

Infractions identified by ASGI

A) Unlawful restriction of the concept of "exploitation"

The definition of "special exploitation" actually adopted by the Italian legislature (cf Subsections 12a et seq., art. 22 Legislative Decree n. 286/98, as mod. from the Legislative Decree n. 109/2012) cannot match the provisions of the Directive because the special conditions of exploitation, connected to the residence permit for humanitarian reasons, is in fact recognized on the basis of a much more restrictive definition than the one appearing in the Directive, namely: a) the exclusion from the protection of minors in working age; b) the omission of the reference to particularly exploitative working conditions as understood by al. 2(i) of the Directive and specifically recognized by the Italian legal system in art. 603.2 bis of the Criminal Code (such as systematic lower wage, abnormal time schedules/working hours, dangerous/unhealthy working environment, degrading working conditions), thus disregarding not only the Directive but also the aforementioned national provisions; c) the presence of an arbitrary limitative clause (for the purpose of specific criminal sanctions and the issuance of residence permits to the victims) **where there are at least four (4) workers under irregular resident conditions and hired by the same employer**, as if the gravity of individual exploitation would otherwise be determined by the reference to the number of victims of such exploitation. However, the Directive does not take into account any "quantitative" criteria in assessing the severity of the conditions of exploitation.

Moreover, the issuance of a residence permit is not expressly provided for under the Italian law, even in favour of the victims of the most serious crimes punished under art. 600 and 603 bis of the Criminal Code, or in favour of the victims of the crime of aiding and abetting illegal immigration for the purposes of exploitation, punished by al. 12.3(a) of the Legislative Decree n. 286/1998. The Decree is silent in the not so rare cases where the conditions set out in par. 22(12) bis of the Legislative Decree n. 286/1998 and the conditions of violence or serious exploitation towards the victims of crime are inexistent, but there is exploitation. The transposition of measures regarding the assistance of the victims and social integration are provided by in art. 18 of the Legislative Decree n. 286/1998. However, it is known that forms of slavery and exploitation do not necessarily require violence or need to be strictly pursued by criminal organizations, as defined by the legislation.

B) Failure to adopt administrative sanctions provided by art. 7 of the Directive

Art. 7 of Directive 2009/52/EC requires Member States to take the necessary measures to ensure that an employer accountable for the employment of workers residing illegally is excluded from the benefits and/or subsidies (including EU funds) or s/he has to reimburse the benefits or subsidies previously received, as well as the possibility of temporary closure of the company. None of this appears to have been adopted by the Italian Parliament, despite the crucial importance for deterrence expressly mentioned by the Directive in various productive sectors. For example, one could imagine the strong impact of the absence of subsidies and/or public facilities in agriculture or the importance of the interdiction of construction contracts.

C) Comprehensive breach of the fundamental obligation to provide information

The Italian national legislature has totally omitted par. 6(2) of the Directive, which clearly provides the obligation to "systematically and objectively [inform foreign workers] about their rights under this paragraph and under Article 13 before the enforcement of any return decision". This obligation not only aims the victims of particularly exploitation situations but all third-country nationals illegally employed on the EU territory (even in case of forced or voluntary repatriation). The obligation to provide information also specifically relates to the rights provided by in art. 13 of the Directive. However, nothing has been established to ensure effective mechanisms for a real possibility of denunciation and assistance from institutions and associations involved in the protection of workers. Moreover, the rule found in par. 1(3) of the Legislative Decree no. 109/2012 has never been implemented. This act provides that a decree of non-regulatory nature, issued by the Minister of the

Interior and the Minister of Labour and Social Policies, will have to determine the procedures and the terms to guarantee foreign citizens of their rights to be informed according to par. 6(2) of Directive 2009/52/EC. **This duty to inform is in fact totally absent in the context of the entire institutional interventions.** It is particularly true when one look at the absence of any operational indications (cf. par. G of this document) or the failure to provide multilingual informative forms, as well as the non-disclosure of such information even for "pre-printed" expulsion proceedings, to the inspectors.

D) Failure to facilitate complaints filing

Par. 13(1) of the Directive requires Member States to ensure that there are effective mechanisms to allow third-country nationals in illegal employment to lodge complaints against their employers, directly or through unions or associations, and also to recover their wages or any differential wages. This rule was not transposed into national law. It should also be noted that the irregularities of the stay of foreigners often depend on the lack of identification documents and the inability to prove their income. These irregularities are frequently raised as a reason to refuse legal aid provided by the State to foreign workers. In addition, the effectiveness and efficiency of the facilitation of complaints filing should take into consideration the availability of effective assistance measures for victims in situation of special exploitation, also in view of the well-founded fear of serious reprisals, which normally arise from complaints. These situations should be secured in a manner similar to those provided by for the victims of human trafficking, even in human trafficking like-situations, which does not exactly fall within the scope of art. 18 of the Legislative Decree n. 286/1998 but are closely related.

E) Failure into the prediction of the so-called "reflection period"

Art. 13 of the Directive was not even implemented. This provision prohibits victims in situation of special exploitation to be granted a residence permit "under arrangements comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC" for the victims of trafficking (par. 13(4)). Since the victims in special exploitative situations have not, in any way, been required or allowed the so-called "reflection period" provided by in art. 6 of the Directive 2004/81, the victims cannot benefit from the prior stage and request the residence permit. Consequently, they cannot be informed of their rights to be exercised.

F) Substantial violation of art. 14 of the Directive regarding the obligation of effective inspections based on "targeted" areas and production sectors at greater risks of exploitation of irregular immigrants

In the Communication from the Commission of the EU 22.05.2014, reference is made to the report provided by the Ministry of Labour, which shows a suspicious result that there were actual inspections carried out in 2012 over an improbable number of 17,33% employers in Italy. It is doubtful that these stats could have been or could be documented. They are notorious employment sectors and areas where serious exploitation of irregular immigrants exists. Therefore it is clear that the actual sparse and indistinct tables on ordinary inspections carried out monthly by the Ministry of Labour are insufficient and unsatisfactory, and from which one cannot derive any specific actions in the field of business and in the territories in which exploitation occurs most frequently against irregular foreign workers located in Italy.

G) Failure to enact any indications to guide the operational offices

The relevant departments have so far failed to issue any operating instructions or implement inspection services and law enforcement measures with respect to the enforcement of the rules imposed by the directive to the field offices; same thing for the coordination of interventions and the delegation authorities to the respective institutions. As if the right hand does not know what the left hand is doing. The foreign national staying in irregular conditions, who is arrested and accompanied to the immigration office within a police station, appears on paper to be simply arrested, even where it has been established or is in the process of finding by another office irregular employment that the

person is in conditions of severe exploitation. In fact, even the inspection services do not actually report the vast majority of cases of specific violation under par. 22.22 bis of the T.U. This stresses the obvious lack of operating instructions and the lack of information that has already been mentioned. Meanwhile, as the inspection report is certified within (and almost always near the end) thirty days after the access to the workplace, the information related to the crime report is not provided to the competent public prosecutor neither to the competent immigration office at the local police station. Finally, the infringement of the Directive is illustrated by the data provided by the Ministry of Interior, which only reports eight (8) residence permits issued in 2013 (issued by virtue of par. 22.12 *quater* of the Legislative Decree 286/98) and only two (2) in the first half of 2014.