National Visa for Italy by opening a Representative Office: Reality or Fiction?

Analysis of the labour and immigration legislation appliable to transnational posting of workers

Abstract

Recently several articles have been published online on the alleged "Rep Office Visa".

A revolution in the Italian Immigration Law? Fiction? Or a dusted-off news from the past? Let's give some clarifications on the Italian and European relevant laws in order to separate reality from the optical illusions of the internet.

This paper will start with the general definition of transnational posting (or secondment) and its essential features, which are of a labour law nature

In the first chapter of the Article, we will give particular attention to the substantive requirements of a transnational posting procedure, the safeguards provided for the posted workers, and the obligations of the seconding and host entities, including the sanctions in case of non-compliance (*Chapter A*).

Subsequently, we will show the set of rules regarding Immigration Law applicable to non-EU citizens who intend to obtain a Visa for transnational posting and reside in Italy on these grounds (*Chapter B*).

It will be finally possible to understand and inquire into the cases of transnational posting towards a representative office and unveil the false myths circulating online on this type of Visa (*Chapter C*).

Chapter A: Transnational Posting in Labour Law

The case of transnational posting occurs when a company, with headquarters in another Member State of the European Union or in a non-EU State, transfers to Italy or another EU State one or more employees in order for them to carry out work in the location of destination.

The Company that transfers the worker can be referred to as 'posting Company'. The receiving Company can be called 'host entity'.

As will be examined in the following subchapter A1, there are different cases of transnational posting, and each one of them corresponds to a different justifying reason/purpose. On the other hand, the common ground for all types of transnational posting is that, throughout its duration, the employment relationship must continue to exist between the posted worker and the posting foreign company. Furthermore, the work activity carried out in the host entity must have a limited duration and be carried out on behalf of the seconding company, on which the typical obligations of an employer continue to rest, such as the responsibility regarding the recruitment and the management of the working relationship, the related wage and social security obligations, as well as the disciplinary and dismissal powers.

The rules on transnational posting are contained, at the level of national legislation, in Legislative Decree No. 136/2016, which was issued in implementation of Directive 2014/67/EU, which in turn regulates the application of Directive 96/71/EC, the European standard on transnational posting and the related protections.

The aforementioned legislation is aimed at protecting workers posted to Italian territory by companies established in another Member State of the European Union or in non-European states, ensuring compliance with a solid core of protections relating to working conditions, health, and safety even for employment relationships of a foreign nature, whether these protections are provided for by law or by collective agreements applicable in the State where the worker is posted.

The reason for these safeguards is also to guarantee fair competition between national companies and those providing transnational services in Italy (or more generally in the territory of the EU). The latter, otherwise, would find themselves able to operate on the market under more advantageous conditions than Italian (or European) companies, creating the phenomenon known as 'social dumping'.

A.1 Types of transnational posting

The three main categories of transnational posting are the following:

1) The posting of a worker towards another production unit (subsidiary office, branch office, or representative office) of the same company or another company of the same corporate group (*so-called intra-group or internal posting*).

2) The posting of a worker towards another company within the framework of a contract for the provision of work or services (procurement contract), where the destination company (the host company) can be considered the client of the service to be provided by the seconding company, which is the contractor. In this context, the transfer of the worker is functional to the performance of the service due by the seconding company, with the organisation of the necessary means and with management at its own risk, in favour of the host company (*so-called Posting on contract*).

3) The posting of a worker from an employment agency of another Member State to a user company with its head office or a production unit in Italy (*so-called Employment-Posting*).

Interim employment agencies, also commonly known as temping agencies, are companies specialising in the supply of temporary staff to companies and organisations that need to fill temporary vacancies or manage work peaks. These agencies act as intermediaries between companies seeking temporary staff (commissioning companies) and workers available for temporary employment. They act as formal employers, taking charge of all the administrative aspects of the relationship, including the management of the temporary employment contract and payroll management. On the other hand, the work will be carried out in favour of and for the so-called commissioning company, which will exercise managerial power over the workers, provide the organisation and means of production and assume the relevant business risk.

An examination of the Immigration Law applicable to transnational posting will take place in Chapter B of this paper. Still, it is worth anticipating that Italian Immigration Law provides for the granting of a work visa to *non-EU* citizens only in the sense of internal or intra-group posting or posting on contract. Therefore, the possibility of an employment agency supplying non-EU workers to Italian companies is excluded, as this visa hypothesis is not contemplated by law.

Finally, it is evident that all postings involving EU citizens do not require any immigration procedure since, due to the founding principle of free movement of workers, EU citizens enjoy the right to move freely between Member States and take up residence where they prefer without the need for a visa.

A.2 Obligations of the Posting Company (origin of the worker)

During the posting period and up to 2 years from its termination, the foreign company must fulfil the following obligations, in addition to the obvious responsibility of continuing to pay the worker:

1. Make the **preliminary notice of posting** of personnel employed in Italy by midnight of the day preceding the start of the secondment itself and notify all subsequent changes within 5 days from the occurrence of the event, in accordance with the procedures set out in Ministerial Decree No. 170, 6 August 2021.
The preliminary notice of posting must contain several pieces of information specifically laid out in a specific Circular of the National Labour Inspectorate (INL Circular no. 3/2016), and must also be completed on the basis of the additional rules provided for in the INL Note no. 1659, 29 October 2021. This information includes,

for example, the details of the posted workers, the type of posting, the identification data of the posting company, the duration of the posting, the destination location and the details of the contact person referred to in point 3 below.
The preliminary notice, starting from 1 March 2017, must be carried out through the special platform of the Ministry of Labour (INL Note no. 1670 of 28 February 2017).
The administrative sanctions provided for non-compliance with these communication obligations range from 180 to 600 euros for each violation and for each worker concerned.

2. **Keep**, and prepare in Italian language, **labour documentation**. Specifically: employment contract, pay slips, schedules showing daily working hours, documentation proving payment of wages, the public notice of establishment of the employment relationship and the certificate proving the abidance with social security legislation.
   It is noteworthy that the documentation translated into Italian should already be available at the time of any inspection by the inspection authorities, under penalty of incurring the sanctions set out in INL Circular no. 1/2017. Violation of this duty is punished with an administrative fine ranging from €500 to €3,000, for each worker concerned.
3. Appoint, during the period of secondment and up to two years after its termination, a **contact person** electively domiciled in Italy responsible for sending and receiving acts and documents and with powers of representation to maintain relations with the social partners. Without this, the legal office of the posting company is deemed to be the place where the recipient of the service has its registered office or resides. The violation of this obligation is punishable with a fine ranging from €2,000 to €6,000.
4. Ensuring compliance with **minimum guarantees on working conditions** established in Italy by the applicable legal provisions and collective agreements with regard to minimum wages, maximum working hours, occupational health and safety, and other aspects considered of paramount importance and identified by Legislative Decree No. 136 of 17 July 2016.
5. **Paying the worker.** If the employment relationship is always maintained with the company of origin (so-called "posting" company) during the entire period of posting, in whose interest the worker is also posted to another location, it goes without saying that it will be the responsibility of the posting company to remunerate the worker.
6. **Pay social security contributions** to the worker in the country of employment during the period of posting. The contributions cover the possible cost of sickness, maternity, invalidity, old age and similar situations and are due in the same amount as for the nationals of the destination State. In Italy, they are paid to INPS (the National Social Security Institute) for all employees.

From what has been said so far, it is clear that the legislation embraces the general principle of the "*Lex Loci Laboris*" (Law of the Workplace).
This principle has two more far-reaching declinations: one concerning minimum guarantees in working conditions, mentioned in point 4 of this subchapter; and one concerning social security, mentioned in point 6 of this subchapter.

The rules on social security and coordination between the various systems in case of cross-border workers were established at the European level and for European citizens by EC Regulation No. 883/2004 & the related EC Implementing Regulation No. 987/2009. However, the applicability of these rules was expressly extended also to non-EU citizens by Regulation (EU) No. 1231/2010 and Legislative Decree No. 136, 17 July 2016.

Having said that, we must not neglect that, in the field of social security, there are important exceptions to the principle of the *Lex Loci Laboris*, which considerably mitigate its scope.
In the sphere of intra-European postings (between EU Member States), the most important exception to the general rule of the *Lex Loci Laboris* is the so-called A1 Certificate, as per the provisions of Regulation (EC) no. 883/2004 and the INPS circular no. 136 of 23 December 2022. If requested and obtained by the EU country of origin of the worker, it exempts the employer from paying contributions in the country of destination of the posted worker.

In the context of postings from outside the EU, the *Lex Loci Laboris* may be waived whenever the sending and receiving States have concluded bilateral social security treaties aimed at mutually accepting and recognising each other's social security systems.
The list of countries that have concluded social security agreements with Italy is kept by the INPS (National Institute for Social Security), which has a dedicated web page.

A.3 Obligations of the Host Company (destination of the worker)

The Italian entity or employer hosting the posted worker is subject to certain duties, including:

1. General **prevention and protection duties**: the receiving entity must ensure that the posted workers have a safe and healthy working environment in compliance with Italian health and safety regulations.
2. **Joint responsibility** with the posting entity **for compliance with the minimum guarantees on the working conditions, already** referred to in point 4 of the previous sub-chapter (A.2).

A.4 The Authenticity of the Transnational Posting of Workers

The movement of an employee from one State to another within the framework of a posting must never betray the purpose and nature of this legal institution, which must always remain in the interest of the posting company, which must be the employer of the posted person for the entire duration of the secondment and carry out a real economic activity.

By way of example, the following cases are therefore considered 'fictitious' postings:

a) the posting company is a fictitious company, exercising no economic activity in the country of origin;
b) the posting company does not provide any services but merely provides staff in the absence of the relevant authorisation. With regard to this scenario, it should be noted that in order to be able to supply labour in Italy, it is necessary for the agency to be registered in the specific digital Register kept by the ANPAL (The National Agency for active labour-market policies). In the absence of such registration, it is irregular labour supply with the risk of severe liability and sanctions;
c) the posted worker at the time of recruitment by the foreign posting company already resides and habitually works in Italy;
d) the posted worker, duly employed by the posting company, is fired during the period of posting and, in the absence of notification of the advanced termination of the secondment, he continues working at the posting company.

When the posting does not appear authentic to the inspection authorities, the seconding company and the host company shall be punished with an administrative fine of €50 for each worker employed and for each day of employment, similar to the provisions of Article 18, paragraph 5 bis of Legislative Decree No. 276/2003. In any case, the amount of the administrative penalty cannot be less than Euro 5,000 nor more than Euro 50,000.

If there is employment of minors, the provision provides for the application of the penalty of imprisonment of up to eighteen months and a fine (Art. 5 of EU Regulation 987/2009; Circ. of the Ministry of Labour No. 6/2016 on Decriminalisation Decree No. 8/2016). These are, in this case, penalties of a criminal nature to which someone can be convicted following a judicial assessment.

It is not a topic of this legal paper the crime of aiding and abetting illegal immigration under Article 12 of the Italian Consolidated Immigration Act, as well as the countless specific cases that may fall within the scope of this provision. However, on the matter of criminal sanctions, it is worth mentioning that a fictitious posting put in place for the main purpose of obtaining a visa, under certain circumstances, may fall under this criminal offence.

Chapter B: National Visa and Residence Permit for Transnational Posting in Italy.

As anticipated in Chapter A, only the so-called "intra-group secondment" or "posting on contract" are cases that may justify the issuance of a national visa for Italy in favour of *non-EU* nationals.

It follows that, on the contrary, the "employment-posting" *cannot* concern non-European citizens who, as such, would require a national visa in order to work and reside in Italy.

In the following section, for each type of transnational posting that may justify the issuance of a visa, we will highlight the objective and subjective requirements for obtaining a visa laid down by Italian immigration law. These requirements are to some extent additional to those intrinsic to European and national labour law, which were discussed in Chapter A.

B.1 The so-called Internal or Intra-Group Transnational Posting Visa

The National Visa for Italy - which allows the entry of a non-EU national in the context of a secondment from the company where they are employed to an affiliated or subsidiary company or to a branch or representative office located in Italy - is regulated by Article 27 quinquies of the Italian Consolidated Immigration Act, and by Article 27 par. 1 lett. a) of the same Law.

Subjective Requirements

The two norms both allow for the obtainment of a visa for transnational intra-group postings, and they are partially overlapping in their applicability.

a. *Art. 27 quinquies* is applicable to both managers and specialised workers, as well as to trainee workers, with at least three months of previous employment with the posting company.

A *Manager* is defined as an employee who performs tasks characterised by high professionalism, decision-making autonomy and responsibility towards the entrepreneur, as well as by powers of coordination and control of the entire business activity or of an autonomous branch of the enterprise.

Highly specialised workers are defined as workers possessing specialised knowledge indispensable for the field of activity, techniques or management of the host entity, assessed not only with respect to the specific knowledge of the host entity but also in the light of their qualifications, including appropriate professional experience, for a type of work or activity requiring specific technical knowledge, including possible membership of a professional body.

Trainees are defined as workers, holders of a university degree, transferred (and paid during the transfer) to a host entity for the purpose of career development or the acquisition of business techniques or methods, in accordance with an individual training plan (containing the duration, training objectives and conditions for carrying out the training).

b. *Art. 27 para. 1. Lett. a)* only concerns Managers and Executives of foreign companies who hold a university degree and at least 6 months of experience with the posting company

Thus, Art. 27 para. 1 lett. a. sets more stringent subjective requirements than 27 quinquies. It follows that workers who are qualified under Article 27(1) are also qualified under Article 27 quinquies. But one cannot say the opposite: not all workers who may be posted under Art. 27 quinquies may also be posted under para. 27(1). The choice between one provision and the other, which is reflected in a different type of residence permit, is therefore only possible in certain cases.

The practical consequences of falling under one or the other provision (by choice or necessity) are relevant from the point of view of the convertibility of the secondment residence permit into an employment permit, and they will be examined below.

Generally, it is noteworthy that Italian immigration legislation does not allow the issuance of a visa for secondment to any worker who is eligible for posting according to labour law, but establishes some subjective criteria evidently aimed at restricting the field to more qualified workers.

This is consistent with the Italian immigration regulatory system, which for 'low-skilled' workers provides for a so-called 'in-quota' visa granting system, which is quantitively limited by the so-called “Flussi Decree” each year. The secondment visa, on the other hand, is a visa that is not subject to quantitative limits, so that the presence of 'qualitative' limits is coherent with the system.

Objective Requirements

At this point of the discussion, we would like to take a closer look at the type of relationship that may exist between the posting company (the sending entity) and the host entity (the worker's destination entity) in the so-called intra-group type of posting.

Four different types of relationships between the posting company and the host company might occur.

a. Subsidiary

In this case, a company is entirely controlled by another one (the so-called subsidiary). It is irrelevant if the company owning the share capital of the other is the posting or host entity. The secondment (with the issuance of the related visa) can happen in both directions.

b. Branch

In this case, the host company is a branch office of the home company where the worker is employed abroad (posting company).

The branch is a mere extension of the foreign company. It has no autonomous and distinct legal subjectivity from the company from which it depends. It therefore *does not* have a director or a board of directors, but only a person in charge who acts within the scope of the mandate conferred on him by the company and on its behalf.

The branch office carries out economic and commercial activities on behalf of the foreign company in the country where it is established. From a tax point of view, however, it is subject to taxation in the country in which it operates.

In this case, a visa may only be granted in the case of secondment from the foreign company to a branch (or subsidiary) in Italy. On the contrary, there is no visa for secondment in the opposite direction: from the branch abroad to the Italian company.

c. *Representative Office*

In this case, the host company is a representative office of the company where the worker is employed abroad (the posting company).

The representative office is a physical place, with a precise address, through which a company operates in a foreign country (e.g., in Italy) in a preparatory manner for the possible future start of a business activity. In fact, the representative office can only carry out market research and analysis or other auxiliary activities, to the exclusion of any commercial activity involving the sale or production of goods or services.

Consistently, from a tax point of view, the representative office is not considered a permanent establishment, it cannot produce profits (it is only a cost item for the company) and it does not have to pay taxes in the territory where it is established.

Due to its preparatory purpose, the representative office should be of a temporary nature.

In this case, the visa may be granted only in the case of posting from the foreign company to the representative office (or local unit) in Italy. On the contrary, there is no visa for secondment in the opposite direction: from the representative office located abroad to the Italian company.

d. Being part of the same company group

In this scenario, the posting (seconding) company and the host (receiving) company are each controlled by or connected to the other.

Control exists when one company exercises a *dominant* influence over the management of the other by virtue of the votes it can exercise in the latter's ordinary shareholders' assembly. Influence is dominant when the controlling company can exercise the majority of votes in the other's shareholders' meeting or in any case a sufficient number of votes to control the decision-making process of the shareholders' meeting.

A *connection* exists when one company can exercise a *significant* influence over the management of the other, with the former being able to exercise at least 1/5 of the votes (or 1/10 if the affiliated company is listed on the stock exchange) in the ordinary shareholders' meeting of the affiliated company.

This means that, in most cases, one company must hold at least 20% of the capital of the other (or 10% in the case of a listed company) in order for the two companies (investor and investee) to qualify as belonging to the same group.

As for the subsidiarity, it is irrelevant whether the company owning the capital of the other is the posting company (of origin) or the host company (of destination). The secondment to Italy (with the issuance of the corresponding visa) may take place in either direction.

Duration and convertibility of the permit

The maximum duration of the posting under immigration law is 3 years for managers and skilled workers, and 1 year for trainee workers.

The first residence permit issued to the worker has a maximum duration of 2 years. Consequently, an extension of the secondment and the renewal of the document will only be possible for an additional year, in order to total the maximum three years of posting.

The visa for the posting of trainee workers, highly specialised workers or managers, as per Article 27 quinquies of the Italian Consolidated Immigration Act, entitles the holder to a residency permit that cannot be converted into a permit for employment with direct recruitment in Italy or into another work permit. This means that at the end of the maximum period of posting, the residence permit will expire and the non-EU worker will have to return to the place of recruitment abroad.

Otherwise, the secondment visa ex. 27 paragraph 1 lett. a. of the Italian Consolidated Immigration Act, which can only concern executives or managers with a previous employment relationship with the posting company of at least 6 months, entitles the worker to a residence permit for secondment, that during or at the end of the maximum period of posting, can be converted into a residence permit for subordinate work with direct employment in Italy. This means that the worker may also remain in Italy indefinitely by terminating the employment relationship with the posting company and starting a new one with the destination entity.

B.2 Visa for Transnational Posting on Contract

The posting on contract is the other type of transnational posting which can justify the issuing of a National Visa for Italy in favour of *non-EU* citizens according to Italian Immigration Law.

Objective Requirement

Contracting, in Italian law, is defined by Article 1655 of the Civil Code as a contract whereby one party, called the contractor, in return for payment, with their organisation and necessary means and with management at its own risk, the performance of a work or service in favour of another party.

When a contract of employment thus defined is stipulated between a foreign Italian natural or legal person, in the role of principal, and a foreign company, in the role of contractor, which employs a non-EU citizen, Article 27, paragraph 1, letter i. of the Consolidated Immigration Act expressly provides for the possibility of the latter being seconded to Italy for the purpose of the performance of the work or service by the contracting company.

It is to be highlighted that contracting very much differs from labour leasing, where the work is carried out under the responsibility and using the structure and organisation of the company where the worker is sent to perform the service. On the contrary, in the case of contracting, the product or service is performed under the sole responsibility of the contracting company and with the use of its organisational structure.

This distinction, also from an immigration law perspective, is crucial because, under the law currently in force, only in the case of contracting it is possible to issue a visa for seconding.

Duration and convertibility of the permit

The residence permit for posting on contract is extendable up to a maximum of four years. This means that after a first permit of two years, it is possible to obtain a renewal of the permit for a maximum of another two years.

On the other hand, a residence permit for posting on a contract cannot be converted into another type of permit for employment in Italy or into another work permit.

Therefore, after a maximum of four years, the worker has to return to their country of origin.

B.3 The procedure for obtaining transnational posting visas and the worker's subsequent residence permit

The procedure for obtaining this visa is almost unchanged in both cases of intra-group secondment and posting on contract.

a) First phase: Security Clearance (Nulla Osta)

The first stage of the procedure is always the application for the so-called Nulla Osta to the relevant Prefecture. In Italy, the Prefecture is a provincial Branch of the Ministry of the Interior and it has an office called 'Sportello Unico Immigrazione' (Immigration Desk), which is responsible for examining these applications and many others in the field of immigration.

The Prefecture decides on the issuance of the Nulla Osta after verifying the correctness and formal completeness of the application and after obtaining the binding opinions of the Police and the Provincial Labour Inspectorate. The Police will verify the presence of any possible criminal record of the application in Italy and in the Schengen area. The Provincial Labour Inspectorate, on the other hand, is competent to verify the economic capacity of the posting company to pay the salary and the social contributions, as well as the presence of sufficient guarantees regarding the mandatory working conditions that must be ensured to the posted worker, although he is employed abroad and under the conditions primarily laid out by a foreign legal system.

The legal time limit for the decision on the issuance of the Nulla Osta is 45 days, subject to suspension of the time limit in the event of requests for additional documentation. On the other hand, it is noteworthy that the deadline is not peremptory, i.e., a decision to issue or refuse the Nulla Osta may also be taken at a later time. And, in practice, these delays are not uncommon.

b) Second phase: National Visa

Once the Nulla Osta is issued, within 6 months, the worker can request an appointment with the competent Italian Consulate in their place of residency and apply for a National Visa for transnational posting.

The Consulate will certainly strongly rely on the checks carried out by the Sportello Unico Immigrazione of the Prefecture in Italy prior to issuing the Nulla Osta. On the other hand, as a general rule, it has general competence regarding the verification of the requirements for the issuance of the work visa. At this stage, the checks focus more on aspects such as the authenticity of the relevant documentation from the State of origin (frequently already submitted to the Prefecture for the purpose of issuing the Nulla Osta) the actual existence of the employment relationship between the Visa applicant and the foreign posting company, the presence of

any significant criminal record committed in the State of origin, and other similar aspects that can hardly be verified by the competent Prefecture, which is located in Italy.

The visa, if issued, has a maximum duration of 365 days. The Visa is never renewable, as opposed to the residence permit, which the posted worker must request within 8 days of his entry in Italy.

c) *Third phase: Residence Permit*

Once in Italy, the non-EU citizen holding a National Visa for secondment in his passport must meet with the Prefecture that issued the Nulla Osta and submit an application for a residence permit to the 'Questura' (Police Headquarters) of his new domicile in Italy.

The worker may, however, work from the first days of his entry into Italy, subject to the prior declaration of secondment by the posting company.

Chapter C: Transnational Posting towards a Representative Office, Reality or Fiction?

In light of what has been illustrated so far, it should be easy to reckon that the articles circulating on the Internet about the alleged possibility of obtaining a visa by simply opening a representative office are often misleading.

<u>The essential element of employment</u>

First of all, many of these online contents omit to specify that this type of visa is only accessible to employees of the Company, namely people working under the direction of someone else. It is therefore not possible for the director and majority shareholder of a foreign company to be transferred to Italy after opening a representative office there because they certainly cannot be an employee of their own Company. In fact, the 'subordination', as mentioned at the beginning of this article, is an essential feature of the employment relationship between the worker and the posting company.

Although both English-language and Italian-language versions of the applicable regulations transnational secondment refer generically to 'worker', there are several provisions that show that they are employees.

At the level of European legislation, the fundamental norm on transnational postings, Directive 96/71/EC, in expressing the *Lex Loci Laboris* rule on working conditions, uses the term 'employment', notoriously opposed to 'self-employment'. Moreover, the very reference to the applicable 'work terms and conditions" shows it is about employment, given that self-employed workers are notoriously not working under the minimum conditions set by law (evidently to protect those who cannot choose their own conditions because they work under the subordination to others).

At the national level, Article 27 quinquies paragraph 1 of the Consolidated Immigration Act, which is the main regulation on the transnational posting visa, leaves no room for misunderstanding by expressly specifying that it applies to employees.

In Italy, employment, by definition, requires that the employee responds to the directions, directives and demands of an employer. On the other hand, it cannot be neglected that, especially in non-European jurisdictions, there are looser notions of 'employee', where it is permissible for a majority shareholder (who controls the Company) to be, formally, an employee of the company itself. The conflict between more or less rigid conceptions of employee is in any case clearly resolved by Article 2(2) of Directive 96/71/EC, where it is explicitly specified that the concept of employee is the one applicable under the law of the Member State in whose territory the worker is posted.

It follows that the posting of a worker who cannot be qualified as an employee according to the law of the destination State (e.g., Italy) would in any case lack the essential requirement of an employment relationship between the worker and the posting company. This would therefore be a sanctionable scenario, both from a labour law point of view, where the case could be qualified as 'fictitious posting', and from an immigration law point of view, where the visa could be legitimately denied or revoked.

The function of the representative office

Secondly, it should not be neglected that the representative office, as mentioned above, is intended to enable a foreign company to conduct market research, marketing activities, customer development and similar auxiliary activities, with a view to the possible opening of a secondary or subsidiary office in Italy. It is therefore an entity aimed at facilitating and preparing the possible internationalisation of a company.

The posting of a worker to a representative office therefore implies that the office is set up for these purposes, and not for the exclusive purpose of facilitating a non-EU person in obtaining a visa at moderate cost, considering that the representative office does not file income tax returns or balance sheets.

The opening of a representative office solely for the purpose of obtaining a visa, if carried out intentionally, could constitute the offence of 'illegal entry and stay in the territory of the State' for the person applying for the visa, or the offence of aiding and abetting illegal immigration for those who have facilitated it. Moreover, any instrumental pre-establishment of the requirements for obtaining a visa may evidently result in a negative outcome of the visa application procedure if the specious nature of the procedure is reckoned by the deciding authority.