REPORT

on the Free Movement of Workers in Italy in 2012-2013

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Outlook

During the reporting period, the economic and political situation in Italy has been quite difficult. In February 2013 the general elections took place and a new government has entered into office. Italians turned out to be divided into four parts: one fourth did not vote, one fourth voted for the center-left party, one fourth for the center-right, and one fourth for a populist and anti-Euro movement called Five Stars. The Monti’s government, who ruled during 2012, was mainly concerned with reducing the public debt and to attain this purpose it established new taxes or increased those already in force. Many expenses have been cut, even those allocated to social policies, for instance for study grants. The Letta’s government, in office since April, is now trying to find the resources necessary to eliminate the tax on the primary residential property and to avoid the increase of VAT, promised during the electoral campaign by the center-right party. Since Italy has committed itself to reach a balanced budgetary position, there are very few available financial resources to help the economic recovery. Unemployment is becoming a national emergency, but the public debate seems incapable to offer answers. That notwithstanding, the number of foreigners coming to Italy is still growing (+ 245 000, according to ISTAT). On the contrary, many Italians are moving abroad, much more than the previous years. Newspapers delivered with great prominence the outcome of a survey showing that in 2012 Italian migration has grown of 30% compared to 2011 and that 78 941 Italian have left the country.

Coming to the treatment of EU nationals, during the reporting period no major novelty took place. Legislation on EU nationals has not been amended, and both public debate and legal scholars has devoted small attention to the subject. As it happened during the previous years, third countries nationals attract more attention than EU nationals.

The major problems that the Report has pointed out relate to the residence right and the treatment of third country family members of Italian and EU nationals. On the one hand, the right for the same sex spouse to be awarded with a residence card is still subject to debate. Even if same sex spouse can not marry in Italy, a marriage abroad could justify a request for family reunification. On the other hand, third country family members are discriminated because national and local legislation often reserves access to financial advantages or to public posts only to Italian and EU nationals.

The prohibition of any discrimination on the ground of nationality in the public and private sector, as far as access to work and working condition are concerned, is well established in Italian national legislation, even though some exceptions happen, mainly relating to access to the public sector and to financial benefits. It is worthy of mention that very often when finding redress to discrimination, EU nationals and their family members rely on the principle of equality of treatment as enshrined in Italian Constitution, instead of on EU law. EU law and case-law are often quoted in support of a claim based on Italian law. The reason for this is that the scope of application of the principle of equality of treatment is wider than that of art. 24 of Directive 2004/38/EC.
Chapter I:  
The Worker: Entry, Residence, Departure and Remedies

Text in force:  
Legislative Decree no. 30 of 2007, transposing Directive 2004/38/EC.

1. TRANPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Nothing to add to the previous years’ reports.

2. SITUATION OF JOBSEEKERS

Nothing to add to the previous years’ reports.

During the reporting period, no reference to the Antonissen case can be found in the case-law nor in administrative guidelines.

3. OTHER ISSUES OF CONCERN

Registration of residence – Last years’ reports underlined that Italian’s decision to make the registration into the population registry valid also for the purpose of Directive 2004/38, can entail unwanted negative consequences.

During the reporting period, the procedure for the registration into the population residence has been amended. 1 Under the new rules, registration takes place within two working days from the application. Within 45 days, the official responsible of the file will check whether the conditions for registration are met. If the case may be, the official will ask the applicant to submit additional information. If no decision is taken within 45 days from the registration, registration becomes conclusive. The circular letter issued to explain how the law should be applied, listed the document that Italians, EU and non EU nationals shall submit in order to be registered into the population registry. EU nationals, who register for the first time, shall prove to satisfy the conditions established by Legislative Decree 2007 n. 30, implementing Directive 2004/38. On the contrary, when EU nationals move from one Municipality to another, they have only to register their new address, as Italians do, and are not required to demonstrate that they are entitled with the right to reside. The circular letter is useful in that it makes clear, hopefully once and for all, that the only documents that a EU national shall provide are an identity card and the proof of being a worker, a student or having economic resources. Municipalities that in the past sometimes asked for additional documentation (a population registry is kept in each municipality), have no excuse to keep on doing it. The additional information required related to the size of the house, the origin of the economic resources, and so on. However, neither the law nor the circular letter makes it clear whether the official responsible for the file should check the substance of the allegations or merely the fact that the required documents had been submitted.

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1 Decree-Law 9-2-2012 n. 5, turned into Law 4-4-2012 n. 35. See also Circular letter 27-4-2012 n. 9; and Decree of 2012 n. 154, GU 10-9-2012 n. 211.
In June 2012, the results of the 2011 census has been released: 3 865 385 foreign nationals lived in Italy on 11-10-2011. According to ISTAT, on 1-1-2011 4 570 317 foreign nationals were registered in the population registry. The difference between the number of foreigners who filled the census form, and those who were registered into the population registry was larger than expected. Since one of the aims of the census is to bring the population registry up to date, those who did not fill the census form (Italians and foreigners alike) will be cancelled from the population registry. Cancellation is not automatic, because public officials will contact each person to ascertain if they have kept their habitual residence in the Municipality. Only if the person concerned does not appear when called, nor can prove to have kept his/her habitual residence in the Municipality, s/he is cancelled (ISTAT, circular letter 13-12-2011 no. 15). As far as EU citizens are concerned, Italian law does not take into account that, where so provided for under Article 16 of Directive 2004/38/EC (and the implementing legislation), the continuity of residence is not affected, even if the person concerned has moved his/her habitual residence out of the country. No data are available about how many EU nationals could face the risk of having the registration of their residence cancelled. The entire proceeding will take at least one year. It can not be ruled out that, as unforeseen consequence, a EU citizen who was cancelled from the population registry, would loose his/her registration for the purpose of Directive 2004/38/EC in a case not provided for by the Directive itself.

Healthcare – State and Regions have entered into an agreement establishing common rules on the provision of healthcare services to foreign nationals. Two points are worthy of mention. Firstly, a EU citizen who is entitled to reside in Italy because has sufficient economic resources, can satisfy the requirement concerning the sickness insurance by voluntary registering with the Italian national health service, opportunity till then precluded to EU nationals. Secondly, in order to identify the dependant members of the family of a EU nationals the agreement refers to the definition of dependent family employed for tax purposes, which is stricter than that of the Directive and does not fit well for residence purposes.

Detention of EU citizens – A research by MEDU (Medici per i diritti umani) on CIEs (centri di identificazione ed espulsione – Identification and Deportation Centres) found that in 2011 494 Romanian nationals had been detained in a CIE, of whom 346 had been repatriated. In 2011 a total of 7 734 foreigners had been detained, of whom 3 880 had been repatriated. In 2012 7 944 foreigners were detained, of whom 4 015 had been repatriated. Under Legislative Decree no. 30 of 2007, a European Union citizen may be detained in a CIE for the time required for the court to validate the immediately enforceable expulsion decision. The police authority’s decision of immediately enforceable expulsion must be communicated to the court within 48 hours and validated within the subsequent 48 hours. If the decision is validated, it can be enforced. Otherwise it loses force and effect. Nonetheless, in practice some European Union citizens are detained in the CIE even after the expulsion decision has been validated when immediate deportation is not possible. This solution does not appear to be admissible because not provided by the law. The Court of Turin, referred to on a number of occasions in relation to detention while awaiting deportation, has stated that the European Union citizen cannot be detained any longer (decisions 4-7-2012, no. 4499/2012; 30-7-2012, no. 4515/2012; 13-10-2012).

MEDU, Arcipelago CIE, 2013.
4. **FREE MOVEMENT OF ROMA WORKERS**

The situation of Roma has not significantly improved, as shown by the very critical remarks made by Amnesty international: see *Italy’s discriminatory treatment of the Roma breaches EU Race Directive*, July 2012; and *Sgomberi forzati e segregazione dei Rom in Italia*, September 2012.
Chapter II
Members of the Family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

Legislative Decree no. 30 of 2007, transposing Directive 2004/38/EC, provides that the reunification of third country family members of an Italian citizen is governed by the same rules regulating the reunification of family members of a European Union citizen. Cases found in practice and case-law are mainly concerned with the family members of Italian citizens. Nonetheless, principles expressed in such cases are also applicable to the family members of European Union citizens.

The court of Florence upheld an appeal against the denial of an entry visa for family reunification for a child whose custody was given to an Italian relative of his under kafalah in Morocco. The court decided that Legislative Decree no. 30 of 2007 had to be applied, granting the right of entry to a minor in this case (judgment 14-12-2012, 4279/12). The decision is extremely succinct and hence it is not clear whether the court founded its decision on the family relationship that existed between the parties even before the kafalah was established, or because of it. The court did not even consider the Supreme Court line of case-law according to which the kafalah is not capable of granting the status of dependant pursuant to Legislative Decree no. 30 of 2007.

The court of Reggio Emilia upheld an appeal against the refusal to renew a residence permit to a third country national man who, following the marriage to an Italian woman, changed sex, becoming a woman but without seeking the correction of his sex as noted in the official records. The police authority had given the fictitious nature of the marriage as the reason for its refusal. The court found on the contrary that the marriage was real. Furthermore, having examined the relevant international case-law (the Court of Strasbourg) as well as foreign decisions, it stated that a change of sex not accompanied by a rectification of official records was not a cause for the dissolution of the marriage (Order 9-2-2013, no. 8354/12). Italian law provides that the correction of a person’s sex in the official records will eliminate one of the pre-requisites of a marriage, that is, the difference in sex and, as a consequence, the marriage would be dissolved by law.

Same-sex spouses – Although same-sex spouses are not able to marry in Italy nor is it possible to have such a marriage transcribed, it is increasingly frequent for the foreigner to request a residence permit on the grounds of being one of a couple where the other is an Italian national. The court of Reggio Emilia has acted as a trail-blazer in quashing the decision to refuse the permit by the police authority on the basis of the fact that the capacity of spouse acquired in the country where the marriage was celebrated should have effect in Italy as well if only for the purposes of the issue of the residence card (Order 13-2-2012, the judgment is final because not appealed by the State Counsel. See, on this decision, De Felice, La libertà di circolazione dei coniugi dello stesso sesso nello spazio di libertà dell’Unione, Il diritto di famiglia e delle persone, 2012, 1660-1668. The court of Pescara came to the same

3 The child was the ‘nipote’ of the Italian National, meaning both nephew and grandchild.
4 Going against its previous case-law, the Supreme Court has stated that the marriage of two Italians of the same sex celebrated abroad would be without force and effects in Italy, but not contrary to public order: judgment 15-3-2012 no. 4184.
conclusion, Order 15-1-2013). The Ministry of the Interior has now issued a circular in which, while recalling that Legislative Decree no. 30 of 2007 does not permit the issue of a residence card pursuant to Article 10 to a spouse of the same sex, in effect it recognises the practice of those police authorities which have issued a residence document as legitimate (Circular 26-10-2012, no. 400/C/2012/8996/IIdiv). The press has reported that the police authorities of Reggio Emilia, Rimini, Milan, Rome and Treviso have issued a residence card to third country nationals who are the same sex spouses of Italian citizens. The Association Certi Diritti offers assistance in individual cases and has drawn up a form with a list of the documents which have to be presented to the police authority.

2. ENTRY AND RESIDENCE RIGHTS

The Supreme Court has stated in a series of judgments that the residence card of a third country family member of a European Union or Italian national is constitutive of the right of residence. If the spouse does not apply for the residence card within three months from his or her entry into Italy, his/her legal position will be governed by the Consolidated Legislation on Immigration. That law prohibits the expulsion of a spouse or relative up to the second degree of kinship so long as living under the same roof with an Italian citizen. As a consequence, if a foreigner is married to an Italian citizen, s/he will be able to obtain a residence permit for family reasons so long as the couple are living together (orders 20-4-2012 no. 6315, 10-5-2012 no. 7193, 10-5-2012 no. 7203, 10-7-2012 no. 11593, 21-11-2012 no. 20517, 22-11-2012 no. 20645 and 19-3-2013 no. 6806. For a commentary on the above caselaw see: Lang, Il valore giuridico della carta di soggiorno di familiare di cittadino italiano o cittadino UE nella giurisprudenza della Cassazione, *Diritto immigrazione e cittadinanza*, 2012, 4, 105-112). The fact of living together also protects a child of an Italian citizen from expulsion (Supreme Court, judgment 12-1-2012 no. 3516).

As far as we know, there has only been one case relating to a foreigner who was the member of the family of a European Union citizen without a residence card. The decision of the Supreme Court is very short, meaning it is impossible to understand the reasoning followed in full. The case involved a Serbian national married to a Romanian citizen and the father of two children of Romanian nationality who was expelled by the Prefecture of Rome for reasons not stated in the judgment. He appealed against the deportation decision claiming that he held a residence permit issued by Romania and that he could not be deported because he was the spouse of a Romanian citizen. The Justice of the Peace dismissed the appeal; a further appeal to the Supreme Court was submitted. The court stated that protection against deportation deriving from living with a spouse applied only if the spouse was an Italian citizen. On the other hand however, the Court accepted the other ground of appeal and remitted the case to another Justice of the Peace to establish whether the residence permit issued by Romania could be relied on to prevent the adoption of the deportation order (Supreme Court, Order 3-5-2013 no. 10383).

If the family member obtained the residence card, the conditions for its renewal or revocation are governed by Legislative Decree no. 30 of 2007, which does not require that the spouses live under the same roof. As a consequence, the police authority was not able to refuse to renew a residence card on the ground that a foreign spouse and her Italian husband were no longer cohabiting (Supreme Court, Judgment 23-5-2013, no. 12745).
The form of the residence card for the members of the family who are non EU nationals, has never been issued, and the Police Headquarters, responsible for the issuance of the residence card, simply adjust and use the form of the residence card for foreigners. When filling this form, the spouse shall prove to live under the same roof of the Union citizen, a condition not required neither by Directive 2004/38, nor by the implementing legislation.

3. IMPLICATIONS OF THE METOCK JUDGMENT

The Metock judgment has not give raise to any legislative amendment, but has been often relied on by courts. During the reporting period, the Supreme Court quoted it in the judgment 23-5-2013, no. 12745 (considered above).

4. ABUSE OF RIGHTS, i.e. MARRIAGES OF CONVENIENCES AND FRAUD

Italy did not transpose Article 35 of the Directive.

The Supreme Court has stated that a marriage between a foreign national and an Italian national, concluded after the foreigner had been expelled, the order to such effect having been correctly served, was not a reason for the quashing of the deportation. To decide otherwise would encourage the celebration of sham marriages (Order 10-7-2012 no. 11582).

5. ACCESS TO WORK

It is quite common that competitions for posts in the public sector are open only to Italian and EU nationals, therefore denying access to their third country family members.

In 2012 the Ministry for Education, University and Research held competitive exams for the recruitment of teachers for all kinds and levels of schools,5 the first of its kind for 13 years. Access was permitted for Italian and European Union nationals. In this way access was not permitted for foreigners, not even for the third country family members of a European Union national. A Croatian national, a family member of a European Union national, applied to the court complaining of the discriminatory nature of the provision. The Court of Rome upheld the appeal and ordered the Ministry to admit the woman concerned to the pre-selection tests (Order 14-12-2012).

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

No specific legislative provision addresses this issue, neither has it been discussed in courts.

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5 Decreto n. 82/2012, Indizione dei concorsi a posti e cattedre, per titoli ed esami, finalizzati al reclutamento del personale docente nelle scuole dell'infanzia, primaria, secondaria di I e II grado, in GU 4a Serie Speciale - Concorsi ed Esami, 25-9-2012, n.75
Chapter III
Access to Employment. (a) Private sector and b) public sector

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

The right to equal access to the employment in the private sector is well established in Italian legislation.

The law on the press provides that the editor responsible for a newspaper or magazine must be an Italian citizen (Law 8-2-1948 no. 47, Disposizioni sulla stampa, Art. 4). In 2012, in the context of discussions relating to the reform of the professions, there was talk about the repeal of the requirement but no decision was taken.

No other cases to report.

1.1. Equal treatment in access to employment (e.g. assistance of employment agencies).

Nothing to report.

1.2. Language requirements

See the special report on language requirements.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

Access to public employment is dependent upon the passing of an open competition, which is a principle enshrined into the Constitution and upheld by the Constitutional Court.

2.1. Nationality condition for access to positions in the public sector

As a rule, competitions for access to public employment, under both fixed-term contracts or under contracts of indeterminate duration, are open to Italian and EU nationals alike. Nonetheless, some exceptions happen.

The Regional Administrative Court of Puglia, by its Judgment no. 1138 of 26-6-2012, quashed the appointment of the Chairman of the Brindisi Port Authority made by the Ministry of Infrastructures and Transport, because he was not an Italian national. Even though the law setting up the Port Authority makes no provision as to the nationality of the Chairman, the Court stated that since the Port Authority was a public body and the functions of the Chairman entailed the exercise of public powers, the position had to be reserved to an Italian citizen. In a commentary on the decision it was stated that not only was the judgment consistent with European Union law but it was European Union law itself which imposed the requirement of citizenship for access to the functions of public employment entailing the exercise of public powers (Vigliotti, Cittadinanza italiana: requisito essenziale per gli alti funzionari, Corriere del merito, 2013, 103 et seq.).
2.2. **Language requirements**

See the special report on language requirements.

2.3. **Recognition of professional experience for access to the public sector**

Council of State, opinion 10-7-2012 n. 05107/2012 (see Annex). The Ministry for Education, University and Research asked the Council of State for an opinion on the request submitted by an Italian national to have his German title as *Lehrbefugnis* declared as equivalent to an Italian qualification as full professor. The applicant submitted a similar request in the past, grounded on Directive 2005/36/EC, and the case reached the Court of Justice (case C-586/08 [2009] *Rubino*). The Court held that the case was not within the scope of application of the Directive, but that ‘nevertheless, Articles 39 EC and 43 EC require qualifications obtained in other Member States to be accorded their proper value and to be duly taken into account in such a procedure’. The judgement was not of any help for Mr Rubino. Subsequently, the law on the recruitment of University professors has been amended. Contrary to the previous system, under the new rules a national commission is established in order to grant the qualification as full professor or as associate professors to candidates. The qualification lasts four years. Universities can hire only holders of the qualification and can recruit them by calling an open competition. Mr Rubino asked that his German qualification be declared equivalent to the Italian one. The Council of State held that in its opinion the Ministry should grant the request of the applicant, but should limit the validity of the qualification in time, in order to avoid any reverse discrimination to the detriment of those holding an Italian qualification. According to the Council of State, the duration of the validity of the qualification should be the same for Italian and German qualification, namely four years, starting from the date the German qualification had been acquired.

In 2012 the Ministry for Education, University and Research held competitive exams for the recruitment of teachers for all kinds and levels of schools, the first of its kind for 13 years. Access was permitted for Italian and European Union nationals. Admission was granted to those who had obtained the teacher training qualification in Italy or abroad so long as the qualification was recognised in Italy. The final ranking list will be drawn up on the basis of the admission tests (oral and written, held in Italian) and the assessment of qualifications, scored in accordance with the annex to the decree. Teaching qualifications obtained in another EU Member State had the same score as the Italian qualification (from 1.25 to 3 points, depending on the final mark obtained) but some Italian qualifications added a further 1.5 points. No justification for this has been given. Nonetheless, since the rule is not new in Italian legislation on the recruitment of teachers, a tentative justification can be drawn from the case-law of the Constitutional Court. According to the Court, the rational of the rule attributing an extra points to the some Italian qualifications is to compensate the fact that during the course that the candidates have to follow in order to obtain them, they can not perform any temporary teaching jobs, which are awarded points for the purpose of drawing up the ranking list (see Corte Costituzionale 17-3-2006 no. 108).

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6 Decreto n. 82/2012, Indizione dei concorsi a posti e cattedre, per titoli ed esami, finalizzati al reclutamento del personale docente nelle scuole dell'infanzia, primaria, secondaria di I e II grado, in GU 4a Serie Speciale - Concorsi ed Esami, 25-9-2012, n.75
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3. **Other aspects of access to employment**

Nothing to report.
Chapter IV
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

The prohibition of discriminations in working conditions is well established in Italian legislation.
Nothing to report.

Specific issue: Working conditions in the public sector

According to Article 45 of Legislative Decree no. 165 of 2001, every public administration department has to grant equality of treatment to its employees.
Nothing to report.

2. SOCIAL AND TAX ADVANTAGES

Social Advantages

Nationality is rarely a condition for access to social benefits or tax exemptions. As a rule, those benefits are designed for ‘workers’ in general. When they address low income workers or people, the ISEE index (Indicatore della situazione economica equivalente – Equivalent Economic Situation Indicator) is used as evidence of need. The ISEE index is calculated from the taxable income declared for the previous-year IRPEF (imposta sul reddito delle persone fisiche – personal income tax) and from the movable and immovable property own by the applicant. The ISEE index is objective, but can only be calculated if during the previous year, the applicant’s income was taxed in Italy. Therefore, during his/her first year in Italy, the EU worker could face difficulties in obtaining social benefits for low income people, because calculating his/her ISEE index would prove quite difficult. During the reporting period, discussions have been afoot to amend the index so that it is able to represent the true situation of the person concerned more accurately and to avoid abuse.

Article 60 of Decree-Law 9-2-2012 no. 5 (converted into law by Law 4-4-2012 no. 35) introduced the ‘Social Card’ for one year on an experimental basis. This is an economic benefit for households living in poverty in 12 Italian cities. The amount ranges from a minimum of €231 for a household of two people to a maximum of €404 for households of five or more people, with payments every two months. Beneficiaries are selected according to their income (less than €3 thousand per year), without discrimination based on nationality. European Union citizens are expressly identified as beneficiaries (Ministry of Employment, Decree 10-4-2013). Indeed, one of the differences with the previous social card (‘Purchases Card’, of €480 per year), introduced by Article 81, paragraph 29, of Decree-Law 2008 no. 112 (converted into law by Law 2008 no. 133) which is still in force, is the fact that the latter is reserved for Italian nationals in economic need although the aims are the same. The 2008

7 See Legislative Decree no. 109 of 1998.
The social card is financed by State funds and Regions have the power to supplement it with their own resources for the benefit of residents in the regional area. The Region of Friuli-Venezia-Giulia has increased this economic support for its own residents. A Romanian national, resident in the Region and the wife of a worker, applied for the social card from the Municipality. She was initially granted the benefit, but it was then withdrawn because she was not an Italian citizen. She then made an application to the court to challenge the decision to revoke the card. The Court of Trieste decided the revocation was illegitimate because it represented discrimination on the grounds of nationality, prohibited under Regulation 492/11/EU and by Article 18 TFEU, and the difference of treatment cannot be justified by requirements connected to financial policy and containment of public expenditure (Order 19-9-2012).

F. Biondi Dal Monte, Cittadinanza europea, libera circolazione e parità di trattamento. Il diritto all’assistenza sociale dei cittadini dell’Unione, Diritto, immigrazione e cittadinanza, 2012, 4, 37-58: after having examined the EU legislation and case-law on the scope of application of the right to access to social assistance for EU nationals, the A. analysed Italian case-law on the subject. She pointed out that Italian legislation as a rule does not tie access to social benefits to the legal position of EU nationals (workers, students, and so on), but in a few cases reserved it to Italians and more often links it to residence or to a particular period of residence.

**Tax advantages**

The Codified Law on Income Tax allows for costs incurred in student rent to be deducted from tax. The deduction amounts to 19% of the costs incurred with a maximum of € 2,633. From 2012 the deduction applies to rent paid in the European Union country where the student is registered at a course of study (Article 16, paragraph 1, of Law no. 217 of 15-12-2011).

2.1. **General situation as laid down in Art. 7 (2) Regulation 1612/68**

As explained in the next chapter, Italian legislation on the equality of treatment is more generous than EU law. Regulation 1612/68/EEC is rarely mentioned, because for a EU national, worker or not, it is far more interesting to rely on the principle of equality of treatment as enshrined in Italian Constitution.

2.2. **Specific issue: the situation of jobseekers**

As pointed out in the previous years Reports, under Article 19 para. 3 of Legislative Decree no. 30 of 2007 (transposing Directive 2004/38/EC), Union citizens who entered Italy in search for a job are not entitled to social assistance for the first six months of stay, unless these allowances are granted by the law. See also the answers to the questionnaire on jobseekers.

Financial benefits equivalent to the ones which were in question in the Collins, Ioannidis and Vatsouras cases do not exist in Italy. As noted in previous reports, the Popolo della Libertà (People of Freedom Party), the centre-right party which won the 2008 elections, was
against the introduction of a minimum income. In contrast with this, in the discussions on the subject during the electoral campaign leading up to the February 2013 political elections, the Movimento cinquestelle (Five Stars Movement) stated that it would introduce a citizen’s wage without however specifying either the beneficiaries or the resources required to finance it. The President of the Council of Ministers, appointed by the President of the Republic after the elections, in his speech to the two chambers of Parliament, expressed his willingness to introduce a minimum income for needy families with children but no specific proposal was put forward thereafter.
Chapter V
Other Obstacles to Free Movement of Workers

Cases of discrimination against European Union nationals have often been examined in the light of Italian law. Two are the main instruments used: the first consists in applications to the Constitutional Court on the initiative of the Government if the discrimination has been introduced by a Regional law, complaining of breach of Article 3 of the Italian Constitution (equality of treatment) or of Article 117 of the Constitution (Compliance with European Union Law) (a). The second is an anti-discrimination action which can be initiated by the victim of the discrimination or by expressly authorized associations defending interests of foreigners (b).

a) Regional laws which tie access to benefits to nationality or to a shorter or longer period of residence are often challenged by the Government. The Constitutional Court, the court with jurisdiction to resolve this kind of dispute, often quashes Regional laws because of breach of Article 3 of the Constitution. The Constitutional Court accepted the government’s application seeking to strike down a number of provisions of Law no. 12 of 2011 of the Autonomous Province of Bolzano on ‘Integration of male and female foreign nationals’. One of the challenged provisions stated that European Union nationals could only receive the subsidy available for learning foreign languages if having been resident for one year without interruption in the Province. The Court held that the provision violated Article 3 of the Constitution because the requirement of one year’s residence was not imposed on Italian nationals and was without reasonable justification and contrary to the principle of equality (Judgment no. 2 of 14-1-2013).

There are similar challenges pending. These include application no. 131/2012 against Law no. 15 of 2012 of the Autonomous Province of Trento, making access to care benefit for persons who are not self-sufficient subject to a continuous period of three years’ residence and application no. 188/2012 against Law no. 15 of 2012 of the Region of Umbria which makes the assignment of social housing subject to a period of five years’ residence in the Region.

b) The Italian legal system recognizes a prohibition against discrimination on the basis of nationality which is much wider than that provided for under Directive 2004/38/EC. In particular, successful challenges have been mounted against State or local authority legislative provisions reserving benefits to citizens or which impose residence requirements even in cases where Article 24 of the Directive would allow the possibility of reserving the benefit to state nationals. This result has been achieved through the widespread use of the practice of considering discrimination on the grounds of nationality as being included in the scope of application of Directive 2000/43/EC, even though this interpretation has been rejected by the Court of Justice in case Kamberaj (C-571/10 [2012] paragraph 50).

Thanks to this reading of the law, access to benefits is ensured for all European Union nationals without even considering the possibility that it could represent an excessive burden for the state.

During the reporting period, the following acts have been successfully challenged:
- the Public Notice for the assignment of municipal fair rent housing published by the Municipality of Ghedi, reserving this benefit to Italian nationals (Court of Brescia, Order 12-6-2012);
- the Regional Law of Friuli-Venezia-Giulia, reserving the Purchases Card to Italian nationals (Court of Trieste, Order 19-9-2012).

For a recollection of all the anti-discrimination case-law of Northern Italian courts, see A. Guariso (ed.), Senza distinzioni. Quattro anni di contrasto alle discriminazioni istituzionali nel Nord Italia, 2012.

Civilian Service – Legislative Decree no. 77 of 2002 setting up civilian service, requires Italian nationality in order to be able to participate in the competitive entry selection. A Pakistan national challenged the nationality requirement and the court, upholding the application, ordered that the procedure should be re-opened to allow the applicant’s participation (Court of Milan, Order 9-1-2012, confirmed by the Corte of Appeal 12-3-2013, no. 1639/2013). Other courts had held, to the contrary, that the nationality requirement was justified. Mr Riccardi, the Minister of Integration and Co-operation of the Monti’s Government, stated in response to a parliamentary question, that Italian nationality was mandatory because imposed by the law. The 2013 public notice for the selection of 457 volunteers to take part in civilian service projects in Italy, in line with this approach, requires Italian nationality. The Public Notice for 350 volunteers to work in the municipalities of Emilia-Romagna affected by the 2012 earthquake, is reserved to Italian citizens.

Italian legal provisions often equate European Union nationals and Italian citizens, neglecting the fact the third country family members of Italian or European Union nationals deserve equality of treatment. During the reporting period, Legislative Decree no. 109 of 16-7-2012 transposing Directive 2009/52/EC, providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, has been enacted. It establishes a procedure to regularise foreign workers. The application for regularisation could be submitted by the employer, who at 9-8-2012 had employed a foreign worker irregularly for at least three months. 134,576 applications for regularisation were submitted. To submit an application the employer had to be an Italian national, a national of a Member State of the European Union or a foreigner holding a residence permit as defined by Article 9 of the Consolidated Law on Immigration (Article 5 of Legislative Decree 2012 no. 109). Employers were not included who were third country family members of an Italian or EU national. Nonetheless, the Decree of the Ministry of the Interior of 29-8-2012 states, over and above the conditions laid down by the Legislative Decree, that the application for regularisation could also be presented by foreigners holding a residence card as member of the family of an Italian citizen or of a European Union national and ‘foreign employers who have exercised the right to free movement in compliance with Directive 2004/38/EC’.  

New taxes on real estate were introduced in 2012 when located in Italy (IMU) or abroad (IVIE). The chargeable value and rates were calculated in a different way, but a number of corrective amendments were introduced in 2013. In the first place, IVIE had to be paid with effect from 2013. If a taxpayer, in compliance with the law then in force, had paid the tax in

9 OJ no. 209 of 7-9-2012.
10 ‘i datori di lavoro stranieri che hanno esercitato il diritto alla libera circolazione in conformità alla direttiva 2004/38/CE’.
2012, the tax paid will be treated as an advance on the tax to be paid in 2013. In the second place, a reduced rate has been set for real estate located abroad and identified as the taxpayer’s principal abode in the same way as for real estate located in Italy. In the third place, the tax exemption applying to income from land has been extended to non-leased properties located abroad, on a par with property located in Italy (Article 1, paragraph 518 and 519 of Law no. 228 of 24-12-2012).
Chapter VI
Specific Issues

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES):

No cases about frontier workers have been found. It shall be noted that residence is often a condition for access to social assistance benefit established by regional and municipal legislation (see above, Chapter V).

2. SPORTSMEN/SPORTSWOMEN

Waterpolo
The limitation to affiliate EU players in A1 category championship established by the ‘Federazione Italiana Nuoto – Pallanuoto’ (FIN, i.e. Italian Swimming Federation – Water polo) is well known to the European Commission and is the object of the infringement procedure 2011_4140. The 2011-2012 Water polo General Regulation equates EU players to third countries nationals allowing a maximum of two ‘non-Italian players’ to be affiliated to each team of A1 Category for the sport season 2011-2012.11 The teams taking part to the championship but one agreed to reduce the number to one for the sport season 2012/13. The Pro Recco Team on the contrary contested the decision and did not agree. It was obliged to maintain for two years consecutively two different teams to compete both in national and European competitions. As a protest against the Federation, the president of the Pro-Recco retrieved the women's team from all the competitions, the men's one from the European competitions and abandoned the presidency of the team.

Basketball
The general rules applicable are the same as in 2010/11 and are based on the distinction between players trained in Italy (so called ‘giocatori di formazione italiana’) and not, created in the 2006/07 season. Nonetheless many changed intervened due to the so called 2012 ‘Passaporti case’ (i.e. players that obtained Italian nationality during their players’ carrier in Italy), that ended with the regularisation of all players of A1 and A2 category owners of an Italian passport, as stated by Official Communication by the FIP (Federazione Italiana Pallacanestro – Italian Basket Federation) Council of 14 April 2012, no. 1375.12

The case arose due to the discrimination that affected players that obtained the Italian citizenship but could not satisfy the requirement of four-year training in Italy, in the young sector as they arrived in Italy after the age of 19. These players, some of whom have already played as ‘Italian’ before the rules’ change in 2006/07, published an open letter to the FIP on 1 February 2012 that opened the door to the reform.

According to the new Regulation, from June 2012 onwards is adopted the so-called ‘5+5 and 3+4+5 rule’. It means that every team could include in the referee’s report 5 non-Italian players and 5 Italian players, one of which can be a passaportato, and can affiliate 3 non-EU players, 4 EU players and 5 Italian-trained players, one of which can be a passaportato. In the subsequent Federal Council of June 2012 steps were taken to equate players from ACP countries to EU-players.

**Football**
The rules described in last year’s Report are still in force.

**Volleyball**
The rules described in last year’s Report are still in force.

**Rugby**
The rules described in last year’s Report are still in force. The principle of ‘Italian trained player’ (giocatore di formazione italiana) has been extended to the Women’s league. For the first time, for the season 2013/2014 women’s team can affiliate two Italian trained players in first division and one in second division.\(^{13}\)

**Ice-Hockey**
The rules described in last year’s Report are still in force.

**Handball**
The rules described in last year’s Report are still in force. The limit for foreign players not trained in Italy, to be decided on annual basis according to the General Regulation, has been confirmed at 1 player only in the Vademecum 2013/14.\(^{14}\)

3. **THE MARITIME SECTOR:**

Nothing to report.

4. **RESEARCHERS/ARTISTS**

As already indicated in the previous years’ Reports, Italy encourages employment by granting tax credits to employers. In 2012 the so-called ‘employment bonus’ was established, that is a tax credit was allowed amounting to 35% of the cost incurred for the employment of highly qualified staff in the research sector, possessing a degree obtained either in Italy or abroad if declared to be equivalent but without restrictions in relation to nationality (Decree-Law 22-6-2012 no. 83, Misure urgenti per la crescita del Paese, converted into law by Law 7-8-2012 no. 134, Art. 24).

Nothing else to report.

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5. ACCESS TO STUDY GRANTS:

A research on foreign students enrolled at Italian Universities shows that, during the academic year 2011-2012, there were 14,451 EU undergraduate students out of 1,743,697, and 2,114 EU post-graduate students out of 106,254.15

Legislative Decree no. 68 of 29-3-2012 (Revisione della normativa di principio in materia di diritto allo studio e valorizzazione dei collegi universitari legalmente riconosciuti) defines the general framework for the right to study, including study grants. The criteria for the assignment of study grants relate to the economic situation of the interested party and his or her family.

The resources available to the State fund which finances study grants have been much reduced over recent years in the context of the fiscal policies seeking to reduced expenditure to bring down the public deficit. Thus in 2012 57 thousand students who, although satisfying the income criteria identified, did not receive any study grant.

Article 59 of Decree-Law 2013 no. 69 (not yet converted into law) establishes a new kind of study grants, called ‘borsa di mobilità’, for deserving students who concluded their secondary education in Italy and apply for enrolment at a University sited in an Italian Region different from the one where they live. The aim is to foster students to move from their Region of origin.


6. YOUNG WORKERS

Nothing to report.

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15 Gli studenti internazionali nelle università italiane: indagine empirica e approfondimenti, a cura di Ministero dell’Interno Dipartimento Libertà Civili e Immigrazione Direzione Centrale Politiche Immigrazione e Asilo e Centro Studi e Ricerche IDOS, maggio 2013
Chapter VII
Application of Transitional Measures

1. **TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS**

   Italy lifted the transitional arrangements regarding workers from A8 during 2006.

2. **TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA**

   The transitional period for workers from A2, decided in 2007 for one year and subsequently renewed, ceased to produce its effects by the end of 2011.
Chapter VIII
Miscellaneous

1. **Relationship between Regulation 1408/71-883/04 and Art 45 TFUE and Regulation 1612/68-491/11**

The national case-law on Regulation no. 1408/71/EEC is very abundant. On the contrary, Regulation no. 1612/68/EEC is seldom invoked in front of national judges in cases that involve social security allowances. As far as we know, during the reported period no discussion regarding the relationship between Regulation no. 1408/71/EEC or Regulation no. 883/04 and Regulation no. 1612/68/EEC or 491/11/EU has taken place, neither in legal writings nor in front of courts.

2. **Relationship between the rules of Directive 2004/38 and Regulation 1612/68 for frontier workers**

As far as we know, during the reporting period no discussion regarding the relationship between Directive no. 2004/38/EC and Regulation no. 1612/68/EEC for frontier workers has taken place, neither in legal writings nor in front of courts.

3. **Existing policies, legislation and practices of a general nature that have a clear impact on free movement of EU workers**

3.1. *Integration measures*

The general legislation on immigration provides for the implementation of integration measures for foreigners. Since for the purpose of the said legislation foreigners are non-EU nationals, citizens of the Union do not benefit from integration measures. Nonetheless, some Regions have established integration measures, mainly in the field of social assistance and healthcare, which Union citizens in need can benefit from.

3.2. *Immigration policies for third-country nationals and the Union preference principle*

The number of foreigners that can be admitted for working reasons is established yearly by way of a Decree of the President of the Council of Ministers (the so-called ‘decreto flussi’ – flows decree). For the year 2012, 13,850 permit for workers and self-employed workers could be issued, only 2,100 for foreigners residing abroad (Decree 16-10-2012).

3.3. *Return of nationals to new EU Member States*

Italy is still attracting foreigners and EU nationals, mainly from Romania. Even if some EU nationals return to their country of origin, many more are coming.
ITALY

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

Italy does not have a developed tradition of non-judicial bodies or in general of alternative dispute settlement proceedings. Besides the SOLVIT system, only the UNAR (Ufficio nazionale antidiscriminazione razziale – National office against racial discrimination) can be pleaded to. The victim of a discrimination on the ground of race or nationality can submit his/her case to UNAR, which can issue recommendations.

5. SEMINARS, REPORTS AND ARTICLES

Italian legal scholars do not devote much attention to the free movement of workers. The relevant articles dealing with specific problems, published during the reported period, have been quoted in the other chapters of the present report.