

## EMN FOCUSED STUDY 2012

### Intra-EU mobility of third-country nationals

#### National Contribution from Italy

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focussed Study. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.*

Top-line 'Factsheet'  
(National Contribution)  
[Executive Summary  
(Synthesis Report)]

*National Contribution (one page only)*

*Overview of the National Contribution – drawing out key facts and figures from across all sections of the Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.*

The Italian legislative framework (see Section 1) has enforced a discipline in favour of third-country nationals residing in another Member State who wish to enter or stay in the Italian territory (first of all the visa waiver), as also provided for by EU directives.

Whilst the procedure of entry and stay in the Italian territory has not been regulated differently by the EU Directives, the same law concerning third-country nationals coming from their country of origin applies (this is the case of frontier workers, seasonal workers, self-employed, as well as special cases of workers). In these cases, the legal provisions can therefore be an obstacle for third-country nationals already resident in EU territory, greatly interested in having a reduction of the required time frame, a fortiori in cases where the red tape has a disproportionate impact given the brevity of employment for which the residence permit is required.

With regard to the entry and stay of EU citizens, the regulation is harmonized at EU level as a result of Directive 2004/38/EC, implemented in Italy by Legislative Decree 30/2007, and it ignores the fact that the EU citizen comes or not from the country of origin or from any other Member State.

However, the “flow decrees” establish labour quotas periodically, under which the non-EU citizens may enter Italy. These are determined according to the demands of the labour market and its analysis. Even the citizens of third countries in intra-EU mobility should generally follow the provisions contained in the quotas, except as otherwise regulated.

As regards possible restrictions (see Section 3), first of all it should be noted that in Italy non-EU foreigners are applied the same salary schedule as for all employees under collective bargaining agreements. Moreover, in order to exercise self-employment one must have evidence of the possession of the requirements for the exercise of the profession, housing and a suitable annual income. On the other hand, as regards the recognition of academic qualifications of non-EU citizens, it is necessary to undertake a procedure involving several

institutions and ministries, without prejudice to any bilateral agreements. With regard to the vested welfare and, in particular, social security rights of non-EU citizens there is full equality with Italians if non-EU citizens are in possession of a long-term residence permit or a residence permit for no less than one year. Other limitations arise from the obligation to pay a fee to obtain a residence permit, and regulations that impose different types of obligations such as the integration agreements.

The data on international migration flows provided by Eurostat (see Section 2), based on national administrative sources (the *Anagrafi* - Civil Registries), contain useful information on immigration and long-term international migration, with disaggregated data by age, gender, citizenship and country of previous or future residence. However, the absence of specific data relating to intra-EU mobility makes it particularly difficult to trace the movement of non-EU citizens within the EU because, as in the Italian case study, transfers to foreign countries mainly concern Italian nationals. In fact, there are mostly young Italians highly skilled to transfer for more significant employment opportunities. Though, the theme of intra-European mobility of non-EU citizens is not, therefore, a phenomenon of specific importance from a quantitative point of view, it is, however, worthy of further investigation as part of the objective of free movement of workers.

More information can be achieved with more satisfactory results, both for inflows and for outflows, when the Bank of Italy – which, as will be mentioned, leads an interesting sample survey on persons crossing the Italian border – will undertake to determine the number of people coming from other Member States or going to other Member States in programmed workflows (eg, for conferences participation), if in entry, whether they are nationals of a Member State or foreign nationals in that Member State, and, if outgoing, whether they are Italian or non-EU citizens resident in Italy.

## Section 1

### The National Legislative Framework: Visas and Residence Permits

*(National Contribution: Maximum 8 pages)*

*This section reviews the national rules and procedures which third-country nationals who are resident in one Member State need to follow in order to acquire a **visa and/or a residence permit** to reside in another Member State. It also includes any conditions that mobile third-country nationals need to fulfil in order to acquire a visa and/or residence permit, such as evidence that they have a stable and regular income, sickness insurance and/or that they comply with certain integration conditions (where applicable).*

*Please note that additional provisions in national legislation which can affect the decision of mobile third-country nationals to settle in another Member State (or Norway), but are not conditions for acquiring a visa or residence permit as such (e.g. rules and procedures governing the recognition of degrees and diplomas), are examined in Section 3 of this common template.*

*In their responses to this section, EMN NCPs are asked to specify and describe the relevant national rules and procedures that **specific groups of mobile third-country nationals need to follow** in order to obtain a visa and residence permit. These include groups of mobile third-country nationals that enjoy mobility rights under the EU's migration Directives, and other groups of mobile third-country nationals that do not enjoy such rights at EU level. If national legislation exists that is relevant to all groups of mobile third-country nationals, EMN NCPs*

*should specify this is the case in the space provided.*

***Please note that only those national rules and procedures that are specific to mobile third-country nationals should be identified.*** *If the national rules and procedures that apply to third-country nationals who wish to move to another Member State for the purposes of work are the same as the national rules and procedures that apply to third-country nationals who migrate to an EU Member State (or Norway) from a third-country for the first time, please indicate this is the case and do not provide further information.*

*Finally, where specific national rules and procedures governing access to a visa and residence permit exist for specific groups of mobile third country nationals, EMN NCPs are asked to specify how these national rules and procedures differ (if at all) from the national rules and procedures that apply to **mobile EU citizens**.*

*The Synthesis Report will provide the reader and policymakers, in particular, with a comparative analysis of the rules and policies adopted at national level in order to implement the elements of the EU *acquis* set out in the background to the common template (further above), and any other national rules of relevance to intra-EU mobility of third-country nationals.*

*In the following, what is required is a brief outline of the relevant national rules and procedures pertinent to the group described under each entry, along with an explanation of how these rules and procedures differ (where relevant) from the national rules and procedures that apply to EU citizens.*

### **Groups of third-country nationals who enjoy mobility rights under the EU's migration Directives:**

#### **1.1. Long-term residents in another Member State**

a) What national rules and procedures **apply** to third-country nationals who are long-term residents in another Member State in respect of their access to a visa and/or residence permit in your country?

Pursuant to art. 9-bis<sup>1</sup> of Legislative Decree no. 286/1998 (the so-called T.U.I., Consolidated Act on Immigration), a TCN in possession of a valid EC long-term residence permit issued by another EU Member State may request to stay in the national territory for a period exceeding three months, in order to:

- a) pursue an economic activity (employment or self-employment), in accordance with articles 5, par. 3-bis, 22 and 26. Certifications as per art. 26 are issued by the Single Desk for Immigration;
- b) attend courses of study or vocational training, in accordance with applicable law;
- c) stay for another lawful purpose, but only if in possession of regular means of subsistence amounting to double the minimum required by law for the exemption from participation in health care costs, as well as a health insurance for the period of the stay (paragraph 1, art. 9 bis T.U.I.).

For the issuance of the residence permit to TCNs coming from another Member State, the general conditions laid down by the Consolidated Act on Immigration (T.U.I) and the Implementing Regulation are applied (ex art.9-bis, paragraph 2 of the T.U.I). Entry into the national territory is allowed without a visa (important exception compared to other non-EU

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<sup>1</sup> Article introduced by Legislative Decree of 8 January 2007, n. 3, implementing Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.

workers) and – as far as the authorization procedures referred to in art. 22, par. 5 of the T.U.I. are concerned – without the requirement of being resident abroad.

If the TCNs are in possession of the requirements referred to in art. 9 and 9-bis of the T.U.I., within 90 days from the request they are issued an EC long-term residence permit. The Member State which issued the previous EC long-term residence permit (par. 8) is informed of the newly issued one.

Paragraphs 6 and 7 of art. 9-bis of the T.U.I. lay down the procedures for the revocation of a residence permit and the expulsion of a TCN.

b) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

A more favorable discipline is applied to citizens of another EU Member State, as per the EU Directive no. 2004/38/CE, implemented in Italy by Legislative Decree no. 30/2007. In order to reside in the Italian territory for more than 3 months, it is necessary to satisfy one of the following requirements (art. 7 of Legislative Decree 30/2007):

- a) being employed or self-employed in the country;
- b) being in possession of sufficient economic resources for themselves and their family members - in order not to become a burden on the country's social assistance system during the period of stay - as well as a health insurance or any other suitable insurance covering all risks in the national territory;
- c) being enrolled in a public or recognized private school in order to attend a course of study or vocational training, while complying with the requirements referred to in point b);
- d) being a family member, as defined by art. 2, accompanying or joining an EU citizen who has the right to stay according to paragraphs a), b) or c).

EU citizens maintain their right to stay even if they are temporarily unable to work, or unintentionally unemployed (by proving their condition of involuntary unemployment as per art. 7, par. 3, Letter c) and d) of the already-mentioned Legislative Decree), or if they are following a vocational training course.

Administrative formalities are regulated by art. 9 of the already-mentioned Legislative Decree.

With regard to possible differences between EU and non-EU citizens, there is continuity between law and practice. In both cases, entry into the national territory is allowed without a visa. EU citizens, however, are not required to prove their previous residence in another Member State, nor the possession of long-term resident status for the purpose of mobility (Directive 2004/38/EC, implemented in Italy with Legislative Decree 30/2007). Notwithstanding the obligation to meet certain economic requirements, there are still some differences in the quantification of the resources needed to live in Italy; non-EU citizens are also required to inform their country of origin of their transfer. The main procedural difference consists in the authority that is in charge of the procedure: in order to start the procedure, TCNs refer to the Single Desk for Immigration, whereas EU citizens have to contact the local Registries.

## **1.2 EU Blue Card holders**

a) What national rules and procedures apply to third-country nationals who are EU Blue Card holders in another Member State in respect of their access to a visa and/or residence permit in

your country?

Article 27-quater of the T.U.I.<sup>2</sup> establishes the general procedures for the granting of authorization to highly qualified non-EU workers. In particular, paragraph 17 states that after 18 months of regular residence in another Member State, TCNs holding an EU Blue Card issued by such State may enter Italy without a visa, in order to pursue a business activity, under the conditions provided for in this article. Within a month after entering the country, the employer must apply for the work authorization, according to the procedure laid down in paragraph 4, and subject to the conditions of this article. The authorization shall be issued within 60 days. The request for the work authorization may be submitted by the employer, even if the EU Blue Card holder still resides in the territory of the first Member State. The *Questore* (Police Commissioner) issues the permit to the highly qualified non-EU worker (who was previously authorized to work by the Single Desk for Immigration) according to the conditions laid down in this article.

The Member State which issued the previous EU Blue Card is then informed of the newly issued one. In accordance with Article 13, TCNs whose authorization to work or residence permit have been refused or revoked (or whose permit has not been renewed) are therefore expelled from the country, and their return is carried out towards the Member State which originally released the EU Blue Card, even if the EU Blue Card issued by the other Member State has expired or has been revoked. The provisions under Article 22, par. 11 apply to the EU Blue Card holder readmitted in Italy pursuant to this paragraph.

Art. 9-ter of the T.U.I.<sup>3</sup> establishes that TCNs holding an EU Blue Card issued by another Member State, and authorized to stay in Italy under the conditions laid down in Article 27-quater of the Consolidated Act on Immigration, may ask the *Questore* (Police Commissioner) to issue an EC long-term residence permit, as per art. 9, par. 1 of the T.U.I.

The provision referred to in paragraph 1 shall apply to TCNs who may prove:

- a) that they have resided regularly and continuously for five years in the EU territory, as EU Blue Card holders;
- b) that they have hold an EU Blue Card for at least 2 years, in accordance with Article 27-Quater of the T.U.I.

Any period of absence of the TCN from the EU territory does not interrupt the length of time referred to in this paragraph, and shall be included in the calculation of the same period when it is less than 12 consecutive months and does not exceed a total of 18 months in the period referred to in paragraph a).

EU Blue Card holders who satisfy the requirements are issued an EC long-term resident permit by the *Questore*; this permit is labeled “ex holder of EU Blue Card”.

The residence permit referred to in par. 1 is revoked in the cases provided for in Art. 9, par. 7, letter a), b), c) and e), as well as in the case of absence from the EU territory for a period of 24 consecutive months (paragraph 4).

b) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

For the differences in the rules and procedures adopted for highly qualified EU workers, compared to non-EU ones, please refer to the observations in Section 1.1.b. In order to reside in the Italian territory for more than 3 months, it is necessary for EU citizens to satisfy one of

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<sup>2</sup> Article introduced by Legislative Decree of 28 June 2012, n. 108, implementing Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

<sup>3</sup> Article introduced by Legislative Decree of 28 June 2012, n. 108, implementing Directive 2009/50/EC.

the following requirements (art. 7 of Legislative Decree 30/2007, implementing Directive 2004/38/EC):

- a) being employed or self-employed in the country;
- b) being in possession of sufficient economic resources for themselves and their family members - in order not to become a burden on the country's social assistance system during the period of stay - as well as a health insurance or any other suitable insurance covering all risks in the national territory;
- c) being enrolled in a public or recognized private school in order to attend a course of study or vocational training, while complying with the requirements referred to in point b);
- d) being a family member, as defined by art. 2, accompanying or joining an EU citizen who has the right to stay according to paragraphs a), b) or c).

Therefore, there is no need to prove a previous residence in another EU Member State, nor the possession of EU Blue Card, other types of residence permit or the authorization for its issuance.

### **1.3 Researchers**

a) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who wish to undertake work as a Researcher in your Member State?

Article 27-ter, paragraph 7 of the T.U.I. establishes that a TCN, admitted as a researcher in an EU Member State, may enter Italy without a visa to continue the work already begun in the other State. For stays of up to 3 months the residence permit is not required and the authorization referred to in par. 4 is replaced by a declaration to the Single Desk on Immigration at the prefecture - Territorial Office of the Government of the province in which the research is currently carried out by the foreigner, within 8 days from the entry. This declaration must be accompanied by a certified copy of the Acceptance Agreement agreed upon in the other State, which involves a period of research in Italy, the availability of financial resources and health insurance valid for the period of stay in Italy, together with a statement of the Institute at which the research activity takes place. Under the provisions of article 27-ter, par. 4 and 7, for periods exceeding 3 months, the stay is subject to the signing of an Acceptance Agreement with a Research Institute (paragraph 1) and the general provisions as per art. 27-ter, par. 4 and 7 of T.U.I. are applied. The research activity is permitted during the waiting period for the issuance of the residence permit.

b) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

The European Union promotes development and mobility in order to create new career opportunities for researchers. There are many programs (EURAXESS, EURES) which promote the mobility of researchers within the EU. In this regard, the "Communication from the Commission to the Council and the European Parliament of May 23, 2008: Better Careers and More Mobility: a European Partnership for Researchers" established criteria and objectives for the Member States.

The general rules on mobility of EU citizens and workers, as well as the directives on the recognition of qualifications and work experience obtained abroad (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, commonly known as "Directive Zappalà"), apply to researchers from another Member State.

For the differences in the rules and procedures adopted for highly qualified EU workers, compared to non-EU ones, please refer to the observations in Section 1.1.b. In order to reside in the Italian territory for more than 3 months, it is necessary for EU citizens to satisfy one of the following requirements (art. 7 of Legislative Decree 30/2007, implementing Directive 2004/38/EC):

- a) being employed or self-employed in the country;
- b) being in possession of sufficient economic resources for themselves and their family members - in order not to become a burden on the country's social assistance system during the period of stay - as well as a health insurance or any other suitable insurance covering all risks in the national territory;
- c) being enrolled in a public or recognized private school in order to attend a course of study or vocational training, while complying with the requirements referred to in point b);
- d) being a family member, as defined by art. 2, accompanying or joining an EU citizen who has the right to stay according to paragraphs a), b) or c).

Therefore, there is no need to prove a previous residence in another EU Member State, nor the possession of a residence permit or the authorization for its issuance.

#### **1.4 Students**

a) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who wish to undertake studies in your Member State?

Article 39, par. 4 of the T.U.I. establishes that a TCN holding a residence permit issued by an EU Member State, if enrolled at a university or a higher education institution, may enter Italy for stays longer than 3 months without a visa, in order to continue his/her studies already undertaken in the other Member State, or integrate them with a related program of study, provided that he/she satisfies the necessary requirements for the residence under article 39 of the T.U.I., and only in the following cases:

- a) if the TCN participates in an EU exchange program or a bilateral program with the country of origin, or has already been authorized to stay in an EU Member State for study reasons for at least 2 years;
- b) if the TCN attaches to his/her application for the residence permit a documentation by the academic authorities of the EU Member State in which he/she attended the course of study, stating that the new program of studies to be undertaken in Italy is actually complementary to the program of study already completed.

Conditions referred to in paragraph 4-bis, letter a) are not required if part of the TCN's program of study must necessarily take place in Italy.

Entry into Italy and access to University courses are allowed "on an equal footing with Italian students: to TCNs holding a residence permit for employment, self-employment, family, asylum, political or religious reasons; to TCNs regularly residing for at least 1 year and in possession of a degree obtained in Italy; to TCNs (wherever their residence is) who have obtained diplomas from Italian schools abroad or from foreign or international schools operating in Italy or abroad and subject to bilateral agreements or special regulations for the recognition of qualifications, and who satisfy the general entry requirements for study," (ex art. 39, par. 5, of the T.U.I.)

b) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

Pursuant to art. 7 of the Legislative Decree no. 30/2007, implementing Directive 2004/30/EC, the right to stay beyond 3 months is granted to the EU citizens who "are enrolled in a public

or recognized private school in order to attend (as their main activity) a course of study or vocational training and are in possession of sufficient economic resources for themselves and their family members (to be attested by a declaration or other appropriate documentation) in order not to become a burden on the country's social assistance system during their period of stay, as well as a health insurance or any other suitable insurance covering all risks in the national territory”.

Therefore, there is no need to prove a previous residence in another EU Member State, nor – as previously explained - the possession of a residence permit or the authorization for its issuance.

With regard to access to education, the same conditions apply for Italian, EU and Third-Country nationals already residing in Italy.

The inclusion of international students at the end of their studies is more complex, since the authorization to extend their stay, in order to seek or take a job, is not automatic, unless they are EU citizens or children of immigrants who acquired a long-term residence permit. The conversion of a study permit into a work permit, in fact, may only be allowed by the annual “flow decrees”, within the set limits.

For further details on this matter you may refer to the national report on international students migration, published on the Italian website [www.emnitaly.it](http://www.emnitaly.it).

### **1.5 Posted workers**

a) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who are posted by a service provider for the purposes of cross-border provision of services in your Member State?

Art. 27, paragraph 1, letter i) of the T.U.I. defines posted workers as employees dependent on employers, natural or legal persons, resident or established abroad and directly paid by them, who are temporarily transferred abroad at (Italian or foreign) natural or legal persons, resident in Italy, in order to perform specific services in the Italian territory subject to a contract drawn up between the above-mentioned natural or legal persons, resident or established in Italy, and those who are resident or established abroad, in compliance with the provisions of art. 1655 of the Civil Code, Law no. 1369 of 23 October 1960 and the international and EU standards.

Paragraph 1-bis of the above-mentioned article adds that, in the case that the employers (letter i) of paragraph 1) are employees regularly paid by employers (natural or legal persons resident or established in an EU Member State), the authorization to work is replaced by a communication of the client of the contract under which the services are performed, together with a statement of the employer containing the names of the employees to be posted abroad and certifying the regularity of their situation, with regard to residence and work conditions in the EU Member State where their employer is located. The communication shall be submitted to the Single Desk for Immigration of the prefecture-territorial office of the Government, for the issuance of a residence permit.

Italy implemented the European Directive 1996/71/EC concerning the posting of workers with the Legislative Decree no. 1/2000. This decree, in harmony with EU law, defines the concept of “EU posting”, which requires a direct relationship between a posted worker and a posting company that continues to exert its power.

Companies posting workers abroad must comply with the minimum standards of working conditions laid down by the legislation of the State where the work will be performed.

The substantive law is largely left to the discretion of each Member State, as provided for in the above-mentioned Directive with regard to holidays, minimum wage, health and safety, equal treatment of men and women and social security.

b) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

The main difference between EU and non-EU citizens is the need for the latter to obtain authorization to work and notify the Single Desk for Immigration of the prefecture-territorial office of the Government for the issuance of the residence permit. These, in fact, are mandatory procedures for all TCNs, but are not required in case of employment of workers coming from another EU Member State.

**Groups of third-country nationals who are not provided for by the EU acquis:**

### **1.6 Cross-border workers**

a) Do specific national rules and procedures governing access to a visa and/or a residence permit apply to third-country nationals who are resident in another Member State but are employed as cross-border workers in your Member State?

With regard to the entry regulations for non-EU cross border workers, art. 27, paragraph 5 of T.U.I. refers to the specific provisions contained in the international agreements with neighboring states.

b) If specific national rules and procedures apply to the third-country nationals described in 1.6 (1) above, how do these differ from the national rules and procedures that apply to EU citizens in a similar situation?

EU cross-border workers have the right to free movement and residence under the conditions laid down (see 1.1.b) in particular by the Directive 2004/38/EC, as implemented in Italy by the Legislative Decree no. 30 of 2007.

### **1.7 Seasonal workers**

a) Do specific national rules and procedures apply to third-country nationals who are resident in another Member State and who exercise an economic activity as seasonal workers in your Member State in respect of their access to a visa and/or residence permit?

Articles 5 and 24 of the T.U.I. regulate the entry and stay of non-EU seasonal workers in Italy, but do not provide any special rules for non-EU workers already residing in another Member State and wishing to pursue a seasonal economic activity in Italy, with regard to their obtainment of a visa and residence permit, and therefore the general rules apply. However, a special provision is provided for by art. 5, paragraph 7 of the T.U.I. in the case of TCNs holding a valid residence permit for Italy (or an equivalent document) issued by an EU Member State. In this case, TCN workers are required to report their presence in the country (in the manner and within the time period referred to in par. 5 of the above-mentioned article) to the *Questore*, who issues an appropriate receipt for the declaration of presence. The penalty for infringement is an administrative fine of €103 to €309. If such declaration is not made within 60 days after entering the country, an administrative expulsion may be issued.

b) If specific national rules and procedures apply to the third-country nationals described in

1.7 (1) above, how do these differ from the national rules and procedures that apply to EU citizens in a similar situation?

EU seasonal workers also have the right to free movement and residence under the conditions laid down (see 1.1.b) in particular by the Directive 2004/38/EC, as implemented in Italy by the Legislative Decree no. 30 of 2007.

### **1.8 Workers in regulated professions**

a) Do specific national rules and procedures apply to third-country nationals who are resident in another Member State and who apply to work in a regulated profession in your Member State in respect of their access to a visa and/or residence permit?

Art. 26 of the T.U.I. and Art. 39 of the implementing decree of T.U.I. (Presidential Decree 394/99), regulate the entry and acquisition of visa for self-employed TCN workers. There is no special provision for self-employed non-EU workers coming from another EU Member State and the EU provisions on the free movement of persons and services apply.

b) If specific national rules and procedures apply to the third-country nationals described in 1.8 (1) above, how do these differ from the national rules and procedures that apply to EU citizens?

EU citizens have the right to free movement and residence under the conditions laid down (see 1.1.b) in particular by the Directive 2004/38/EC, as implemented in Italy by the Legislative Decree no. 30 of 2007.

### **1.9 Any other category of migrant worker not mentioned above**

Are there any specific national rules and procedures that apply to any group of third-country nationals who are resident in another Member State that has not been mentioned above?

Article 27 of the T.U.I. provides for general favorable entry rules for particular categories of non-EU workers. For the purposes of this study on intra-EU mobility of TCNs, the following categories are relevant:

- managers or highly specialized personnel of: companies with headquarters or branches in Italy; representative offices of foreign companies having business headquarters in the territory of a WTO Member State; main offices of Italian or other EU Member State companies operating in Italy;
- University professors who are going to carry out their academic activity in Italy;
- workers employed by organizations or companies operating in the Italian territory, who have been temporarily admitted (at the request of their employer) in order to fulfill specific tasks or services for a limited or determined period of time, and who are then obliged to leave Italy at the completion of such tasks or services.

In the above-mentioned cases, the authorization to work is replaced by a communication (made by the employer) about the proposed residence contract for employment, as provided for in article 5-bis of T.U.I. This communication is sent electronically to the Single Desk for Immigration of the prefecture-Territorial office of the Government. The Single Desk forwards the communication to the *Questore*, who verifies the absence of grounds for entry refusal (pursuant to Art. 31, par. 1 of the Decree of the President of the Republic no. 394 of August 31, 1999). If authorized by the *Questore*, the communication is then forwarded electronically to the diplomatic or consular representations for the issuance of the entry visa. Within 8 days

from the arrival in Italy, the TCN must go to the Single Desk for Immigration together with the employer, in order to sign the residence contract and apply for a residence permit.

Article 27, paragraph 1, letter e) of the T.U.I. provides for that domestic employees regularly employed abroad by Italian or EU citizens residing abroad for at least an year, who move to Italy for the continuation of their domestic employment, must provide their certified contract to the diplomatic or consular representation. The authorization to work cannot be issued to domestic employees of non-EU citizens.

b) If yes, please describe how these rules differ from the national rules and procedures that apply to EU citizens.

EU citizens have the right to free movement and residence under the conditions laid down (see 1.1.b) in particular by the Directive 2004/38/EC, as implemented in Italy by the Legislative Decree no. 30 of 2007.

### **1.10 Common rules and procedures for all mobile third-country nationals**

a) Does the national legislative framework in your Member State contain rules and procedures that are relevant to all mobile third-country nationals (rather than rules that differentiate between different groups) in respect of their access to a visa and residence permit?

Articles 4 and 5 of the T.U.I. contain the general rules and procedures for the issuance of entry visas and residence permits to TCNs who wish to reside in Italy. Citizens of a non-Schengen country, with a regular visa issued by the network of diplomatic and consular offices authorized by the Ministry of Foreign Affairs, may enter into the Italian territory for tourism, study, family reunification, work and other reasons. Once entered regularly in Italy, if a TCN intends to stay longer than 90 days, he/she is required to apply for a residence permit, which will be issued for the same reason and duration of the visa. Due to innovations brought by Law no. 68 of May 28, 2007, third country nationals who intend to stay in Italy for less than three months for study, visits, tourism and business reasons, since June 2, 2007 are no longer obliged to apply for a residence permit. They need only to declare their presence on the Italian territory, according to the measures established by the Decree of the Ministry of Interior of July 26, 2007.

The Consolidated Act on Immigration (T.U.I.) also provides for specific rules regarding certain categories of TCNs. In particular, long-term residents holding a EC long-term residence permit issued by another Member State are regulated by articles 9 and 9-bis, as amended by Legislative Decree 3/2007 implementing Directive 2009/109/EC. The entry and stay for study purposes is regulated by articles 39 and 39-bis. As regards workers, procedures regarding entry visas and residence permits are laid down in art. 22 for employed workers; art. 24 for seasonal workers; art. 26 for self-employed; art. 27 for special workers (art. 27-bis for researchers, art. 27-quater for highly-qualified workers). Provisions of the T.U.I. are supplemented by the implementing decree no. 394 of August 31, 1999.

With regard to TCNs from another Member State who wish to reside in our territory to pursue an economic activity, they are usually subject to the national legislative framework on immigration, with the exception of the above-mentioned categories of workers, which are regulated by specific provisions implementing EU directives.

b) If yes, please describe the rules and procedures and explain how they differ from the national rules and procedures that apply to EU citizens.

Pursuant to Directive 2004/38/EC, the Legislative Decree 30/2007 lays down the general rules to be respected by EU citizens in order to exercise their right of free movement and residence in Italy. Article 5 regulates the right to free entry, without prejudice to the “necessary control of the travel documents at the border”. Article 6 regulates the right to free residence for up to 3 months, which requires “a valid identity document for foreign travel, in accordance with the laws of the State of which the TCN is national”.

Article 7 establishes specific requirements for EU citizens who wish to stay in Italy for more than 3 months: being employed or self-employed in Italy; being in possession of sufficient economic resources for themselves and their family members, as well as a health insurance; being enrolled in a public or recognized private school in order to attend a course of study or vocational training, while having, at the same time, sufficient economic resources for themselves and their family members; being a family member accompanying or joining an EU citizen who has the right to stay.

Article 9 regulates the administrative formalities for the proper exercise of the right to “long stay permit” (longer than 3 months): the same rules for Italian citizens apply to EU citizens, with the exception of additional documentation required by art.7. Article 10 lays down the requirements and the documentation to be produced so that family members may obtain a residence permit, whereas articles 11 and 12 determine the cases in which the latter may maintain this right. Articles 14 and 18 regulate the right to permanent residence, which is guaranteed to those EU nationals who have resided continuously and regularly in Italy for at least 5 years (except for derogations in melius for subordinate employees, as per art. 15). Finally, article 20 and following regulate the limitations of the right to movement and residence (although only for “reasons of national security, imperative grounds of public security and other reasons of public interest and/or public security”), as well as the procedures of removal (including the cases of termination of the conditions which determine the right of residence, as per Art. 21).

## Section 2

### Scale and scope of the phenomenon

*(National Contribution: Maximum 4 pages)*

*EMN NCPs are requested to:*

- (i) comment on the availability of statistics on overall intra-EU mobility of third-country nationals and for the following groups of mobile third-country nationals in their countries;*
- (ii) provide the relevant statistics available;*
- (iii) provide estimates of aggregate numbers of third-country nationals using any of the proxy sources suggested further below; and finally*
- (iv) provide statistics on the flows of EU nationals to and from other Member States and Norway, Switzerland, Iceland and Liechtenstein.*

*The Synthesis Report will aim to provide a sense of the scale and scope of the phenomenon of intra-EU mobility of third-country nationals by mapping the availability of data at national and EU level on the number of mobile third-country nationals. It is recognised that there are numerous gaps and weaknesses in the available statistics. An attempt will be made in the Synthesis Report to indicate general patterns and trends in the phenomenon of*

*third-country national intra-EU mobility by using proxy sources. The Synthesis Report will compare the scale of the movements of mobile third-country nationals that are provided for by the EU acquis and those that are not, and provide possible reasons for the differences. It will also compare these trends with available statistics on the intra-EU mobility of EU nationals.*

**2.1. Are statistics on overall intra-EU (work-related) mobility of third-country nationals available in your (Member) State**

- *If yes, please indicate, where possible, the type of available statistics, including Member State of previous residence, skills profile (high or low-skilled), demographic profile (age, nationality, etc.), occupational profile, family status.*

*Please present these statistics in a way that permits the reader to obtain a sense of the scale of the phenomenon. This should include breaking down any data on overall numbers by nationality, country of previous residence, etc. If the data can be cross-classified, please specify that this is the case. If the data is collected annually, please present it over the last 5 years; if the data is collected more sporadically, please present any data that may be available, irrespective of the years.*

In Italy there are no statistics on intra-EU mobility of third-country nationals specifically related to mobility for work.

It was recently published (on 16<sup>th</sup> October 2012) the Prime Ministerial Decree on Provisional Programming concerning the entry flows of non-seasonal third-country national workers in the territory of the State for the year 2012<sup>4</sup>. This legal provision authorizes with art. 4 the conversion of no. 500 long-term resident's EU residence permit issued to third-country nationals from another Member State of the European Union into residence permits for employment. The measure, aimed at promoting the mobility of third-country nationals already integrated into the EU, provides a useful quantitative indication of reception policies implemented by Italy regarding long-term residents from another Member State. However, the quota does not include the entries (as well as the departures) of foreign workers from one EU country in possession of another type of residence permit. The compulsory registration of long-term residents who change their country of residence is provided for by Article 19-bis of Directive 2011/51/EU<sup>5</sup> that Member States must transpose by 20<sup>th</sup> May 2013.

However, in Italy the path is already mapped pursuant to art. 2, paragraph 4 of Legislative Decree no. 3 of 8<sup>th</sup> January 2007, implementing Council Directive 2003/109/EC of 25<sup>th</sup> November 2003 concerning the status of third-country national long-term residents<sup>6</sup>. In accordance with this decree, the Ministry of the Interior already provides to determine the contact point and the exchange of information and documentation with the Member States of the European Union with regard to registration of long-term residents.

**2.2. Are statistics based on administrative registrations available in your (Member) State on the following groups of mobile third-country nationals? If they are not**

<sup>4</sup> [www.interno.gov.it/mininterno/export/sites/default/it/assets/files/24/2012\\_11\\_23\\_gazzettauff20121016\\_DPCM.pdf](http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/24/2012_11_23_gazzettauff20121016_DPCM.pdf).

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:132:0001:01:IT:HTML>.

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:it:pdf>.

**available could they in principle be made available from existing registrations?**

- *For each group, please indicate the type of statistics, including Member State of previous residence, skills profile (high or low-skilled), demographic profile (age, nationality, etc.), occupational profile, family status.*

**Groups of third-country nationals who enjoy mobility rights under the EU's migration Directives:**

- 1) Long-term residents coming from another Member States (information should be collected by national contact points established under Directive 2003/109/EC on third-country national long-term residents)
- 2) EU Blue Card holders (information should be collected by national contact points established under Directive 2009/50/EC on EU Blue Card holders)
- 3) Researchers
- 4) Students
- 5) Posted workers

**Groups of third-country nationals who are not provided for by the EU acquis:**

- 6) Cross-border workers
- 7) Seasonal workers
- 8) Workers in regulated professions
- 9) Any other category of migrant not mentioned above

The European Regulation on statistics (862/2007) Article 3, which regulates the “Statistics on international migration, usually resident population and acquisition of citizenship” also contains specific provisions with regard to intra-European mobility. It provides harmonized statistics about the immigrants moving to the territory of the Member State, disaggregated by groups of citizenship by age and sex, by groups of countries of birth by age and sex, by groups of countries of previous usual residence by age and sex; and statistics about emigrants by groups of citizenship and groups of countries of next usual residence (both disaggregated by age and sex).

Every year, in Italy statistics are available on cancellation for transfer of residence abroad. In 2010 there were 67,501 cases, only in part related to foreign nationals (27,956). From these data, it is possible to know the country of destination but not the nationality of the person involved and this bias has detrimental effects for a more detailed interpretation of data.

The EU and non-EU national who leaves Italy to transfer his/her residence abroad is required to unsubscribe from the Register of the municipality of origin. Article 5 of Decree-Law no. 5 of 9<sup>th</sup> February 2012, converted into Law no. 35 on 4<sup>th</sup> April 2012, introduced in Italy new provisions on personal records, relating procedures for registration referred to in Article 13, paragraph 1, letters a). b) and c) of Presidential Decree no. 223 of

30<sup>th</sup> May 1989, as well as the procedure for the registration and subsequent control of the statements made<sup>7</sup>.

However, there is probably a problem of underestimation of the number of cancellations from the *Anagrafe* (Civil Registry) of Italian municipalities of foreigners leaving abroad, as sometimes the emigration occurs without the foreigner having complied with the duty of cancellation from the registers. Historically this condition of foreign population affected the positive net migration with foreign countries for the fact that every Census shows a discrepancy between the number of people it records and the number officially registered. Suffice it to say that in 1991 approximately 356,000 foreigners counted as residents constituted 67% of those who were enrolled in the *Anagrafe* (Civil Registry), the approximately 1,335,000 foreigners recorded in 2001 were 83% and, according to the first provisional results, in 2011 the approximately 3,865,000 are about 80% according to estimates.

A biased estimate of the number of people not cancelled from the *Anagrafe* (Civil Registry) of foreigners who have left the country may be obtained by taking into account data on persons that could not be traced and cancellations because of non-renewal of residence permits, made ex officio by the municipalities according to specific procedures. Updating of the *Anagrafe* in late 2010 resulted in the deletion of around 60 thousand foreign citizenship records where the persons concerned could not be traced (allegedly mostly non-EU), but it is impossible to know if they have moved to another municipality, or to a foreign country, or they become irregular migrants, or they have returned to the country of origin.

On the other hand, the opposing factor should also be taken into consideration, specifically, the underestimation of the foreign population currently living in Italy owing to non-registration at the *Anagrafe* (Civil Registry) and/or the failure of non-nationals living regularly in Italy to make census returns, for the delays involved in the transition from stay to residence, in the first case, and for the difficulties to intercept all the interested parties, in the second case.

Also the registrations of non-EU citizens coming from abroad undertake to highlight the country of origin but not their nationality, and hence there is a lack of information even if it is assumed that in most cases the two notions coincide. In 2010, foreign citizens enrolled abroad were 419,552.

**ITALY. Registrations and cancellations of personal data for transfer of residence (2006-2010)**

	2006	2007	2008	2009	2010
Resident citizenship records cancelled for transfer of residence abroad	58 407	51 113	61 671	64 921	67 501
<i>Of whom foreign nationals:</i>	12 099	14 814	22 135	25 897	27 956
Resident citizenship records registered for transfer of residence abroad	279 714	527 123	494 394	421 859	447 744
<i>Of whom foreign nationals:</i>	242 048	490 430	462 276	392 529	419 552

SOURCE: EMN Italy. Elaboration of Istat data ([www.istat.it](http://www.istat.it))

The National Institute for Statistics (Istat) survey summarized in this table deals with the

<sup>7</sup> [www.governo.it/GovernoInforma/Dossier/residenza/Circolare\\_residenza\\_27aprile.pdf](http://www.governo.it/GovernoInforma/Dossier/residenza/Circolare_residenza_27aprile.pdf).

enrolment figures for cancellation of registration and transfer of residence managed by the municipalities. Each year Istat draws up individual data registered on the transfer of residence to and from abroad, exclusively on the basis of the resident population. This survey provides the base for information for all analyses of in-and-out flows of residents and it allows learning the intensity as well as the socio-demographic characteristics of those who take up residence. These data are obtained from the survey conducted with the APR/4 model, in other words it is used a copy from the migration practice completed by the *Anagrafe* officer of the *Comuni* (Town Councils) where the registration or cancellation of records are done.

The National Institute of Statistics provides historical data covering the period 1995-2010, the latest year available. For the purposes of this research, it was decided to analyse only the 2006-2010 period to keep consistency with the specifications in Section 2.4.

As for the cancellation of registration for transfer of residence abroad, the data show a general increase in this particular type of migratory practices, which made up the 4 percent between 2009 and 2010, reaching 15.6% if compared to the flow registered in 2006. However, several studies<sup>8</sup> have shown that outflows do not generally involve citizens of third countries who seem to be reluctant to make further traveling in other Member States, allegedly for the high costs associated with migration, and when leaving Italy they return to their countries. On the contrary, albeit to a lesser extent than in the past, the cancellation of registration relate primarily to Italian citizens who continue to emigrate, especially if they are young or highly skilled persons. The movement of the Italian population abroad continues, therefore, to be an important aspect to understand the current state of migration dynamics.

The increase in registration due to transfer of residence from abroad is even greater, and there is a disaggregation between Italian citizens and foreign nationals. From this disaggregated data it can be seen that the phenomenon concerns mainly the foreign nationals that, in the last four years, have represented more than 93%. From the quantitative point of view, it can be seen a significant increase (62.2%) of the resident foreign population registered for transfer of residence from abroad during the period under review. In particular, after a significant increase in 2007, there is a slight contraction that was followed by an increase of 6.9 percentage points for the last available year.

Thus, over the period considered, the positive contribution in terms of population registration of foreign citizens from abroad does not appear balanced by outflows of comparable entities, as cancellations for abroad were far below the registrations<sup>9</sup>.

### **2.3. Are there any other/proxy sources of statistics that could provide indications of patterns and trends?**

➤ *It is recognised that most proxy sources of statistics will only capture a portion of the mobile third-country nationals concerned and therefore cannot provide indications of the scale of total mobility among third-country nationals with any degree of accuracy. However, they may provide approximate indications of general patterns and trends and will be used with caution in the Synthesis Report.*

In Italy there are no further statistical records in addition to those mentioned above that can

<sup>8</sup> Cf. Licata Delfina, "The many faces of Italian migration", in Fondazione Migrantes, *Report on Italians in the world 2012*, Ed Idos, Rome, 2012, p. 15-27.

<sup>9</sup> Cf. Albani Mauro, "Main flows of foreign residents assessment in the last decade", in Caritas/Migrantes, *Statistical Dossier on Immigration 2012*, Ed Idos, Rome, 2012, p. 89-96.

provide information on intra-EU mobility, with the exception of the statistics of a sample survey of the Bank of Italy<sup>10</sup>, which monitors the short period transfer for work of Italians (and also of EU and non-EU citizens living in Italy). It should also be noted the Census of 2011 and its enormous cognitive potential which, however, cannot be used for the purposes of this study because the data are not yet available.

In this regard, on 3<sup>rd</sup> July 2012, the Italian National Contact Point of the EMN held in Rome, at the Idos Study and Research Centre, a deepening of the archives on immigration entitled “Inside statistics” for the benefit of members of the EMN national network<sup>11</sup>. This was the first annual meeting in 2012 dedicated to experts from the Italian network, carried out specifically for the preparation of this focus study on the intra-EU mobility of third-country nationals.

After an opening speech by the Central Directorate for Immigration and Asylum Policies of the Ministry of the Interior, frame of reference for the EMN Italy, Istat (the National Institute of Statistics) experts addressed the issue of registry office cancellation over the last three years and ex officio cancellations, with particular attention to the nationalities most involved in the issue and their major destinations. The analysis of expired residence permit over the last three years was also of particular interest; it is considered to be an interesting indicator of the potential number of regular migrants slipping into an irregular status, and also an indicator of mobility.

However, the National Institute of Statistics and the experts invited to the seminar denounced the lack of statistical sources on the subject, highlighting the consequent technical difficulties in the preparation of this study.

The Central Directorate for Immigration and Border Police pointed out this lack to the Public Security Department and this deficiency will soon be solved, also in accordance with Directive 2011/51/EU.

#### **2.4. Please provide any statistics available on the flows of EU nationals within your (Member) State over the last 5 years in order to provide a comparison with the flows of third-country nationals**

➤ *Please indicate, where possible, any available statistics, including Member State of previous residence, skills profile (high or low-skilled), demographic profile (age, nationality, etc.), occupational profile, family status.*

*Please present these statistics in a way that permits the reader to obtain a sense of the scale of the phenomenon. This should include breaking down any data on overall numbers by nationality, country of previous residence, etc. If the data can be cross-classified, please specify that this is the case. If the data is collected annually, please present it over the last 5 years; if the data is collected more sporadically, please present any data that may be available, irrespective of the years*

The data on international migration flows provided by Eurostat contain useful information on long term international immigration and emigration during the reference year, with disaggregated data by age, sex, nationality and country of previous/next residence. In this context, immigration is intended as the action by which a person establishes his or her usual residence in the territory of a Member State for a minimum period of twelve months,

<sup>10</sup> Cf. [www.bancaditalia.it/statistiche/rapp\\_estero/turismo-int](http://www.bancaditalia.it/statistiche/rapp_estero/turismo-int).

<sup>11</sup> Cf. [www.emnitaly.it/ev-c0.htm](http://www.emnitaly.it/ev-c0.htm).

or a period so presumed, after having previously lived in another member State or in a third country<sup>12</sup>. Based on this definition, contained in Regulation (EC) no. 862/2007 of the European Parliament and of the Council of 11<sup>th</sup> July 2007 on Community statistics related to migration and international protection<sup>13</sup>, emigration is the opposite action, or better, the abandoning of a home residence at the conditions and in the manner previously described. The data on international migration, managed by Eurostat in collaboration with the Statistics Division, with the Economic Commission for the United Nations of Europe and with the International Labour Office, are based on national administrative sources. The following table provides a complete picture of the flows in and out of Italy for the period 2006-2010, the latest available year.

**ITALY. International migration flows: areas of origin (2006-2010)**

	2006	2007	2008	2009	2010
<b>Emigration</b>					
Total	75.230	65.196	80.947	80.597	78.771
<i>Of which Italians</i>	58.256	44.880	53.924	48.327	45.954
<i>Of which non-EU</i>	11.358	10.871	11.701	13.891	18.645
<i>Of which EU</i>	5.616	9.445	15.322	18.379	14.172
<b>Immigration</b>					
Total	297.640	558.019	534.712	442.940	458.856
<i>Of which Italians</i>	43.052	42.818	38.163	36.215	34.357
<i>Of which non-EU</i>	186.750	190.400	283.687	270.592	305.888
<i>Of which EU</i>	67.838	324.801	212.862	136.133	118.611

SOURCE: EMN Italy. Elaboration of Eurostat data (<http://epp.eurostat.ec.europa.eu>)<sup>14</sup>

As can be seen from the table, the Eurostat archive provides disaggregated data between Italian, EU and non-EU citizens both in inflows and outflows terms. A first analysis of the statistical data highlights the clear preponderance of the inflows, which makes Italy a major country of destination. Even though the most part of immigration concerns citizens of third countries, which in the last two years have accounted for over 60% of the phenomenon, a strong presence of EU citizens who choose Italy as their country of residence is noted. In 2007, following the enlargement of EU towards the East, the share of EU citizens has even exceeded that of the non-EU (58.2% compared to 34.1% of total inflows).

Differently, the trend of outflows, as mentioned above, relates largely to Italians, even though the trend is decreasing. In the course of five years, the trend has gradually moved

<sup>12</sup> EMN (ed.), *Glossary on asylum and migration 2.0. A tool for better comparability*, Publications Office of the European Union, Luxembourg, 2012. See. [www.emnitaly.it/down/pb-18-02.pdf](http://www.emnitaly.it/down/pb-18-02.pdf).

<sup>13</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:IT:PDF>.

<sup>14</sup> Data do not correspond to those indicated in the previous table because, regarding the demographic balance of *registrations from abroad* and *cancellations to abroad* and the *global population trend*, it is noted the existence, at the national level, of two different ways of gathering statistical data, which culminate in different statistical results:

- the first system uses statistical elaborations based on individual forms regarding the registration of persons who changed their residence during the year; this method is commonly used because of the high degree of information details contained in these forms, although it is more subjected to errors regarding the overall data accuracy, because the individual forms have not been filled in for every person involved;
- the second system, which we have privileged in this study, is based on forms filled in by the competent Municipalities and refer to the total number of people involved. Data gathered by using these forms represent the cornerstone of the so-called demographic balance, published by the Division for Population, Education and Culture of the Istat, providing the most reliable summary of information.

from an incidence of 77.4% recorded in 2006 to 58.3% in 2010. An opposite trend was recorded for the emigration of third-country nationals (from 15.1% in 2006 to 23.7%) and the outflows of EU citizens, which almost tripled in the examined period (7.5% to 18.0%).

**ITALY. International migration: first 15 countries of citizenship, destination and origin (2010)**

Emigration				Immigration			
Country of citizenship		Country of destination		Country of citizenship		Country of origin	
Italy	45.954	Germany	7.650	Romania	92.116	Romania	92.591
Romania	7.488	Romania	7.454	Italy	34.357	<b>Ukraine</b>	30.432
<b>Morocco</b>	2.179	United Kingdom	6.846	<b>Ukraine</b>	30.416	<b>Morocco</b>	30.198
<b>China</b>	1.517	<b>Switzerland</b>	5.895	<b>Morocco</b>	29.960	<b>Moldova</b>	27.038
<b>Albania</b>	1.495	France	5.583	<b>Moldova</b>	26.591	<b>China</b>	23.179
Poland	1.429	Spain	4.021	<b>China</b>	22.866	<b>Albania</b>	22.749
<b>Ukraine</b>	1.211	<b>USA</b>	3.651	<b>Albania</b>	22.591	<b>India</b>	15.292
Germany	1.142	<b>Brazil</b>	2.597	<b>India</b>	15.246	<b>Peru</b>	12.455
<b>Bangladesh</b>	1.039	<b>Morocco</b>	2.015	<b>Peru</b>	12.166	<b>Pakistan</b>	10.894
<b>India</b>	1.011	<b>China</b>	1.982	<b>Pakistan</b>	10.816	<b>Philippines</b>	10.482
<b>Moldova</b>	822	Belgium	1.621	<b>Philippines</b>	10.745	<b>Brazil</b>	10.058
France	781	Poland	1.588	<b>Bangladesh</b>	9.688	<b>Bangladesh</b>	9.679
<b>Brazil</b>	670	<b>Albania</b>	1.529	<b>Egypt</b>	9.345	<b>Egypt</b>	9.625
United Kingdom	608	<b>Ukraine</b>	1.231	<b>Senegal</b>	8.851	<b>Senegal</b>	8.908
<b>Pakistan</b>	584	<b>Argentina</b>	1.078	<b>Brazil</b>	8.566	Germany	8.401
Total	78.771	Total	78.771	Total	458.856	Total	458.856

NB. Third countries are shown in bold print

SOURCE: EMN Italy. Elaboration of Eurostat data (<http://epp.eurostat.ec.europa.eu>)

As far as the main communities involved in *outgoing* flows for 2010 alone are concerned, Eurostat data confirm the clear preponderance of Italians (45,954) compared to the phenomenon as a whole (78,771). Among the first communities for outflows of third-country nationals there are Morocco (2,179), China (1,517), Albania (1,495), Ukraine (1,211), Bangladesh (1,039) and India (1,011). Worthy of note from a quantitative point of view is also the Moldovan community (822) followed, to a lesser extent, by Brazilians (670) and Pakistani (584). Nevertheless, it is interesting to note that the second country of origin of emigrants who left Italy in 2010 is that of a Member State, Romania, with 7,488 cancellations. A large number of emigrants is also observed for other EU countries such as Poland (1,429) and Germany (1,142), respectively, in the sixth and eighth place in the ranking. France and the United Kingdom are also involved in outflows with more than 600 units.

Romania and Italy are also the first two countries of origin of inflows in 2010 (respectively 92,116 and 34,357 units), followed by Ukraine (30,416), Morocco (29,960), Moldova (26,591), China (22,866), Albania (22,591), India (15,246), and Peru (12,166). In addition there are a number of new immigrants within the 8,500 and 11,000 units, related to Pakistan, Philippines, Bangladesh, Egypt, Senegal and Brazil.

The historical series elaborated by Eurostat, based on administrative statistical data, shows that the recorded growth of the foreign population did not occur in a regular pattern. The pace was affected by the new legislation on the matter and, in particular, by the various regularisation procedures adopted. Moreover, in early 2007, the entry of Romania and Bulgaria into the EU and the subsequent entry into force of new legislation on the free movement and residence of EU citizens have had an immediate impact on migration statistics, so that the registration of Romanians to the civil registry has placed Romania on top of the list of countries of origin of foreign residents in Italy. More recently, and to a lesser extent, regularisation for domestic workers (maids and nannies) and care workers of

2009 has certainly contributed to the high number of registrations from abroad occurred in the years 2009/2010, which involved mostly citizens of Moldova, Russia, Ukraine and some countries of Southeast Asia, such as Pakistan, India, Bangladesh and the Philippines.

As far as the main countries of destination of outflows are concerned, the first 10 countries listed in the ranking take up over 60% of migrants. They are: Germany (9.7%), Romania (9.5%), United Kingdom (8.7%), Switzerland (7.5%), France (7.1%), Spain (5.1%), USA (4.6%), Brazil (3.3%), Morocco (2.6%) and China (2.5%). Two EU countries, Belgium and Poland, occupy also the eleventh and twelfth position on the list. Thus it appears that there is clear preference for other EU Member States, although the incidence of non EU country destinations such as USA, Brazil, Morocco and China is not negligible.

For some communities, such as Morocco, it is likely that the return flows are due to the strong economic downturn and the effects of the employment crisis that began to appear in Italy at the end of 2007. The migrants are, in fact, particularly penalized in this context, since they are included in working sectors that are more exposed to economic fluctuations, often with unstable contracts, and without the security of family social welfare benefits that usually protect the Italian citizens, so that in the years 2008 - 2010, the unemployment rate of foreigners grew by 73% compared with 32% of Italians<sup>15</sup>.

In the case of Morocco, the return is also due to appropriate policies and project activities carried out in the immediately preceding years. An example is the project “Mig-Resources. Migration and Return, resources for development”<sup>16</sup>, a program carried forward between the months of April 2006 and July 2009, which focused on the profile of the migrant as a potential “development agent” and has aimed towards the creation of favourable conditions for investment in Italy and in Morocco giving the Moroccan migrants an opportunity to play an effective role in the social-economic development of their country. The project was developed by IOM in collaboration with the CERFE Research Centre, with the Centre for economic and demographic research (CERED) in Rabat and the Hassan II Foundation. The project was financed by the Ministry of Foreign Affairs – Italian Cooperation.

But the return is also part of the natural conclusion of the migration project. A study conducted by the Idos Studies and Research Centre in 2008<sup>17</sup> showed that the migration project of Albanian immigrants in Italy has an average duration of 18 years, as also confirmed by a survey conducted by IOM in 2005. Based on this estimate, it can be assumed that, for those who have emigrated in the early ‘90s or at the beginning of the crisis in Albania, the migration cycle will end exactly in the present period and that the trend of return will continue to grow in the five years of 2010-2015.

Sometimes the return of immigrants is also caused by other types of migratory flows. This is the case of Brazil and China, two emerging countries that are attracting an increasing number of highly skilled Italian workers. It should be considered that in January 2012 Dilma Rousseff, President of the emerging Brazil, opened to immigration of 450,000 technicians and skilled workers. Argentina is doing the same thing in different work areas, opening up to new flows of workers who are essential to keep up the registered high growth rates, starting by favouring the return of its nationals abroad. Numerous studies

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<sup>15</sup> Pittau Franco and Colaiacomo Alberto, “Employment crisis and returns: expired residence permits” in Caritas/Migrantes, *Statistical Dossier on Immigration 2012*, Ed. Idos, Rome, 2012, pp. 133-139.

<sup>16</sup> [www.italy.iom.int/index.php?option=com\\_content&task=view&id=30&Itemid=61](http://www.italy.iom.int/index.php?option=com_content&task=view&id=30&Itemid=61).

<sup>17</sup> Devole Rando, Pittau Franco, Ricci Antonio, Urso Giuliana (ed.), *Albanians in Italy. Economic and social consequences of immigration*, Ed. Idos, Rome, 2008.

have emphasized that in order to overcome the crisis in the domestic market, an increasing number of Italian companies are looking for new markets in BRICS countries<sup>18</sup>, whose domestic markets allow growth at an increasingly faster pace.

However, a dynamic circular migration can be found amongst the Romanian citizens, whose movement has been rendered more fluid and easier, at first by the exemption from visa and, later, by entry into the EU, despite the significant slowdown that has been encountered due to the critical economic situation of the country. This is an interesting study case of circular migration worthy of further investigation<sup>19</sup>. This mode of migration from Romania, which current literature on the subject has defined in various manners such as circularity, commuting, or temporary migration, has been described as a real “life strategy” of individuals and families, which implies a capability of adaptation and redefinition of family ties based on an intermittent presence facilitated by extensive use of new communication technologies<sup>20</sup>.

The ranking related to incoming flows of the main countries of origin of migrants coming to Italy in 2010 shows, on the contrary, an overwhelming prevalence of third countries with the sole exception of Romania, with a percentage incidence on the total incoming flows of 20.2%. Followed by Ukraine (6.6%), Morocco (6.6%), Moldova (5.9%), China (5.1%), Albania (5.0%), India (3.3%), Peru (2.7%), Pakistan (2.4%), Philippines (2.3%), Brazil (2.2%), Bangladesh (2.1%), Egypt (2.1%), Senegal (1.9%) and Germany (1.8%). The data reveal, therefore, the preponderance of continental Europe and the significant presence of countries originating in the Asian area.

#### **ITALY. International migratory flows: first 10 Countries of transit (2010)**

<b>Emigration</b>			<b>Immigration</b>		
Country	Citizenship	Destination	Country	Citizenship	Origin
Germany	1.142	7.650	Germany	2.099	8.401
UK	608	6.846	<b>Kosovo</b>	<b>0</b>	<b>3.273</b>
<b>Switzerland</b>	<b>293</b>	<b>5.895</b>	<b>Switzerland</b>	<b>443</b>	<b>3.296</b>
France	781	5.583	UK	1.568	4.324
Spain	331	4.021	<b>USA</b>	<b>1.477</b>	<b>3.959</b>
<b>USA</b>	<b>423</b>	<b>3.651</b>	France	2.012	3.959
<b>Brazil</b>	<b>670</b>	<b>2.597</b>	<b>Brazil</b>	<b>8.566</b>	<b>10.058</b>
Belgium	166	1.621	<b>Venezuela</b>	<b>802</b>	<b>1.960</b>
<b>Argentina</b>	<b>179</b>	<b>1.078</b>	<b>Argentina</b>	<b>1.195</b>	<b>2.039</b>
Austria	190	1.074	Belgium	376	1.118
Total	78.771	78.771	Total	458.586	458.856

NB. Third Countries are shown in bold print

SOURCE: EMN Italy. Elaboration of Eurostat data (<http://epp.eurostat.ec.europa.eu>)

The Eurostat data on international migration flows examined so far show that, in most cases, there is a significant overlap between country of citizenship and country of destination, in the case of outflows, and between country of citizenship and country of origin in the case of outgoing. For example, in 2010, 1,211 Ukrainian citizens have left Italy and 1,231 residents have requested the cancellation from civil registry due to transfer

<sup>18</sup> Brazil, Russia, India, China and South Africa.

<sup>19</sup> Pittau Franco, Ricci Antonio, Silj Alessandro (ed.), *Romania. Immigration and Labour in Italy. Statistics, problems and perspectives*, Ed. Idos, Rome, 2008 and Pittau Franco, Ricci Antonio, Ildiko Timșă Laura (ed.), *Romanians in Italy between Rejection and Acceptance*, Ed. Sinnos, Rome, 2010.

<sup>20</sup> CeSpi - Centre for International Policy Studies (ed.), *Migration as a social issue. Social changing, policy and representations in Ecuador, Romania e Ukraine*, Working Papers 57/2009, Roma, 2009. Cf. [www.cespi.it/WP/WP%2057%20rapporto%20welfare.pdf](http://www.cespi.it/WP/WP%2057%20rapporto%20welfare.pdf).

in Ukraine, from which it may be concluded that all of these practices have focused on cases of return migration of local citizens. Examining the data on inflows related to the same community, an ingoing flow from Ukraine consisting of 30,416 units is shown, coinciding with the 30,432 registrations to the civil registry recorded in Italy for transfers from that country.

In other cases, however, the data does not have as great a coincidence and this discrepancy may be an important indicator of mobility. More information about the intra-EU mobility can be obtained by comparing these differences for the Member States alone. Both in the incoming as well as in the outgoing movements recorded, it appears evident that the three EU countries mainly affected by the phenomenon of mobility are Germany, the United Kingdom and France. This mobility, however, does not concern only the migration of third-country nationals but, for the most part, is due to the exercise by Italian citizens of the right of free movement. In the case of Germany just as well as for France, one must not forget the incidence of post-war Italian immigrants and their descendants, whose presence in these countries is particularly well established and plays a role of attraction.

It is noted, therefore, that the absence of specific data relating to intra-EU mobility makes it particularly difficult to trace movement of non-EU citizens within the EU because, as it often occurs for the study case of Italy, transfers to foreign countries appear to involve mainly Italian nationals.

### Section 3

#### Identified Restrictions to Intra EU mobility of third-country nationals

*(National Contribution: Maximum 3 pages)*

*Please note that the possible restrictions listed below must be distinguished from the conditions for applying for a visa and/or residence permit reviewed in section 1 above. By 'restrictions' the focussed study has in mind additional provisions in the national legislation of your (Member) State that may affect the decision of third-country nationals to settle in your (Member) State even if they fulfil all the necessary (formal and administrative) conditions for acquiring a visa and/or residence permit.*

*These restrictions are often introduced for reasons of labor market policy or in order to maintain certain professional standards. Examples of such restrictions are provided below. EMN NCPs are asked to comment on the relevance of these examples to their national legislative framework; if relevant, to explain why they have been introduced; and to comment on how they work in practice. They should also indicate, in the space provided, whether there are any additional restrictions in place in their (Member) State that may affect the decision of third-country nationals to settle in your (Member) State.*

*The Synthesis Report will identify any restrictions to the mobility of third-country nationals that have been included in national legislation/policies and explain why these are considered necessary.*

**3.1. Member States (and Norway) may examine the situation of the labor market and give preference to Union (or EEA/EFTA) citizens when considering applications for work from a third-country national in another Member State or EFTA country.**

In general, third-country nationals, including those from other EU or EFTA countries (with the exceptions outlined in Section 1 of this study), may enter Italy for the purpose of salaried

employment, including seasonal and self-employed work, within the annual entry quotas stipulated under the so-called “flow decrees” referred to in art. 3, par. 4 of the T.U.I. (Consolidated Act on Immigration). Regarding the establishment of the entry quotas, these decrees provide for restrictions to the entry of workers coming from States which do not actively cooperate in the fight against irregular migration or in the readmission of nationals being issued an expulsion order; these decrees may also grant preferential quotas to those non-EU countries with which the Minister of Foreign Affairs (together with the Minister of the Interior and the Minister of Labour and Social Policies) has signed agreements for the regulation of both entry flows and readmission procedures (art. 21 of the T.U.I.). Paragraph 4 of art. 21 of the T.U.I. establishes that the decrees must take into account the indications provided by the Ministry of Labour and Social Policies on the trend of employment and unemployment rates (at both national and regional level and based on the qualifications or duties), as well as on the number of non-EU foreign nationals registered as unemployed.

It is for these decrees, therefore, that the lawmakers examine the situation of the labor market, in order to adjust the number of TCNs to be admitted in the country and decide (sometimes in a restrictive sense) on the number of entries allowed for each category of workers and on the basis of their nationality.

In addition, with regard to TCNs holding an EC long-term residence permit, the T.U.I. provides for that they may carry out any work activity, other than those expressly reserved to Italian citizens or forbidden to foreign citizens by law (art. 9, par. 12, letter b of the T.U.I.). The same provision applies to self-employed workers, who are allowed to carry out any activities “which are not reserved to Italian citizens or EU Member State citizens by law” (art. 26, par. 1 of the T.U.I.).

In this regard, the Decree of the President of the Council of Ministers no. 174 of 1994 establishes that a certain number of public offices related to the exercise of public authority and national security – including top positions, responsibilities of legitimacy control, or any other office related to authorization or coercive measures – are reserved to Italian citizens only.

Access to public employment, which certain laws (art. 38 of the Legislative Decree 165/2001) reserved to Italian citizens only (and now to EU citizens as well, thanks to the harmonization with the EU *acquis*), has been recently opened to TCNs. For instance, access to public employment has been extended: firstly, to foreign professional nurses, who can be hired by public structures under fixed-term contracts, although not as public employees (pursuant to the new letter r-bis, par. 1 of art. 27 of the T.U.I., as amended by law no. 189/2002); secondly, to foreign family members of an EU citizen residing in Italy (art. 19 of the Legislative Decree no. 30 of 2007) as well as to refugees (Leg. Dec. no. 251 of 2007), on an equal footing with EU citizens, and therefore subject to the above-mentioned exceptions (Decree of the President of the Council of the Ministers no. 174 of 1994). With regard to foreign citizens’ access to public employment, jurisprudence is divided between an extensive and a restrictive interpretation of the law, therefore the matter cannot yet be said to be finally resolved.

With regard to access to the labour market, preference is given to Italian or EU citizens rather than third-country seasonal workers. According to art. 24 of the T.U.I., in fact, where either the Italian employer, or the foreign employer regularly residing in Italy or trade associations, do not have direct knowledge of the foreign worker they wish to hire, they must contact the competent employment center, which, before the hiring of non-EU workers, must verify (within five days) the availability of Italian or EU workers to carry out the seasonal employment offered.

There seem to be no specific restrictions for TCNs coming from another EU or EFTA Member State, therefore the general framework for non-EU foreign workers (including the above-mentioned restrictions) applies to them.

**3.2. Minimum wages are often specified in the national legislative framework that may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).**

Article 2 of the T.U.I. recognizes the fundamental human rights of a TCN under the rules of law, the international agreements in force and the generally recognized principles of international law. In addition to this, we should mention the ILO convention no. 143 of June 24, 1975 (ratified by Italy in 1981), which guarantees all non-EU workers and their families, who regularly reside in the territory, equal treatment and full equality of rights compared to Italian workers.

We need to point out that in Italy the minimum wage is not regulated by law, but by national collective agreements. These collective agreements make no distinction between Italian and foreign citizens – also pursuant to the above-mentioned principle of equal treatment.

As regards employment, however, it is worth mentioning Article 22, par. 3 of the T.U.I., which establishes that the branch office of the Ministry of Labour, before issuing any authorization, must verify that the conditions offered by the employer to the foreign worker are equal to those established by the applicable national collective agreements. In particular, as regards seasonal workers, article 24, par. 5 of the T.U.I. provides for that any agreement between the Regional Tripartite Committees and the most relevant trade unions at the regional level, which is aimed at encouraging the access of non-EU foreign workers to seasonal jobs, must provide the same pay and conditions as for Italian workers.

In addition to these provisions, article 30-bis, par. c) of the D.P.R. no. 394 of 1999, as amended by D.P.R. no. 334 of 2004, states that in the case of domestic work the proposed residence contract for employment (which is a condition for the access of third-country nationals to the labour market, with some exceptions) must guarantee a monthly salary “no lower than the minimum monthly social security payment, in accordance with Article 3, par. 6 of the law no. 335 of August 8, 1995”.

In conclusion, it is evident that the law is aimed at ensuring equal treatment to foreign and Italian workers by means of specific provisions in the national collective agreements, also in the light of art. 43 of the T.U.I., which prohibits discrimination on the basis of national origin in every area of public life (and, in particular, indirect discrimination on the basis of nationality in the field of employment).

**3.3. If the third-country national who moves from another Member State (or EFTA country) is in a self-employed capacity, Member States (and Norway) may require that they have the appropriate funds which are needed, in accordance with national law, to exercise an economic activity in such capacity.**

Article 26 of the T.U.I. regulates self-employment of TCNs (including EU or EFTA citizens, with the exception of the categories analyzed in part 1 of this study). Paragraph 2 states that “in any case, non-EU citizens wishing to pursue in Italy an industrial, professional, crafts or business activity, establish companies or partnerships, or have access to corporate offices, must also demonstrate: to have adequate resources for the activity they intend to undertake in the country; to be in possession of the requirements of the Italian law to conduct such activities, including – where required – the requisites for professional and business registration; to be in possession of a certificate of the competent authority (not older than 3 months), stating that there are no impediments to the granting of the necessary authorization or license for the activity that the TCN intends to perform.” Furthermore, paragraph 3 of the same article requires proofs of suitable lodgings and an annual income (from legitimate

sources) higher than the minimum required by law for exemption from health contribution.

**3.4. National rules or procedures governing the recognition of degrees and diplomas may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).**

Taking into account the rules and procedures regulating the recognition of degrees and diplomas, articles 12 and 13 of Law no. 29/2006 have extended the scope of the equivalence of qualifications (previously reserved to qualifications obtained abroad by Italian migrant workers and their families) to all EU and EEA citizens, and to citizens of the Swiss Confederation.

Article 12 of Law 29/2006 establishes new procedures in cases where a degree, a specialization course, a certification or professional experience or any other document certifying skills acquired is required. The competent body evaluates the validity of qualifications and certificates obtained in other EU or EEA Member States or in the Swiss Confederation; the decision is subject to the approval of the Ministry of Education, Universities and Research. Moreover, article 13 of Law no. 29/2006 amended art. 379 of the Legislative Decree no. 297 of 1994 by allowing citizens of the EU, the EEA and the Swiss Confederation who have a foreign qualification corresponding to a qualification awarded by the Italian school system to obtain the equivalence of qualification, for all purposes of law.

The framework for non-EU citizens, however, is quite different. Article 37, par. 2 of the Legislative Decree no. 286 of 1998 states that the terms, conditions and time limits for the licensing of professions and the recognition of the qualifications not yet recognized in Italy, are laid down by an implementing regulation. Article 48 of the D.P.R. no. 394 of 1999 (Recognition of qualifications obtained abroad), in fact, provides for that the responsibility for the recognition of qualifications for entry to higher education, periods of study and academic qualifications (at any level) achieved in foreign countries, for the purpose of continuing studies, is attributed to universities and university education institutions, which exercise such power in autonomy and in accordance with their own regulations, without prejudice to bilateral agreements and international conventions on the matter. The institutions referred to in paragraph 1 shall decide on applications for recognition within 90 days of their receipt. In the event that the academic authorities open an inquiry, the period is extended until its completion (within further 30 days). Against the decision to reject the application, or if the term referred to in paragraph 2 has expired without any decision, the applicant may appeal to the Regional Administrative Court or (as an extraordinary appeal) to the President of the Republic. As an alternative, within the same period of time established for the latter, the applicant may appeal to the Ministry of Education, Universities and Research, which evaluates the appeal over the next 20 days; if the appeal is considered well-founded, the Ministry may request the university to reconsider the application, while informing the applicant. The University shall decide within the next 60 days. If the appeal is rejected, or in the absence (within the proper period of time) of either the communication by the Ministry to the University or the decision by the University itself, the applicant may appeal to the Regional Administrative Court or to the President of the Republic.

The recognition of qualifications for purposes other than those referred to in paragraph 1, is regulated by Art. 387 of the Consolidated Law in the field of education for all school levels (approved by Legislative Decree no. 297 of 1994), as well as by the provisions in force concerning the recognition of qualifications, for professional purposes and access to public employment.

Furthermore, pursuant to art. 37 of the T.U.I., the provisions for the recognition of qualifications are defined by the competent Ministers, together with the Ministry of

Education, Universities and Research, in consultation with the professional and trade associations. The Consolidated Law makes several references to the implementing regulations for the recognition of diplomas and degrees.

**3.5. National rules or procedures governing access to social security and social services for third-country nationals and their families may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).**

Article 41 of the T.U.I., implementing the above-mentioned principle of equal treatment laid down in article 2, par. 5 of the T.U.I., generally provides for that: “foreigners holding a residence card or a residence permit of no less than 1 year, as well as the children listed in their residence card or residence permit, are treated as Italian citizens for the fruition of social benefits (including the economic ones), as well as those granted to people suffering from Hansen’s disease or Tuberculosis, the deaf-mute, the blind, the legally disabled and the destitute.”

Article 22, par. 13 of the T.U.I. also specifies that, in case of return to their country of origin, “non-EU workers retain the social security rights they have accrued, and can enjoy them as soon as they turn 65, regardless of the existence of a reciprocal agreement when they are able to meet the legal requirements, also as an exception to the minimum required contribution provided for in Article 1, par. 20, of Law no. 335 of August 8, 1995”. Paragraph 14 adds that services provided by institutions for social assistance and charity (as per law no. 152 of 2001) are extended to non-EU workers regularly employed in Italy.

This regulation has been partially modified by Law no. 214/2011. Following the amendments, the INPS Circular no. 35 of March 14, 2012 made it clear that, under the new provisions, after January 1, 2012 non-EU workers temporarily or permanently employed in Italy acquire the right to a retirement pension at the age of 66, in line with the expected increase in life expectancy for the majority of workers. The Law Decree established, in fact, that in the contributory system the minimum required contribution to obtain a retirement pension is 20 years; therefore, thanks to the exception to the minimum required contribution, non-EU workers who have returned to their country of origin can acquire the right to a retirement pension in the contributory system at the age of 66.

The social security system makes a distinction in treatment, depending on whether the date of employment of the non-EU worker was before or after 1996. This implies that, in case of return before reaching the retirement age and requirements, all contributions could become “non-repayable”. In fact, if a non-EU citizen employed before 1996 decides to return to the country of origin before having reached the minimum required contribution, which is equal to 20 years of contributions under the so called retribution-based (or mixed) retirement system, all his/her contributions will be lost; on the contrary, those employed after 1996, under the contributory retirement system, will be able to “regain” even a few years of contributions.

With regard to seasonal workers, specific rules are laid down in Article 25 of the T.U.I., due to the limited duration of their contracts and their peculiarity. In particular, the following forms of compulsory social security benefits and assistance, in accordance with the regulations in force in the sectors of activity, are granted: a) old-age, survivors and disability insurance (which are covered by the provisions of Article 22, par. 13); b) insurance against accidents at work and occupational diseases; c) health insurance; d) maternity insurance. Article 25 makes it clear that, in lieu of the contributions for family allowance and insurance against involuntary unemployment, the employer is required to pay to the Italian National Social Security Institute (INPS) a contribution equal to the amount of such contributions, under the terms and conditions laid down by law.

Pursuant to art. 9, par. 12 of the T.U.I., TCNs holding a valid EC long-term residence permit can “take advantage of social assistance, social security, health, education and social benefits, as well as the access to goods and services available to the public, including the procedure for obtaining public housing – unless otherwise specified, and upon verification of the actual residence of the foreigner in the Italian territory”.

It must be said, however, that despite the formal equality of treatment is guaranteed by art. 41 of the T.U.I., sometimes indirect discrimination occurs, especially when apparently neutral criteria have an unfair impact on different social groups (e.g. when certain forms of assistance require a prolonged residence in the community, or in the Region). The issue of indirect discrimination has been the subject of many court rulings (sometimes conflicting with each other).

As far as access to social services is concerned, there seem to be no restrictions specifically targeted at TCNs from another EU or EFTA Member State, rather than the above-mentioned general rules applied to non-EU citizens.

### **3.6. Any other restrictions**

The national legislation contains other restrictions on access to the labour market, which may affect EU or EFTA citizens’ decision to move to Italy.

First of all, Art. 5, par. 2-ter of the T.U.I. states that the application for issuance and renewal of a residence permit costs between 80 and 200 Euros, by decree of the Ministry of Economy and Finance, in consultation with the Minister of the Interior.

Secondly, Article 4-bis, par. 2 of the T.U.I. establishes the criteria and procedures for non-EU citizens when signing an Integration Agreement at the submission of the application for the residence permit, in accordance with Article 5. This agreement is based on credits, and commit the TCN to achieve specific integration objectives during the period of validity of the residence permit. Although the signing of the Integration Agreement, which is in force since March 10, 2012, is not a restriction, strictly speaking, it is a necessary condition for the issuance of a residence permit which should be pointed out. The total loss of credits determines the revocation of the residence permit and the expulsion of the non-EU citizen from the country, which is carried out by the *Questore* according to Art. 13, par. 4, with the exceptions of non-EU citizens holding: residence permits for international protection status, application for international protection, subsidiary protection, humanitarian or family reasons; EC long-term residence permits; residence cards for foreign family members of EU nationals; non-EU citizens holding another kind of valid residence permit, who exercise their right to family reunification.”

Article 5-bis of the T.U.I. provides for specific obligations for the issuance of the residence permit for employment. This article requires the signing of a contract of stay for subordinate work between an Italian employer (or a foreign employer regularly residing in Italy) and the foreign employee, containing the following points: a) the employer must guarantee the availability of housing for the worker, which meets the minimum parameters required by law for public housing units; b) the employer commits to pay the travel expenses for the return of the worker to his/her country of origin.

Another kind of indirect discrimination consists in the preference for certain categories of foreign workers. Article 23, par. 1 of the T.U.I, in fact, provides for a preemptive right of access to the labour market for those non-EU citizens who attend specific education activities and vocational training aimed at their insertion in the labour market, which are organized in their countries of origin under programs approved by the Ministry of Labour and Social Policy and the Ministry of Education, University and Research, sometimes in collaboration with other bodies and organizations.

It is worth considering one last provision introduced by Art. 5, par 7 of the T.U.I., which

establishes that agreements or bilateral agreements signed with non-EU States may require that any foreign worker wishing to enter Italy for subordinate or seasonal employment be registered in a specific list (provided for by the same agreements), in which they must specify their qualifications or skills, as well as other requirements laid down by the implementing regulation. It is not specified how TCNs coming from other EU or EFTA Member States may register in such lists, because the measure has not been fully implemented yet.

## Section 4

### Conclusions

*(National Contribution: Maximum 2 pages)*

*The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policy makers at national and EU level.*

***With regard to the aims of this Focussed Study, what conclusions would you draw from your findings? What is the relevance of your findings to (national and/or EU level) policymakers?***

Within the framework of the present EMN study, there emerged an interest in deepening the existing knowledge on the intra-EU mobility of TCNs, trying to portray the scope, rationale, qualifications and other aspects of understandable interest to policy makers at both national and at EU level.

From the Italian point of view intra-European mobility of third-country nationals, understandable and worthy of a positive assessment as an expression of the objective of free movement for workers at the conceptual level, cannot be framed as a top priority in relation to non-EU migration.

In fact, there are mostly young Italians with good qualification that move within Europe to reach better employment opportunities as the Italian labour market does not offer sufficient opportunities.

Although in Italy there are less job opportunities available for qualified non-EU citizens, there are several reasons that lead to believe that third-country nationals are unlikely to move to another Member State:

- practical and organizational reasons: having to terminate the relationships established, to learn another language and, in general, to take on a new process of adaptation. Even holders of EU Blue Card (recently implemented, but in fact already operating for different categories in our country thanks to art. 27 of T.U.I.), except for those very highly qualified holders that are well paid for whom there are virtually no national boundaries, are not so prone to change. Assume, for example, that a nurse has come to Italy, learnt the language, found a satisfactory housing accommodation and established fruitful relationships: these and other factors, including climatic factors, are not in favour of a willingness to change.

- lack of market areas: highly specialized services that need temporary interventions are provided through the inter-company trade involving the same company or companies that have supplied the equipment (in Italy the Bank of Italy's annual survey on short-term visits – even a few days' duration – is recording a massive movement of incoming and outgoing of hundreds of thousands of people with EU citizenship and mainly directed to EU countries).

- legal obstacles: the holder of the EC long-term residence permit, moving to another Member State, must start with a regular residence permit and, although s/he has an employment, s/he does not have the guarantees of stability previously enjoyed. For this

reason, except in specific and therefore limited number, there are not the necessary conditions to assume significant movements.

On the other hand, a different role played by ethnicity stands to benefit, when people settled at first in Italy may have a strong family interest on ethnic basis to move to another Member State, as seen in the case of the Kurds, of the Afghans and to some extent in the case of the Tunisians landed in Italy after the “Arab Spring in North Africa” in 2011.

The intra-EU mobility is also examined in the opposite direction, from other States to Italy, and it must be said that in this respect the Italian labour market is not so attractive with regard to Central and Northern European Member States, while it may be attractive to some extent for the countries of Eastern Europe.

In light of these premises it can be concluded that, from the information available, the intra-EU mobility of third-country nationals takes more of an interest in quality than quantity.

The present study aimed to contribute to a better understanding of the difficulties and challenges of intra-EU mobility of third-country nationals, in particular as regards the mobility for work, with a view to facilitating the movement of interested foreign workers within the EU and to protect their economic and social rights related to migration.

More information can be achieved with more satisfactory results, both for inflows and for outflows, when the Bank of Italy – which, as already mentioned, leads an interesting sample survey on persons crossing the Italian border – will undertake to determine the number of people coming from other Member States or going to other Member States in programmed workflows (eg, for conferences participation), if in entry, whether they are nationals of a Member State or foreign nationals in that Member State, and, if outgoing, whether they are Italian or non-EU citizens resident in Italy.

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