2) and (6), DPR 394/1999); for the others the maximum duration is up to 2 years + possible extension of 2 more years;
- it allows only for very limited mobility within the national labour market (an Art. 27 permit is bound to a specific working sector and to the employer who first hired the worker; the worker may change employer and permit/sector only after the first renewal);
- it does not allow to access permanent residence directly (an Art. 27 permit needs to be converted into another permit in order to apply for LTR).

1 Pre-application phase

1.1 Legal transposition of the EU legal migration acquis

With regard to the provisions concerning the pre-application phase relating to access to information (Art. 9 and Art. 14 SPD), Italy has not transposed them into any specific provisions under Italian migration law - Legislative Decree (D. Lgs.) 286/1998 (*Testo Unico Immigrazione*), subsequent amendments and relevant application decrees. However, the substantial content of these provisions is incorporated into the fundamental rules on transparency to be followed by all Italian public authorities (Art. 35, D. Lgs. 33/2013); most importantly, the analysis carried out reveals that the content of these two articles is actually put in practice, as described in the next subsection. Therefore, major non-compliance issues affecting the practical application of the Directives have not been highlighted.

1.2 Practical application of the EU legal migration acquis

Directive	FRD (Family Reunification Directive)	LTR (Long Term Residency Directive)	SD (Students Directive)	RD (Research Directive)	BCD (Blue Card Directive)	SPD (Single Permit Directive)
	2003/109/EC	2003/109/EC	2004/114/EC	2005/71/EC	2009/50/EC	2011/98/EU

³ See Art. 27, D. Lgs. 286/1998 and Artt. 40 and 44-bis, D.P.R. 394/1999.

2003/86/EC)						
Languages	National language - Italian					
	English					
	French					
	Spanish					
	German					
	Russian					
	Arabic					
	Chinese					
The information is easy to find*	2	2	4	4	2	3

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4: Disagree; 5: Strongly disagree

Information can be found on the following aspects of the application procedure:

Application procedure	Conditions for admission	Entry requirements (e.g. visa etc.)	Cost of application	Applicable deadlines	Rights upon admission	Any differences between the Directives
Yes	Yes	Yes	Yes	Yes	Yes	No information for LTR on: Entry requirements. No information for pupils under the SD on any aspects. No information for volunteers under the SD on: Applicable deadlines No information for researchers under the RD on: Applicable deadlines and Rights upon admission

Information upon request

In Italy, information can be provided by the Ministry of Foreign Affairs, the Ministry of Interior and the National police.

1) Ministry of Foreign Affairs: general information can be requested via phone; in person at the Ministry general information desk; or through an online Information Request Form (available on the Ministry website).

2) Ministry of Interior: Contact Center for information on the progress of applications for the issuance or renewal of residence permits & Multilingual contact centre for general information on migration issues (free of charge and available h24).

3) National police: All files and applications regarding entry and residence permits in Italy are dealt with at local level by the relevant local police office (*Questura*). Thus, all requests for information must be addressed to the Questura in the province where the foreigner lives or where the application was submitted. Each Questura has a dedicated web page where its contact details can be found (address, email, phone numbers, office hours of the general information desk).

In third countries, the website of Italian embassies and consulates usually provide the contact details (email, phone number, address and office hours) of their Information Desks for information concerning visas and entry in Italy; sometimes they provide also the contact details of the local private agency to which they may have outsourced the processing of visa applications.

Although Arts. 9 and 14 SPD have not been literally transposed into Italian law, their content has essentially been put in practice. Art. 14 SPD requires Member States to make available to the general public a regularly updated set of information concerning the conditions of third country nationals' (TCNs') admission to and residence in their territory. The analysis shows that in Italy both public authorities involved in the migration process (Ministry of Interior, National Police, Ministry of Foreign Affairs, Ministry of Labour and Welfare Policies, Italian embassies and consulates, etc.) and other stakeholders (NGOs and migrant support organisations) provide relevant information, primarily through their websites and/or through multilingual handbooks (usually available both in hard copies and electronic version). Information is provided by institutional actors both in Italy and in third countries; with regard to the latter, a relevant role is played by Italian embassies and consulates.

Generally speaking, information provided concerns: the requirements and procedures to enter and stay in Italy; entry visas; the requirements and procedures for filing an application for a residence permit; the annual quota system; the main characteristics and rights related to different types of residence permits. Such information usually covers all Directive statuses and equivalent national schemes. However, it is worth highlighting that while for certain statuses (i.e. FRD, LTR, SPD's main scheme and BCD) information is more detailed, richer and easier to find and access, for other statuses (i.e. RD, pupils, trainees and volunteers under the SD, and national statuses equivalent to the BCD and the RD) information is more limited, less detailed and more difficult to find. In general, information provided by NGOs is often more precise, clear, up-to-date and user-friendly than information provided by institutional websites of public authorities (with some exceptions). In addition, certain topics (i.e. costs of application, deadlines, rights upon admission) are almost exclusively covered by NGOs.

Information is provided by all sources and stakeholders in Italian. Some sources provide information also in commonly spoken world languages (e.g. English, French, Spanish, Arabic, Chinese, Russian, etc.) but the use of multi-language websites appears to be still insufficient, both on the part of public authorities and NGOs. Even when websites are multi-language, not all information is available in a language other than Italian, and information translated in other languages is usually less specific compared to information provided in Italian.

Art. 9 SPD requires Member States to provide, upon request, adequate information to the TCN and the prospective employer on the documents required to make a complete application. In Italy information may actually be provided upon request, including through face-to-face consultation, by different public authorities (Ministry of Interior, Ministry of Foreign Affairs, Questura, Italian embassies and consulates).

In light of the above, in the pre-application phase there seems to be no de facto infringement of the SPD or other Directives, although access to information is not always granted in an optimal way to prospective migrants.

1.3 Differences between national statuses and the EU legal migration acquis

In this first migration phase no substantial differences have emerged at the level of legislation (as well as in terms of its application) between the EU legal migration Directives and equivalent national statuses, besides the fact that access to information concerning the latter may be more difficult.

2 Preparation phase

2.1 Legal transposition of the EU legal migration acquis

With regard to provisions relevant to the preparation phase, Italy has overall complied with the transposition of the EU legal migration acquis, with some exceptions. Firstly, the SD has been transposed in a rather concise and vague way in the main legal text on immigration (D. Lgs. 286/1998). In particular, the general conditions for admission listed under Art. 6 SD have been only partially incorporated into D. Lgs. 286/1998; moreover, whilst the specific conditions for students (Art. 7 SD) have been substantially transposed, the specific conditions for pupils have been transposed in a rather generic way (Art. 39-bis(1)(c) and (d) D. Lgs. 286/1998), while no specific condition for the admission of trainees is mentioned in the text (even though Art. 39-bis(1)(b) D. Lgs. 286/1998 specifies that TCNs may be admitted for the purpose of training). This lacking transposition has probably affected the practical implementation of the SD as concerns the categories of school pupils and trainees.

Secondly, with regard to conditions of admission under the BCD, the Italian legislation seems to apply a notion of "higher professional qualification" that does not match the one provided for by the Directive. According to Art. 27-quater(1)(a) D. Lgs. 286/1998, the TCN is required to hold both a higher education qualification and the relevant higher professional qualification to be admitted as a highly qualified worker (HQW). On the contrary, according to the notion of "higher professional qualification" provided for by Art. 2(g) BCD, holding a higher education qualification complying with the requisites set by Art. 2(h) should be sufficient to be admitted as HQW (as established by Art. 5(1)(c) BCD). Therefore, admission criteria for HQWs under the BCD end up being stricter in Italy, in particular if compared to the national parallel scheme, that does not impose any requirements related to educational qualification (except for interpreters/translators and nurses) or professional qualification.

Finally, with regard to the LTR, a partial conformity issue may be observed. Art. 9(1) D. Lgs. 286/1998 (which transposes Art. 5(1)(a) LTR) requires the TCNs applying for obtaining an EU LTR permit to provide evidence of stable and regular resources; these are evaluated through reference to the annual social allowance (5.824,91 € per year in 2017). Therefore, it seems that Italian legislation sets a specific salary threshold, below which the recognition of an EU LTR permit is denied. This may raise concerns as the interpretation of Art. 7(1)(c) FRD given by the CJEU in the Case C-578/08, and also applicable to Art. 5(1)(a) LTR.

2.2 Practical application of the EU legal migration acquis

In each directive the submission of the application is done in multiple steps except in the case of LTR, where only one application is needed and the procedure is simple: the TCN (who fulfils the requirements) submits an application for the residence permit labelled "EU residence permit for long-term residents" to the competent *Questura* (local police office). In the case of all the other directives, a more complex procedure is followed:

- BCD: The procedure consists of four steps: 1) an application requiring an authorisation to work is filed by the employer at the *Sportello Unico Immigrazione*

(Single Desk for Immigration – SDI); 2) the SDI, after having consulted the local *Questura*, issues the authorisation to work (or a refusal) and, in case the TCN does not reside on the Italian territory, the SDI sends the authorisation to the competent diplomatic authority in the country of residence of the TCN; 3) the competent diplomatic authorities issue a visa allowing the TCN to enter the Italian territory; 4) within eight days of the entry in Italy (in case he/she was not already residing in Italy) the TCN shall go in person to the SDI that issued the authorisation to work in order to sign the contract of residence and simultaneously apply for the residence permit labelled “EU Blue Card”. The residence permit is issued by the competent *Questura*. The procedure includes two/three applications: 1) for the authorisation to work; 2) for the visa in case the TCN does not reside in Italy; 3) for the EU Blue Card

- FRD: The procedure consists of four steps: 1) an application requiring an authorisation to family reunification is filed at the SDI by the sponsor residing in Italy while the family member is still residing abroad; 2) the SDI, after having consulted the local *Questura*, issues the authorisation to family reunification (or a refusal) and the SDI sends the authorisation to the competent diplomatic authority in the country of residence of the TCN’s family member; 3) after having checked the authenticity of documentation proving family relationships, the competent diplomatic or consular authorities issue a visa allowing the TCN’s family members to enter; 4) within eight days of the entry in Italy, the TCN’s family member has to apply for a “residence permit for family reasons”, at the SDI that issued the authorisation to family reunification. The permit is issued by the competent *Questura*. The procedure includes three applications: 1) for the authorisation to family reunification; 2) for the visa for family reasons; 3) for the residence permit for family reasons.

- SD: The procedure consists of two steps: The TCN applicant student is required to: 1) first, apply for a visa for study reasons with the competent diplomatic authorities in his/her country of residence; 2) having obtained a study visa, within eight days of the entry in Italy, the TCN student has to apply for a “residence permit for study reasons” at the local *Questura* (the SDI is not involved), via authorised post offices. The local *Questura* issues the permit. The procedure includes two applications: 1) for the visa; 2) for the residence permit for study reasons

- RD: The procedure consists of five steps: 1) the applicant researcher and the hosting institution sign a hosting agreement; 2) based on this hosting agreement, the hosting institution submits an application at the SDI requiring an authorisation to work for the TCN; 3) the SDI, after having consulted the local *Questura*, issues the authorisation to work (or a refusal) and, in case the TCN does not reside already in Italy, the SDI sends the authorisation to the competent diplomatic authority in his/her country of residence; 4) the competent diplomatic authorities issue a visa allowing the TCN to enter the Italian territory; 5) within eight days of the entry in Italy (in case he/she was not already residing in Italy) the TCN applies for the “residence permit for scientific research” at the SDI that issued the authorisation to work. The permit is issued by the competent *Questura*. The procedure includes two/three applications: 1) for the authorisation to work; 2) for the visa in case the TCN does not reside in Italy; 3) for the residence permit for scientific research.

- National schemes / statuses covered by the SPD: The procedure consists of four steps: 1) the employer submits an application at the SDI requiring an authorisation to work for a given TCN; 2) the SDI, after having consulted the local *Questura*, issues a decision on the authorisation to work (issued or refused); the positive decision is forwarded to the consular office where the TCN resides; 3) the competent diplomatic authorities in his/her country of residence issue a visa allowing the TCN to enter the Italian territory; 4) within eight days of the entry, the TCN shall go in person to the SDI that issued the authorisation to work in order to sign the contract of residence and simultaneously apply for the residence permit labelled “single working permit”. The residence permit is issued by the competent *Questura*. The procedure includes

three applications: 1) for the authorisation to work; 2) for the visa; 3) for the single working permit.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
The information that applicants need to complete is not extensive	2	2	2	2	2	2
The application form is user-friendly	3	3	3	3	3	3

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C				
Continuous legal residence		Yes			
Sufficient resources	Yes	Yes	Yes (students) Yes (trainees)	Yes	
Accommodation/Address in territory	Yes	Yes			Yes
Sickness insurance	Yes	No	Yes	Yes	No
Work contract (for RD host agreement)				Yes, C	Yes
Minimum salary threshold					
Professional qualifications				Yes, C	Yes, T, C
(Pre-) Integration measures	Yes, T	Yes			
Pre-departure conditions			No (students) No (trainees) No (volunteers)		
Proof no threat to public	No	Yes	No	No	No

Medical examination certificate	Yes, C	No	No	No
Valid travel document		Yes	Yes	Yes
Entry visa				Yes
Other	No	Yes, T, C	No	Yes

Note: T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.

The main application issues in this migration phase stem from a crucial aspect that will be dealt with more in detail under section 3, namely the fact that in Italy the procedure to obtain a residence permit consists of several steps and multiple applications to be submitted to different authorities (with the exception of the LTR permit, whose application procedure consists of a single step). As mentioned above, in order to enter and stay in Italy for employment (which includes statuses under the SPD, BCD, RD and equivalent national statuses) or family reasons (FRD) two applications have to be submitted: 1) the application for the authorisation (“nulla osta”) to work or to family reunification, to be submitted by the employer or the sponsor to the competent SDI; and 2) the application for the residence permit itself to be submitted by the TCN within eight days from entry in Italy to the local *Questura* through authorised post offices⁴.

Application forms for the “nulla osta” differ depending on the Directive or equivalent national status and are submitted through an online procedure on the website of the Ministry of Interior. Conversely the application form for residence permits is standard for all types of permits (“Modello 209 – Modulo 1 & Modulo 2”) and is used not only to request the issuance of the first permit but also the renewal, update or conversion of a permit. Application forms are available (and have to be filled in) in Italian only; written instructions are in Italian as well. While the effort and time required to complete the application forms seems overall fair (estimated 1-2 hours), the time and effort required to obtain the supporting documents which have to be provided together with the application (and to obtain official translation and authentication when required) may be extensive (ranging from 30 to 90 days). This may vary depending not only on the type of permit (as the required documentary evidence differs), but also on the workload of the local administrations and consular authorities involved in the process. The application form for residence permits (*Modello 209*) may be considered relatively clear and easy to be filled in; however, a general assessment can hardly be done, as this depends very much on the TCN’s skills, and especially on his/her knowledge of the Italian language. Therefore, the assistance provided free of charge by dedicated municipal desks and authorised *patronati* (migrant support organisations linked to trade unions) is in most cases essential.

The issues described so far – i.e. complex procedures consisting of multiple steps; applications involving multiple applicants and different authorities; possible difficulties in obtaining the required documentary evidence and in filling in the application forms; language issues; etc. they represent examples of how the practical implementation of certain provisions may result in the hampering of the migration process.

Finally, Italy does not apply any pre-integration measures. Nevertheless, since 2011 it has introduced a system of integration measures (the so-called *Accordo integrazione*,

⁴ If the TCN does not reside in Italy, an additional step and an additional application are needed between these two steps/applications. In order to enter the Italian territory, the TCN has to apply for an entry visa at the Italian diplomatic or consular authorities in his/her country of origin or residence, based on the authorisation to work or to family reunification issued by the SDI.

i.e. "integration agreement") to which every TCN applying for a residence permit (valid for more than one year) should commit to. However, this system applies after the entry of the TCN in Italy; it does not impose any conditions to enter the country, but rather a set of conditions to remain.

2.3 Differences between national statuses and the EU legal migration acquis

With regard to this migration phase, it may be interesting to highlight differences in the conditions for admission imposed by the BCD and the equivalent national scheme, which is regulated by Art. 27 D. Lgs. 286/1998. Admission criteria for HQWs under the BCD appear to be stricter and less favourable compared to the national parallel scheme. The latter does not impose any requirements related either to educational qualification (except for interpreters/translators and nurses) or to professional experience; in addition, it does not set any salary threshold, whereas in order to apply for the EU Blue Card the applicant's gross annual salary should not be less than €24.789.

3 Application phase

3.1 Legal transposition of the EU legal migration acquis

As concerns the application phase, while Italy has overall complied with the legal transposition of the relevant provisions of the FRD, LTR, SD, RD and BCD, major non-compliance issues are raised by the transposition of the SPD, affecting also the practical application of the Directive.

Rather than a single procedure, Art. 22 D. Lgs. 286/1998 foresees the following steps for obtaining a "single working permit": 1) the employer must submit an application for authorisation to work at the Single Desk for Immigration; 2) subject to the verification that the vacancy cannot be fulfilled by an individual already present in the country, the SDI issues a decision on the authorisation to work, which, if positive, is forwarded to the consular authorities in the country where the TCN resides (in case the TCN does not reside on the Italian territory); 3) upon application by the TCN, the competent diplomatic authorities issue an entry visa allowing the TCN to travel to Italy; 4) within eight days from entry, the TCN has to sign in person before the SDI the residence agreement and simultaneously apply for a residence permit labelled "single working permit" (*Permesso unico lavoro*); 5) the residence permit application is forwarded to the competent *Questura* (local police office), which is responsible for issuing the permit. Such complex procedure includes three different applications (the first one for the authorisation to work, the second one for the visa, and the third one for the single working permit)

Moreover, this procedure involves three different authorities (the SDI, the consular authorities and the *Questura*); in particular, while the SDI is the authority responsible for receiving the application, the authority responsible for issuing the residence permit is the *Questura*.

A potential conformity issue concerns deadlines. Art. 30-bis(9) D.P.R. 394/1999 establishes that when the application for an authorisation to work filed by an employer contains irregularities that can be rectified, the SDI invites the employer to make the appropriate corrections or integrations. The same article states that the time limit of 60 days foreseen by Art. 5(9) D. Lgs. 286/1998 for the SDI to adopt a decision shall restart from the moment in which the SDI receives the regular documentation. Art. 5(4) SPD refers to a suspension of the term, and not to a new commencement. Moreover, the provision of Art. 30-bis(9) D.P.R. 394/1999 is only applicable to the first stage of the procedure (employer's application for the authorisation to work), while no similar provision applies to the final stage of the procedure (TCN's application for the residence permit).

3.2 Practical application of the EU legal migration acquis

As described in section 2.2 above, the procedure to enter and stay in Italy for employment or family reasons includes multiple applications.

1) Application to obtain an authorisation ("nulla osta") to work or to family reunification

This application is filed by the employer (SPD, BCD and equivalent national scheme), the hosting institution (RD and equivalent national scheme) or the TCN sponsor (FRD) at the Single Desk for Immigration through an online procedure. The applicant should register on the website of the Ministry of Interior, download the form he/she needs (different forms for different authorisations), download a software to complete the form, fill in the form on his/her computer and submit the completed form through an online procedure. The applicant will receive a receipt and will get an appointment to submit additional documentation (hard copy) at the SDI, if needed.

2) Application to obtain an entry visa

The authorisation to work or to family reunification issued by the SDI is sent by the same SDI to the Italian diplomatic or consular authorities in the TCN's country of residence through an online procedure. The application to obtain an entry visa (based on the authorisation obtained) is filed by the TCN himself/herself in person at the Italian diplomatic authorities. Students (or their hosting institution) are not required to apply for a "nulla osta" at the SDI; rather, they have to apply directly (in person) for a visa for study purposes at the Italian diplomatic authority in their country of residence.

3) Application to obtain a residence permit

In the case of first entry in Italy for employment reasons (single working permit), including in the case of HQWs (EU Blue Card and parallel national scheme) and researchers (residence permit for scientific research and parallel national scheme), or for family reunification (residence permit for family reasons), the TCN will get the application form for the relevant residence permit (*Modello 209 - Mod. 1&2*: a standardised form for different types of residence permits) at the Single Desk for Immigration, where he/she must go in person within 8 days from his/her entry (it is the same SDI that issued the "nulla osta"). The form is pre-filled and printed by the SDI, based on the information provided by the applicant in the previous steps of the procedure (request for "nulla osta"), and is signed by the TCN. The SDI sends (via an online procedure) to the competent *Questura* the information needed for the issuing of the residence permit; but the applicant must also hand over the completed form (hard copy) to an authorised post office, which will send it by post to the competent *Questura*.

In the case of application for an EU long-term residence permit, the procedure consists of a single application, which is submitted by the TCN to the competent *Questura*. The application form (*Modello 209 - Mod. 1&2*) can be obtained from authorised post offices; once completed, application forms have to be returned to authorised post offices (which will send them by post to the competent *Questura*). Alternatively, the TCN may turn to authorised Municipality offices or *patronati* and ask them help to complete the application form electronically. Once completed, a copy of the electronic application form is handed over to the TCN, who will have to go in person to an authorised post office and send it by post to the competent *Questura*. Students follow the same procedure in order to obtain a residence permit for study purposes.

Three different authorities are involved in the processing of lodged applications and issuing of permits.

1) Single Desk for Immigration (SDI), which receives the requests for the authorisation to work or to family reunification submitted by the employer/hosting institution or sponsor and prepares the TCN's application for residence permit.

2) Diplomatic or consular authorities, which issue the entry visa.

3) *Questura* (local police office), which issues all kinds of residence permits.

These three authorities are involved in all procedures, except for the residence permit for study purposes (SD) where the SDI is not involved, and the EU long-term residence permit (LTR), where only the competent *Questura* is involved.

In order to notify the applicant of a decision, the competent *Questura* informs the Single Desk for Immigration about its decision through an online procedure. The TCN is informed via SMS and/or publication of the relevant information on the dedicated section of the website of the National Police. The SDI convenes the TCN to hand him/her over the residence permit (or the rejection of the application). If the applicant is the employer, the TCN is involved in the application process and s/he is notified of the decision.

In Italy, the concept of administrative silence exists and is to be considered as "silence non-fulfilment". Regarding the redress procedures against administrative silence, after 60 days from the deadline the applicant may submit a formal injunction to the competent *Questura*, which includes a request to issue a decision and to explain the reasons for the delay within 30 days. If the *Questura* remains silent, the "silence non-fulfilment" becomes "silence rejection". Against "silence rejection" the applicant can lodge an appeal before the competent Administrative Court. The Court will generally confirm the obligation on the part of the *Questura* to issue the omitted decision. However, administrations tend to respond to the formal injunction in order to avoid judicial proceedings.

Directive	General	FRD	LTR	SD	RD	BCD	SPD
Application from third country	No						
Permit received in third country	No						
Number of authorities involved in the application		3	1	2	3	3	3
Number of authorities involved in the issuance of the residence permit	2						
Application modalities		In person & by post	By post	By post	In person & by post	In person & by post	In person & by post
Existence of a standard application form for all statuses	Standard Modello 209 – Mod. 1&2						
Language of the application form	Italian						
Fees charged	Fees depend on	40€: RP from 3 months	100€	40€: RP from 3 months	40€: RP from 3 months to	40€: RP from 3 months	40€: RP from 3 months

the duration on the residence permit (RP)	to 1 year OR 50€ RP from 1 to 2 years	to 1 year OR 50€ RP from 1 to 2 years	to 1 year OR 50€ RP from 1 to 2 years	1 year OR 50€ RP from 1 to 2 years	to 1 year OR 50€ RP from 1 to 2 years	to 1 year OR 50€ RP from 1 to 2 years
Other fees charged?	Yes 76,46€	Yes 76,46€	Yes 76,46€	Yes 76,46€	Yes 76,46€	Yes 76,46€
Fees charged for permit issuance	No	No	No	No	No	No
Fees charged for renewal / replacement of the permit	40€: RP from 3 months to 1 year OR 50€ RP from 1 to 2 years + additional fees (70,46€)	Only additional fees (70,46€)	40€: RP from 3 months to 1 year + additional fees (70,46€)	40€: RP from 3 months to 1 year OR 50€ RP from 1 to 2 years + additional fees (70,46€)	40€: RP from 3 months to 1 year OR 50€ RP from 1 to 2 years + additional fees (70,46€)	40 EUR: RP from 3 months to 1 year - 50 EUR: RP from 1 to 2 years + additional fees

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law)	230	90	50-110	110	140	110
Processing time (in practice)	NI	NI	NI	NI	NI	NI

The procedure described above applies to any residence permit for employment purposes (the single working permit, the EU Blue Card, the residence permit for scientific research, and their equivalent national schemes) as well as to the residence permit for family reasons (under the FRD). Such a complex procedure, including multiple steps, different applicants and different authorities, may not be completely clear and understandable since the outset to TCNs, as well as to employers or hosting institutions. This may represent an issue, but guidance may be provided by the SDI, *patronati*, municipal desks, and consular authorities.

With regard to the fees charged for issuing those residence permits, in 2017 they have been reduced following an infringement procedure launched by the European Commission and a judgement of the Court of Justice (C-309/14, CGIL & INCA).

A relevant application issue concerns deadlines to process applications. Since in most cases the procedure consists of 3 different applications, Italian legislation sets different deadlines to process each of them. First, in order to obtain the authorisation to work the deadline is 60 days (90 days for Blue Card), while for the authorisation to family reunification it is 180 days; second, in order to obtain the entry visa the

deadline is 30 days (except for study visa, which may be between 30 to 90 days); third, in order to obtain the residence permit the deadline set by law is 20 days. However, in practice the actual number of days required may vary substantially, depending on the workload of the single local administrations and consulates involved. The most problematic step in this respect is the last one, i.e. the issuing of the permit. Several sources report that the average number of days required is 290; apparently, the most effective *Questure* manage to process applications in 60 days (instead of 20)⁵.

As concerns the notification of the decision on the application for a residence permit, this consists of a single administrative act, as required by the SPD. However, as mentioned above, in most cases this decision represents only the third and last step of a more complex procedure, which overall counts three separate decisions taken by different authorities at different stages. With regards to procedural safeguards, no major problems have been highlighted. Applicants receive a written notification of the decision on their application⁶; in case of rejection of the application, the reasons for rejection are provided in writing, although in Italian only. The TCN can appeal against a negative decision before the competent Administrative Court within 60 days. If the appeal concerns the right to family reunification, and fundamental rights issues are therefore at stake, it can be lodged before the competent Ordinary Court (Art. 30(6) D. Lgs. 286/1998). The TCN cannot be expelled during those 60 days; after that period, he/she has to request to the judge a suspension of the expulsion order. Even though the right to an effective remedy is in theory ensured, information made available to the TCN about appeal procedures is limited; thus, TCNs generally need to look for the assistance of a lawyer or a migrant support organisation.

3.3 Differences between national statuses and the EU legal migration acquis

In the application phase no substantial differences have emerged at the level of legislation (as well as in terms of its application) between the EU legal migration Directives and equivalent national statuses.

4 Entry and travel phase

4.1 Legal transposition of the EU legal migration acquis

With regard to the entry and travel phase, Italy has overall complied with the legal transposition of the EU legal migration Directives; no major non-compliance issues have emerged.

4.2 Practical application of the EU legal migration acquis

Based on the EU legal migration acquis, once a TCN has obtained the authorisation to work or to family reunification, the Member State concerned has to allow his/her entry and, to this purpose, it shall facilitate the issuance of an entry visa (Art. 13(1) FRD; Art. 14(4) RD). The request for a visa has to be submitted by the TCN (and not by the employer/hosting institution/sponsor) at Italian embassies or consulates in the third country of origin/residence. The Italian legislation sets a timeframe for granting entry visas, which foresees different deadlines for different categories of TCNs. The general deadline for the issuance of an entry visa is 90 days (Art. 5(8) D.P.R. 394/1999); however, visas linked to all types of residence permits for employment purposes (SPD, RD, BCD and equivalent national statuses) have to be issued within a shorter deadline,

⁵ See: https://www.laleggepertutti.it/132557_permesso-di-soggiorno-costi-e-tempi-di-rilascio#Permesso_di_soggiorno_quanto_tempo_occorre_per_ottenerlo; <http://www.meltingpot.org/Rilascio-e-rinnovo-dei-permessi-291-giorni-la-media-di.html#.WVTZJIFLfiU>.

⁶ More precisely, the *Questura* informs the Single Desk for Immigration about its decision through an online procedure; then, it is the SDI that convenes the TCN to hand him/her over the residence permit or the rejection of the application.

i.e. 30 days (Art. 31(8) D.P.R. 394/1999). The same deadline of 30 days is applied to visas for family reunification (Art. 6(5) DPR 394/1999); conversely for students the timeframe to obtain a visa is the general one (up to 90 days). Apparently, these deadlines are usually respected: no systematic delays have been reported; however practices may vary from one consulate to another. In the case of visas for scientific research, Italian law explicitly provides for a fast-track procedure: Art. 27-ter(6) D. Lgs. 286/1998 establishes that visas for scientific research shall be issued as a matter of priority compared to other kinds of visas.

Irrespective of the visa requirement, all TCNs who enter the Italian territory, even for a short stay, have to comply with the following set of general conditions: i) to have a valid travel document; ii) to justify the reasons for entering Italy and the conditions of their stay in the country; iii) to have sufficient resources for their subsistence in the country for the whole duration of the stay and for the return to the country of origin or transit; iv) not be considered a threat to public order, national security or public health.

Upon arrival, TCNs are required to register with the local authority, if they stay for more than three months and have applied for a residence permit; conversely, if they stay for less than three months, they do not need to register with the local authorities, but only have to declare their presence to the local *Questura*. TCNs do not need to register with social security institutions, as this procedure is linked to the procedure for obtaining a residence permit for employment (Art. 22(9), D. Lgs. 286/1998). As concerns healthcare, TCN workers, their family members and other categories of legally residing TCNs⁷ are registered on a compulsory basis with the national healthcare system. Other categories may register with the national healthcare system on a voluntary basis, or will need to have a private sickness insurance⁸.

As concerns travel, in accordance with the EU legal migration acquis, Italy allows TCNs who hold a valid residence permit (issued by Italy) and a valid travel document to enter and re-enter the national territory only on the basis of the permit and the travel document. This applies also to TCNs who hold a valid residence permit issued by another Schengen Member State, provided that the TCN stays in Italy for less than 3 months and he/she declares his/her presence to the competent *Questura* within 8 days from entry (Art. 5(7) D. Lgs. 286/1998), as further discussed under section 7 below. Similarly, TCNs holding a residence permit issued by Italy and a valid travel document are allowed to travel to other Schengen Member States.

4.3 Differences between national statuses and the EU legal migration acquis

In this migration phase no substantial differences have emerged at the level of legislation (as well as in terms of its application) between the EU legal migration Directives and equivalent national statuses.

⁷ These are: TCNs holding a residence permit for employment or self-employment and their family members; long-term residents; TCNs holding a residence permit for family reasons; for international protection or humanitarian reasons; for international protection request; for citizenship request; for health reasons; for study reasons (for student-workers only); all minors (including unauthorized); pregnant women and the baby's father until 6 months after the baby birth; stateless persons.

⁸ These categories are: students who do not work; au pairs; volunteers; TCNs holding a residence permit for elective residence and who do not work; religious people; TCNs working for international organisations or consular and diplomatic authorities in Italy.

5 Post-application phase

5.1 Legal transposition of the EU legal migration acquis

As concerns the post-application phase, Italy has overall complied with the legal transposition of the EU legal migration Directives; no major non-compliance issues have emerged. A few minor issues may be observed in the transposition of the SD and the RD, with regard to the duration of residence permits.

According to the conformity assessment study, the SD provisions concerning the duration of residence permits issued to school pupils (Art. 13 SD) and unremunerated trainees (Art. 14 SD) have not been transposed into Italian migration law. Conversely, Art. 15 SD on the duration of residence permits issued to volunteers has been transposed in a conform manner; moreover, in addition to the Directive provisions, the Italian legislation also stipulates a maximum period of validity for this residence permit (which shall never exceed eighteen months) and establishes that this permit cannot be renewed nor converted (Art. 27-bis(5) D. Lgs. 286/1998).

As concerns the duration of the residence permit for scientific research, Art 8 RD has been transposed by Italy in an overall conform way; however, while the Directive sets a specific limitation of time for the duration of this permit (one year, renewable), the national provision is more generic and states that the permit must be issued for the duration of the research project. If the duration of the research project is extended, the residence permit may be renewed accordingly (Art. 27-ter(7) D. Lgs. 286/1998).

5.2 Practical application of the EU legal migration acquis

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	12 months	NI	NI	NI	The duration of the work contract + 3 months	12 months
Maximum validity of first permit	It has the same duration of the residence permit of the sponsor, to which the residence permit of the family members is linked	Unlimited	For the whole duration of the studies, with a verification of the progress of studies every year (at least 1 exam in the 1st year; at least 2 exams in the following ones) + until 3	For the duration of the research programme/contract indicated in the agreement between the TCN and the hosting institution (renewable in case of extension of the research programme/contract)	24 months	24 months

				years after the legal duration of the course of study + 1 more year after the end of studies	
Minimum validity of permit renewal		12 months		For the duration of the work contract + 3 months	12 months
Maximum validity of permit renewal	Same duration of the residence permit of the sponsor	Permanent, but subject to update (not renewal) every 5 years	12 months	For the duration of the research project/contract (following its extension)	24 months

The post-application phase encompasses the process of delivering the residence permit by national authorities. Issues that may arise in this phase concern the timeframe, the types of national authorities involved, as well as the different durations of permits issued. In this phase of the migration process, in the Italian case, no major application issues can be noticed.

However, as mentioned in section 3.2 above, while the competent *Questura* should issue a residence permit within 20 days from reception of an application, the length of the procedure is usually much longer (60-290 days on average). As mentioned above, in almost all cases (with the exception of study permits and LTR permits) the Italian authorities involved in the application procedure are three: the Single Desk for Immigration; the Italian consular and diplomatic authorities; and the *Questura* (local police offices). The authority involved in the issuing of the permit is the competent *Questura*, even though it is the SDI that convenes the TCN to hand him/her over the residence permit. The employer/hosting institution/sponsor is not involved in the delivery of the permit.

With regard to the duration of first residence permits, it varies depending on the statuses. The residence permit for family reasons has the same duration of the residence permit of the sponsor to which the permit of the family member is linked; generally, its duration is of one year at least (Art. 30(3) D. Lgs. 286/1998). LTR permits have a permanent duration, but they are subject to update every five years (Art. 9(2) D. Lgs. 286/1998; Art. 17(2) D.P.R. 394/1999). Residence permits for study purposes last for the whole duration of the studies, subject to an annual verification of the progress of studies, plus an additional year after the end of studies (Art. 5(3)(c), D Lgs. 286/1998). Conversely, the single working permit has a duration of 1 year in

case of fixed-term contracts and 2 years in case of open-ended contracts (Art. 5(3-bis) D. Lgs. 286/1998).

5.3 Differences between national statuses and the EU legal migration acquis

In this migration phase the main difference that has emerged at the level of legislation (as well as in terms of its application) between the EU legal migration Directives and equivalent national statuses concerns the duration of residence permits.

As mentioned above in this section, residence permits for scientific research last for the duration of the research programme and in case of extension of the research programme, the first permit may be renewed for the duration of the extension (Art. 27-ter(7), D. Lgs. 286/1998). The duration of EU Blue Cards varies based on the type of work contract: in case of fixed-term contract, the permit has the same duration of the contract, plus an additional 3-month period; in case of open-ended contract, the first permit lasts for two years (Art. 27-quater(11), D Lgs. 286/1998). Similarly, the duration of residence permits issued under the parallel national schemes for HQWs and researchers depends on the type of work contract: in case of fixed-term contract the permit has the same duration of the contract, while in case of open-ended contract the permit has a duration of two years (renewable for a maximum of two additional years), except for certain categories of HQWs (university professors, native-speaker lecturers and nurses) who, if hired on open-ended contracts, will obtain an authorisation to work with open-ended validity (Art. 40(2) DPR 394/1999).

6 Residency phase

6.1 Legal transposition of the EU legal migration acquis

As concerns the residency phase, Italy has overall complied with the legal transposition of the EU legal migration Directives; no major non-compliance issues have emerged. Nonetheless, minor non-compliance issues may be highlighted with regards to two themes: access to employment and equal treatment.

Under the rules set out by D. Lgs. 286/1998, there are certain categories of TCNs other than those holding a residence permit for working purposes, who are allowed to carry out an employed activity (e.g. holders of permits for family reunification and holders of permits for reasons of social protection, i.e. for instance, victims of trafficking). However, no provision of Italian legislation requires the indication on their residence permit of the information relating to their permission to work, and also in practice such information is not reported on their permit⁹. This raises concerns in the context of Art. 7 SPD; nevertheless, the spirit of this Directive provision is overall respected, as no further application or document is required to these categories of TCNs in order to exercise their right to work.

Equal treatment provisions are included in several legal migration Directives (Art. 12 RD, Art. 15 BCD, Art. 11 LTR, Art. 12 SPD). However, these articles have been transposed into Italian migration law in rather general terms, usually through a general clause of equal treatment, without any specification of all the elements of equal treatment explicitly mentioned in the correspondent Directives' provisions¹⁰. Nonetheless, this lack may not be seen as a violation of the Directives, as long as the principle of equal treatment is in practice respected in all its elements. In addition, Art. 2(3) D. Lgs. 286/1998 is an all-encompassing provision establishing that all TCN workers who are legally resident in Italy (and their family members) are granted equal

⁹ While in the old paper version of residence permits there could be a stamp saying that that residence permit authorised the holder to conduct a working activity, the current electronic version of residence permits does not include any indication of this kind.

¹⁰ Clear examples are Art. 27-ter(10) and Art. 27-quater(15) D.Lgs. 286/1998 transposing Art. 12 RD and Art. 14 BCD respectively, which state that researchers/holders of EU Blue Card benefit of the same treatment reserved to Italian citizens, with no further specification.

treatment with Italian workers; this provision applies to all employment-related statuses.

To some extent, Art. 2 D. Lgs. 286/1998 actually provides for a broader application of the equal treatment principle compared to the Directives, as some of its paragraphs apply not only to TCN workers but to all legally staying TCNs. Art. 2(2) grants to all legally staying TCNs the same civil rights recognised to Italian citizens and Art. 2(5) grants to all foreigners equal treatment as regards the relations with the public administration, including the possibility to challenge its decisions in front of the competent courts. The latter provision explicitly includes equal treatment also in the access to public services, within the limits prescribed by law. However, this formulation is considered to be too generic and overall insufficient for ensuring compliance with the duty to grant equal treatment in the access to goods and services and the supply of goods and services made available to the public, prescribed by Art. 12(1)(g) SPD.

The same can be said also for Art. 9(12)(c) D. Lgs. 286/1998 concerning equal treatment provisions for holders of EU LTR permits. This provision, indeed, applies without prejudice to what is “otherwise determined” under the legislation in force. Such clause appears too broad to ensure conformity with Art. 11(1)(b), (d) and (f) LTR, as it does not clarify where the possible limitations shall be provided for, therefore leaving room to uncertainty as regards the actual application of the equal treatment clause.

6.2 Practical application of the EU legal migration acquis

The residency phase covers a variety of migration-related aspects that third-country nationals and their families may have to deal with, including: residence permits and their renewal; change of status and naturalisation; access to employment and employment-related rights; equal treatment; and integration.

a. Use of the permit:

The residence permit in Italy is issued using the standard format as set out in Regulation (EC) No 1030/2002, including biometric data (Art. 5(8) D. Lgs. 286/1998). The permit has a constitutive nature, i.e. the possession of a valid residence document creates a legal assumption that the residence is legal. Art. 6(2) D. Lgs. 286/1998 states that the residence permit is required in order to access several administrative procedures and a number of services, with the exception of: sport and leisure activities; access to compulsory education; and access to urgent or essential healthcare treatments, including continuative and preventive medicine programmes, as specified under Art. 35(3) D. Lgs. 286/1998.

Access to education	Access to healthcare	Registration with PES	Fixed telephone subscription	Utility subscription	Open a bank account	Social security registration
	X ¹¹	X	X	X	X	X

b. Renewals of the permit:

When it comes to the renewal of the residence permit, in contrast with the first application procedure, Italy applies a single procedure; moreover, only one authority is involved in the renewal process (i.e. the competent *Questura*). The conditions for the renewal of all residence permits are the same as the conditions for their first

¹¹ But “urgent or essential, even if continuative” treatments are granted also to undocumented foreigners (Art. 35(3), (4) and (5), D. Lgs. 286/1998).

issuance; in addition to these conditions, there is a further requirement concerning the deadline. Requests for permit renewals should be submitted 60 days before the permit's expiry date, but no administrative or financial sanctions are foreseen in case this deadline is not respected (Art. 5(4) D. Lgs. 286/1998). The TCN may be expelled if the renewal is not requested within 60 days after the permit's expiry date (Art. 13(2)(b) D. Lgs. 286/1998). However, if the TCN does not receive an expulsion order, he/she may still submit a renewal application even upon expiry of this latter deadline, without incurring in any sanctions nor suffering any other negative consequence on his/her application.

c. Change of status and naturalisation

Status changes are possible for almost all relevant statuses, with the exception of changes from the SD status to LTR status, from the BCD equivalent national status to all other statuses, and from the RD equivalent national status to all other statuses. TCNs holding a residence permit that allows them to work (single working permit, permit for self-employment, permit for family reasons, permit for asylum or for humanitarian reasons) are not required to apply for a change of status if they change employer/occupation, or if they start to work. However, when their residence permit expires, as part of the renewal procedure they will have to declare the relevant change of employer/occupation or the change of status (Art. 14(1) and (2) DPR 394/1999). This applies also to EU Blue Card holders after the first two years. In these cases the change of status and conversion of the permit is simultaneous to the renewal of the permit. TCNs with a residence permit for study purposes are required to convert it into a permit for employment reasons before it expires, if they start working or if they work more than 20 hours per week or 1.040 per year (Art. 14(4), (5) and (6), DPR 394/1999). The procedure for requesting a status change is different from the first application procedure.

In order to obtain citizenship, TCNs need to comply with the following conditions:

TCNs BORN IN ITALY

TCNs born on the Italian soil can claim Italian citizenship after continuous legal residence in Italy up to legal age, and upon declaration of their desire to do so. That declaration, to be presented within one year of reaching the age of 18, must be accompanied by the following documentation: birth certificate and certificate of residence.

CITIZENSHIP BY MARRIAGE TO AN ITALIAN CITIZEN

The foreign spouse of an Italian citizen can claim Italian citizenship if the following requirements are fulfilled:

- if in Italy: two years legal residence after the wedding; if abroad: three years after the wedding; the timeframes are reduced by half in the presence of children born or adopted by the spouses;
- valid marriage certificate and permanence of marriage bond up until the issuance of citizenship;
- absence of convictions for serious crimes;
- no threat to national security issues.

NATURALISATION

Upon discretionary assessment by the administration, TCNs may acquire the Italian citizenship based on the duration of their legal residence in Italy:

- 3 years for descendants of former Italian citizens up to the second degree and for TCNs born on the Italian soil;

- 4 years for citizens of EU Member States;
- 5 years for stateless persons and refugees, as well as for adult foreigners (over the age of 18) adopted by Italian citizens;
- 10 years for non-EU citizens.

d. Employment rights on the basis of the permit

In general, a work-related permit is linked to a certain employer; when changing employer, TCNs are not required to immediately request a change to their permit, but when their residence permit expires, as part of the renewal procedure they will have to declare the change of employer.

e. Equal treatment

There are some identified restrictions or obstacles for third-country nationals enjoying equal treatment compared to nationals only in the case of:

LTR

- Education and vocational training: no specific mention is made under Italian law as regards vocational training
- Social security benefits, access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing: Art. 9(12)(c) D. Lgs. 286/1998 is without prejudice to what is "otherwise determined" under the legislation in force. As mentioned in section 6.1 above, such clause appears too broad to ensure conformity with the LTR, as it does not clarify where the possible limitations shall be provided for, therefore leaving room to uncertainty as regards the actual application of the equal treatment clause.

SPD

- Access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing: as mentioned in section 6.1 above, Art. 2(5) D. Lgs. 286/1998 includes equal treatment also in the access to public services, within the limits prescribed by law; however this provision has a rather generic formulation and does not make specific reference to the supply of goods and services made available to the public.,

In the framework of equal treatment, the issue of labour exploitation of TCNs is crucial in the Italian context. Italy has a sufficiently developed legal framework to sanction labour exploitation both at a criminal and administrative level and to offer protection to victims (also thanks to the transposition of Directive 2009/52/EC). In contrast, Italy does not have neither a mechanism in place to monitor labour exploitation, nor any other specific measure to prevent labour exploitation, as highlighted also by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)¹². In light of the relevance and seriousness of this phenomenon in Italy, especially in the agriculture and domestic work sectors, it would be urgent to improve the monitoring and prevention of this phenomenon and the practical implementation of existing legislation.

¹² Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2014), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, GRETA(2014)18, <https://rm.coe.int/1680631cc1>; Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2017), Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, GRETA(2016)29, <https://rm.coe.int/16806edf35>.

Social security benefits: a judgement of the Court of Justice (Martinez Silva C-449/16) found that a national measure excluding single permit holders from a family benefit was in breach of Article 12 of the SPD. It will need to be implemented with regard to all relevant family benefits.

f. Integration:

As concerns integration, since 2011 Italy has introduced a system of integration measures to which all TCNs who enter Italy for the first time and apply for a residence permit of a duration equal to or longer than one year must commit to (Art. 4bis D. Lgs. 286/1998, introduced by L. 94/2009; Art. 2 D.P.R. 179/2011). Once the applicant is on the Italian territory, he/she enters an "integration agreement" with the Italian state. The agreement is concluded at the moment when the TCN applies for the residence permit; it is mandatory and it has a duration of two years. If the TCN does not participate in this or fails the integration measures there may be serious consequences, even amounting to the revocation of the residence permit and subsequent expulsion (Art. 4-bis D. Lgs. 286/1998). A further integration test applies to TCNs who apply for a LTR permit: Art. 9(2bis) D. Lgs. 286/1998 (as modified by L. 94/2009) establishes that LTR applicants have to pass an Italian language test, level A2 (unless they have already been recognised an A2 level knowledge of Italian language in the framework of the "integration agreement").

6.3 Differences between national statuses and the EU legal migration acquis

In this migration phase the main difference that has emerged at the level of legislation (as well as in terms of its application) between the EU legal migration Directives and equivalent national statuses concerns access to employment, and in particular the fact that a residence permit for working purposes may be linked to a certain employer only.

This is the case of both the EU Blue Card during the first 2 years of validity and the equivalent national scheme, i.e. the residence permits for HQWs issued under Art. 27 D. Lgs. 286/1998, with a difference between the two. Under the national scheme, the TCN is only authorised to carry out a certain profession with the employer that has first hired him/her. If the TCN loses his/her job or wants to change employer, he/she will have to apply for a new residence permit with a new employer (Art. 27 D. Lgs. 286/1998; Art. 40 D.P.R. 394/1999). Under the BCD this requirement is not so strict. If the EU Blue Card holder wants to change employer during the first 2 years, he/she has to request prior authorisation to the competent authority (the local "Labour Directorate"). The Blue Card holder must send documentation concerning his/her new work contract or binding job offer to the competent authority; if he/she does not receive any reply within 15 days, the opinion of the local Labour Directorate is considered positive and the change of employer is considered authorised. Conversely, if the opinion is negative, the applicant will have to apply for a new residence permit. Therefore, in this respect, the conditions set by the BCD are more favourable for the TCN compared to those set by the equivalent national scheme.

7 Intra-EU mobility phase

7.1 Legal transposition of the EU legal migration acquis

With regard to the intra-EU mobility phase, Italy has overall complied with the legal transposition of the EU legal migration Directives. The provisions concerning short-term mobility and residence in a second Member State of TCNs who hold a residence permit issued by a first Member State (so-called "mobile TCNs") have actually been transposed into Italian migration law almost literally: Art. 8 SD has been transposed into Arts. 39(4-bis) and (4-ter) D. Lgs. 286/1998; Art. 13 RD has been transposed into Art. 27-ter(11) D. Lgs. 286/1998; Art. 18 BCD has been transposed into Art. 27-quater(17) D. Lgs. 286/1998; and Arts. 14 and 15 LTR have been transposed into Art. 9-bis D. Lgs. 286/1998. Only minor non-conformity issues have been highlighted in

the transposition of Art. 15 LTR; these, however, do not affect the practical application of the Directive and do not hamper the proper implementation of the provisions concerning the residence in Italy of a TCN holding a LTR permit issued by another Member State.

7.2 Practical application of the EU legal migration acquis

Based on the EU legal migration Directives, Italy has set the conditions and procedures applying to mobile TCNs, when they decide to move from a first Member State, in which they hold a residence permit, to Italy. No serious violations of the Directives' provisions and no actual application problems have been reported.

All TCNs holding a valid residence permit issued by another Member State are exempted from visa requirements when they enter the Italian territory. A TCN student may stay in Italy for more than three months, provided that he/she fulfils the relevant requirements established by law, and either he/she participates in a European or bilateral exchange programme with his/her country of origin, or he/she is authorised to reside in an EU Member State for studying purposes for at least 2 years, or he/she is enrolled in a study programme that requires to spend a mandatory period in Italy (Art. 39(4-bis) and (4-ter) D. Lgs. 286/1998)¹³.

As concerns TCN researchers, for short-term stays (up to 3 months) an Italian residence permit is not required; moreover, instead than the authorisation to work, the TCN must submit to the SDI within 8 days from entry a communication including a copy of the hosting agreement signed with the hosting institution in the first Member State. This hosting agreement shall include information on the TCN's research period in Italy, his/her availability of resources, and a sickness insurance covering all his/her stay in Italy. In addition, the TCN must attach a declaration from the hosting institution in Italy. For long-term stays (more than 3 months) the normal procedure applies: the TCN must sign a hosting agreement with the hosting institution in Italy and apply for a residence permit following the standard procedure (Art. 27-ter(11) D. Lgs. 286/1998).

With regards to Blue Card holders, after eighteen months of legal stay in another Member State, they can enter Italy without need of a visa, in order to carry out an employed activity here. Differently from the normal procedure, the employer may request the authorisation to work within one month from the TCN's entry in the Italian territory; alternatively the employer may apply for the authorisation to work while the TCN is still in the first Member State. In addition, the time to obtain the authorisation to work from the SDI is shorter compared to first time applicants, i.e. 60 days rather than 90 days (Art. 27-quater(17) D. Lgs. 286/1998).

TCNs who hold an EU LTR permit issued by another Member State may stay in Italy for more than three months for the purposes of: a) carrying out an employed or self-employed economic activity; b) attending courses of study or vocational training; c) staying for any other lawful purpose, if they can prove they have the necessary means of subsistence and a sickness insurance for the period of their stay. Depending on the reason of their stay, these mobile TCNs shall apply for the corresponding residence permit; the standard conditions and procedure applies, except for the fact that the authorisation to work may be requested by the employer even if the TCN has already entered the Italian territory (Art. 9-bis D. Lgs. 286/1998).

Dependent family members are allowed to move to Italy together with mobile TCNs; for long-term stays, they may obtain a residence permit for family reasons, provided that they fulfil the standard requirements established by Italian law (under Art. 29(3) D. Lgs. 286/1998) and they can prove that they have resided with the EU Blue Card

¹³ In addition, the student must attach to his/her residence permit application the relevant documentation provided by the university of the first Member State where he/she was studying, proving that the new study programme in Italy is complementary to the study programme she/he has attended in the first Member State.

holder or the LTR permit holder in the first Member State (Arts. 27-quater(17) and 9-bis(3) D. Lgs. 286/1998).

As concerns short-term mobility, the residence permit a TCN is holding in addition to a valid travel document, is sufficient to enter the Italian territory. Mobile TCNs have to declare their presence to the competent *Questura* within 8 working days from their entry, by filling in a document called "declaration of presence"; non-compliance is punished with an administrative sanction of 103 to 309 euro (Art. 5(7) D. Lgs. 286/1998). Conversely, TCNs do not have to request authorisation for the short-term mobility.

7.3 Differences between national statuses and the EU legal migration acquis

In this migration phase no substantial differences have emerged at the level of legislation (as well as in terms of its application) between the EU legal migration Directives and equivalent national statuses.

8 End of legal stay / leaving the EU phase

8.1 Legal transposition of the EU legal migration acquis

With regard to this phase of the migration process, Italy has complied with the legal transposition of the EU legal migration Directives; no non-compliance issues have emerged.

8.2 Practical application of the EU legal migration acquis

The end of legal stay/leaving the EU phase addresses the applied procedures and rights when a third country national leaves the EU either for a limited period of time or permanently. It also examines procedures and conditions in place for circular migration and overstaying. Some application issues may be highlighted in this phase, but these are to be attributed mainly to deficiencies in the practical implementation of existing legislation, and cannot be considered as amounting to a substantial infringement of the EU legal migration Directives.

TCNs who decide to leave Italy permanently are required to return their residence permit to the Border Police. Apparently, there is no explicit legal obligation to de-register and to leave details of the country of next residence; in any case, de-registration is done automatically by the *Anagrafe* (municipal office where all residents are registered) when it is informed by another authority of the permanent departure of a TCN.

In case of return, the pension rights and social security rights acquired in Italy are maintained by all TCNs who have performed an employment activity in Italy (with the exception of seasonal workers, who have a separate regime). TCN workers can enjoy such benefits when the requirements established by Italian law are met and they get 65 years old, even if there is no agreement of reciprocity between Italy and their country of origin (Art. 22(13) D. Lgs. 286/1998). However, in order to make the portability of social security rights effective, it is crucial that the relevant information is made easily available to potentially interested TCNs. The information that is made available online, although relatively easy to access, is rather limited and generic, and it is in Italian only¹⁴. Therefore, it may not be considered sufficiently clear and exhaustive, especially for persons who have a limited command of the Italian language and/or a limited understanding of the Italian legal and institutional framework on social security. Most probably then, a majority of TCNs need to request

¹⁴ See information provided on the following institutional websites: www.integrazionemigranti.gov.it; <https://www.inps.it/NuovoportaleINPS/default.aspx>; <https://www.inps.it/nuovoportaleinps/default.aspx?sPathID=%3B0%3B45138%3B45346%3B45368%3B45369%3B45372%3B&lastMenu=45372&iMenu=1&iNodo=45372&p4=2>.

additional information and assistance at INPS offices (the national social security agency) and/or *patronati* or trade unions' offices.

As concerns temporary absences, TCNs are allowed to leave the Italian territory for a limited period of time while maintaining their right to stay and their residence permit. However, a residence permit may not be renewed if the holder has been absent from Italy for a period of more than six consecutive months or, for residence permits valid for at least two years, for a consecutive period of more than half of the overall period of validity of the permit, unless such protracted absence was due to military obligations or to other serious and proved reasons (Art. 13(4) D.P.R. 394/1999). Holders of an EU LTR permit may have their permit withdrawn in case of absence from the EU territory for a period of twelve consecutive months, or absence from the Italian territory for a period of more than 6 years (Art. 9(7)(d) and (e) D. Lgs. 286/1998)¹⁵. However, it shall be noted that Italian authorities (*Questura* offices) do not monitor absences, unless they receive specific information in this respect from other authorities.

Italy allows TCNs to leave the national territory when they are awaiting the delivery or the renewal of their residence permit (and then return to Italy), provided that they have: a valid passport; the receipt proving the submission of the application for the issuance or renewal of the residence permit; and the old residence permit (in case of renewal) or the entry visa (in case of first issuance). However, the TCN is not allowed to travel to or transit through any other Schengen country.

With regard to circular migration, Italy has a scheme in place to allow a form of circular migration, which applies to seasonal workers employed in the agriculture and tourism/hospitality sectors (Art. 24 D. Lgs. 286/1998). However, as highlighted by the 2010 EMN national report on temporary and circular migration, the Italian scheme for seasonal workers can be related to the concept of temporary and circular migration only in general terms. In fact, according to EMN, circular migration in a more narrow and specific sense should entail a double process of assistance to the TCN: firstly, in the form of initiatives aimed at his/her preparation for the migration experience, and subsequently, of specific initiatives aimed at his/her socio-economic reintegration in the country of origin. In the case of the Italian seasonal work scheme, "we can, at most, speak of repeated temporary migration, and its simplification measures"¹⁶.

As concerns overstayers, they risk the expulsion from the Italian territory, as any other unauthorised TCN. Administrative expulsion has three main effects: i) it imposes on the TCN an obligation to leave the country; ii) it imposes a prohibition to re-enter the country (entry ban) for a period between 3 to 5 years; iii) this entry ban is registered by Italian authorities in the Schengen Information System (SIS).

A final issue to be highlighted relates to "unreturnable TCNs". In Italy there are no procedures in place for cases of TCNs who lost their right to stay but who cannot be returned; these persons may end up in immigration detention centres, like any irregular migrant who is waiting for his/her removal to take place. According to Italian migration lawyers, the cases where Italian authorities have acknowledged that a TCN could not be expelled and have issued a temporary residence permit are extremely limited.

¹⁵ It is worth mentioning that, however, based on Art. 9(9) D. Lgs. 286/1998 (which transposes Art. 9(7) LTR) long-term residents who are withdrawn their LTR permit but who do not have to be expelled, shall be issued a different type of residence permit.

¹⁶ EMN (2010), Temporary and circular migration: empirical evidence, current practice and future options in Italy, National Report, p. 13, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/14a_italy_national_report_circular_migration_version_13oct2010_en.pdf.

8.3 Differences between national statuses and the EU legal migration acquis

In this migration phase no substantial differences have emerged at the level of legislation (as well as in terms of its application) between the EU legal migration Directives and equivalent national statuses.

9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State

The study shows a diversified picture of the practical implementation of the EU legal migration legislation in Italy. In most cases, the EU Directives targeted in this analysis have been properly transposed and overall adequately implemented by Italy. More precisely, the Italian legislation transposing the FRD, the LTR, the SD, the RD and the BCD can be considered as overall reflecting the principles and requirements set out by the EU Directives.

However, several issues of non-conformity or partial conformity have been observed with regard to the transposition and implementation of the LTR and the BCD; these issues are generally limited to specific provisions and do not affect in a systemic way the overall structure of the transposing legislation. Nevertheless, this does not necessarily prevent that some of these conformity issues have a practical impact on the implementation of the Directive provisions. For instance, this may be the case of the equal treatment provisions linked to the LTR status (Art. 11 LTR) or the case of the admission criteria set by the BCD (Art. 5 BCD).

Other relevant issues may be highlighted, e.g. concerning the timeframe for the issuance of the residence permit (Art. 5 SPD), the information included in the residence permit (Art. 7 SPD), or equal treatment provisions (Art. 12 SPD).

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