



AGREE

Agricultural job Rights to End foreign workers Exploitation

(Severe) exploitation of foreign workers in agriculture: a comparative analysis



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1. Methodological criteria and regulatory references

1.1 Methodology

This report analyses the main results of the European project, AGREE, on severe forms of exploitation in agriculture, a sector known for its high numbers of foreign workers. The project involved Italy, Spain and Romania.

The general aim of AGREE was to understand and analyse the characteristics of the exploitation of migrant workers in agriculture in order to develop efficient strategies and actions aimed at reducing this phenomenon, creating a new culture of work against all forms of exploitation and illegality through the promotion of rights and opportunities for redemption. The aim of the project, therefore, was to share good practices in combating forced labour found in a range of local contexts where workers, unions, local authorities and local stakeholders were involved in implementing measures aimed at improving the living conditions of workers. Research also aimed to describe and define the phenomenon of labour exploitation in agriculture in Italy, Spain and Romania (as well as the labour exploitation of Romanians working abroad).

Specific aims:

- Analyse the phenomenon of severe labour exploitation of immigrants in partner countries and improve the system of prevention/investigation;
- Define «risk maps» and «maps of good practice» (agricultural work cycles and labour mobility);
- Create tools for the training of local stakeholders;
- Strengthen local social actor networks to harmonize efforts to help immigrants by means of networking and training.
- Raise awareness of the phenomenon among farmers and potential buyers through information campaigns

To achieve these goals, the AGREE project involved the implementation of four main actions: 1) research; 2) networking; 3) training; 4)

awareness raising. The activities were carried out in the form of action research.

Research activities in each target country¹:

Desk analysis of the phenomenon of semi-slavery in the food industry. Desk-research involved a documentary analysis of different sources: studies and reports, official statistics, legislative acts, data held by public institutions and non-governmental organisations concerning labour, human trafficking for labour exploitation, organised crime, migration etc. After the information was gathered, an analysis was carried out of statistics, research, reports, printed documents available on the internet, and press articles. Official requests for specific information were sent to relevant public institutions, so as to gain a picture of the legal context for immigrant access to the labour market, in particular the scenario arising from the implementation of the European Directive 52/2009 in individual countries;

Field analysis of territorial case studies in areas with a strong agribusiness sector. Analyses and specific studies involved a series of semi-structured interviews with key respondents² and workers. In Italy, the territo-

¹ National reports and video footage on the Agro Pontino can be found at <http://www.agreeproject.eu/>. The main research topics were: 1) analysis of the agricultural sector and working conditions, in light of the social, economic and organisational changes in the rural areas of the three countries; 2) the phenomenon of exploitation of agricultural labour in Italy, Spain and Romania (and exploitation of Romanian workers abroad); 3) analysis of relevant national employment laws concerning labour exploitation; the way in which the European Directive no 52 has been transposed and integrated; 4) analysis of policies and practices for fighting labour exploitation; 5) analysis of the role played by trade unions and other civil society organisations (labour disputes, public awareness campaigns, strategic interventions etc.).

² Key respondents included: employers in the agribusiness sector, representatives of inspection offices, law enforcement officials responsible for protection of labour, magistrates, trade unionists and social workers in the agribusiness sector. In the three countries, a total of 50 interviews were conducted. It should be pointed out that our respondents' views are closely tied to the local contexts and areas in which they work. The issues highlighted concern the evolution of the phenomenon of exploitation of immigrant labour, emerging scenarios, relations with middlemen and employers, length of stay, living and working conditions, links with local crime; scope for action using tools provide by law.

Apart from in-depth interviews, research also focused on immigrant meeting places, associations, cultural and political institutions that deal with immigrant problems, and trade unions.

In addition to key actors, research also involved more settled immigrant workers, who had been in the country for more than the average length of stay and who had other roles apart from being labourers. However, in the meeting places where we conduct-

rial case study concerned the Agro Pontina area in Latina Province; in Spain there were case studies of the areas of the Maresme and Montsià and Baix Ebre; research in Romania also involved interviews with Romanian workers who had been, or were presumed to have been, severely exploited in Romania or abroad. The aim of the three field analyses was to analyse the forms and mechanisms of exploitation, and describe recruitment processes and dynamics, so as to highlight similarities and specificities in the three territorial contexts. One of the main difficulties encountered during research, especially in Italy and Spain, was the limited involvement of law enforcement authorities, inspectors and surveillance officers, who would have been able to provide a vital «criminological» overview of exploitation and shed light on the functioning of criminal organizations, while providing information on crime fighting. On the other hand, the attitude of most of the key players interviewed, was not only fully collaborative but also encouraging and positive.

Networking activities were carried out throughout 2015. They were launched with the presentation of the AGREE Project in each partner country, and concluded with the presentation to institutions and citizens of the proposals that emerged from the work (action plan). During this period, an active institutional, economic and social network was built, which provided a platform to discuss concrete proposals to address the problem of trafficking and subsequent exploitation of migrants in agriculture.

Training activities included a series of courses that involved local and other institutions. They focused on the regulatory issues that govern the agricultural labour market, the distortions that can arise when employers do not respect collective contracts and adopt behaviour contrary to law, by hiring illegal middlemen. The methodological approach used in the meetings involved the exchange and sharing of the experiences of different actors: labour inspectors, trade unionists, representa-

ed participant observations, we also got to meet people who still had fragile existences and uncertain migratory future, and who did not speak or barely understood Italian or Spanish. We also took into consideration the immigrants most at risk of being exploited – those without residence permits – mostly contacts with other researchers/activists who provide help and support to this category of immigrants.

The collected interviews make up a document that is enriched by information on the conditions in which the interviews took place and the environment in which interviewees live and work, participant observations, and collaboration with key partners who have in-depth knowledge of the living and working conditions of foreign workers.

tives of the business/industrial sectors, non-governmental organizations, etc. The opportunity to receive/exchange information and experiences is fundamental in promoting collaborations that can be formed and consolidated with a view to establishing joint measures to combat slave-like working conditions.

Communication and dissemination activities. The aim of these was to publicise AGREE project results, convey new knowledge and raise awareness of the phenomenon among local actors and civil society. In this regard, awareness-raising events were organised in each partner country with both stakeholders and potential consumers.

The working methodology behind the four major actions described above was discussed and shared among all project partner countries, and the activities were carried out taking into account specific local contexts in the target countries. As regards, the specificities of the Romanian context in relation to the phenomenon of severely exploited labour, it was necessary to reorganise research activities. Starting with the general objective of the project, the activities proposed and realized in Romania focused on three areas of observation:

1. the most vulnerable groups of workers, namely those at greater risk of exploitation in Romania (women, foreigners, Roma people, etc.).
2. Romanians exploited in the country and abroad (where this happens, and if exploitation also involved sexual abuse);
3. Romanians and/or foreigners who are victims of internal and external trafficking for the purpose of labour exploitation in agriculture.

1.2 Regulatory references and definitions

Before going on to the comparative analysis of the main results of the AGREE project, a brief outline will be given of the main regulatory references and definitions of forced labour to be found in European and international regulations.

Forced labour is a concept originally expressed by the International Labour Organisation (ILO) in a convention held in 1930³, which

³ Convention 29, on «*Forced or Compulsory Labour*», 10 June 1930 and the «*Declaration concerning the Aims and Purposes of the International Labour Organisation*», adopted in the 24th Conference of Philadelphia (USA) on 10 May 1944. An important prece-

sought to abolish all forms of particularly hard and vexatious work that still existed despite the formal abolition of slavery. The notion of forced labour is still based on the fact that some working relationships – agreed between the parties concerned – are not free, i.e. they are not based on mutual sharing but on the exploitation of the weaker party (the worker) by the stronger party (the employer).

The ILO definition goes on to specify this concept by referring to extortion, coercive behaviour, subjection, and the threat of possible punishments when workers do not comply of their own free will. It is this «threat of punishment» that traps workers in this type of employment relationship. The definition involves entering into a work relationship that is «not voluntary», since it is an expression of subjection to another's will, as if it were a duty that the employee has towards his or her employer.

According to this Convention, forced labour can generally be said to exist in the presence of two distinct elements: constant threats and punishment; an imposition to work against one's will.

But until now the identification of victims of trafficking for forced labour has been problematic and difficult. Despite the changes brought about by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, attached to the United Nations Convention against Transnational Organized Crime, signed in Palermo in 2000, there is still no single clear and unambiguous definition. One of the main reasons for this may be due to the fact that in many countries «trafficking aimed at labour exploitation is not perceived and regulated as a matter of criminal law, both for macroeconomic reasons (in some states it is the state itself that allows exploitation), and because very often the boundaries between severe labour exploitation, precarious work and poorly paid work with no guarantees are very blurred»⁴.

This does not mean that states do not have to identify suitable measures to combat all forms of labour exploitation.

dent was the Slavery Convention of 1926 (Geneva September 25, 1926) created under the auspices of the League of Nations. Italy ratified this convention in Royal Decree 1723 of 26 April 1928, in the Official Gazette of 30 July of the same year, no. 176. Another important document is the 1956 UN Convention («the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery»), ratified by Italy in 1958 in Law no. 1304 December 20, 1957.

⁴ D. Mancini, *La tutela del grave sfruttamento lavorativo ed il nuovo articolo 603bis c.p.*, <http://www.altalex.com/index.php?idnot=15569>

A further step forward in the identification and protection of victims of trafficking for purposes of labour exploitation came in 2002 with the enactment of the UNHR's *Principles and Guidelines on Human Rights and Human Trafficking*, which is more organic than the Protocol and provides more advanced guidelines on identifying and assisting victims. A further substantial strengthening of human rights and assistance and protection of victims of trafficking in human beings can be found in the Council of Europe Convention on *Action against Trafficking in Human Beings* (adopted in Warsaw in May 2005).

From this it follows that when implementing the Convention, states are to promote social welfare and health policies, as well as psychological care, protection and support for re-integration into the social fabric of the host society or in the society of the country of origin, with possible compensation for harm suffered (articles 24 and 18). In addition to these forms of welfare, legal requirements are also to be met, such as the possible issuing of residence permits on humanitarian grounds to facilitate any freely volunteered cooperation with judicial authorities (articles 14 and 15). The Convention also introduces substantial differences between victims and their exploiters, and different criminal, civil or administrative responsibilities (articles 22 and 28). In particular, Article 35 expressly obliges Member States to promote multidisciplinary agreements, which may also involve civil society. This is a significant step forward in raising awareness of the phenomenon of trafficking for purposes of labour exploitation, achieved thanks to the efforts of governments, international organizations and civil society, including trade unions and NGOs. The roles of the latter are distinct but complementary. The unions are responsible for protecting and improving the working conditions of all workers, including immigrants, thus playing a key role in the fight against trafficking, taking part also in joint action with NGOs and associations working in conjunction with legal and illegal migrant workers.

The Framework Decision of 15 March 2001 (2001/220/JHA), on the standing of victims in criminal proceedings, also sets out obligations for states to provide assistance to victims during proceedings. Lastly, there is Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings – articles 11, 12, 13, which refer to the protection of victims.

It seems clear that the existing regulatory framework and the European directive have been unable to separate severe labour exploitation from trafficking, failing to fully understand the many features that distinguish them, superimposing two phenomena that in reality are often distinct. In light of this realisation, and by virtue of the research results, the AGREE project aims to provide an opportunity to discuss and formulate a «common definition of severe labour exploitation», a definition that can take into account the need to circumscribe such a terrible phenomenon, which severely impacts the lives of migrant workers. This situation has come to be accepted as normal, due to the failure to perceive the negative social value it brings with it. The risk is, therefore, that it is not combatted by adequate repressive measures and/or punitive responses.

2. The characteristics of the agricultural sector and the legal framework

This chapter provides a comparative analysis and summary of the main data from each of the target territories (the areas of the Maresme and Montsiá and Baix Ebre in Spain, the Agro Pontino in Italy and rural areas of Romania). In particular, the analysis aims to highlight similarities and differences in the characteristics of these agricultural sectors, viewed also within the legal framework of each country, outlining a possible interpretation model. We first examine production and agricultural labour organization to show how this affects the spread of the phenomenon of labour exploitation. Then, we shall briefly examine the laws that regulate the access of foreigners to the labour market, as well as the effectiveness of the regulatory and disciplinary regimes to combat labour exploitation, resulting from the implementation of European Directive 52/2009 in individual member states.

2.1 Production and agricultural labour organisation

The different types of labour organization found in the target countries reflect the variety of crops produced and the production methods used. An important aspect concerns the production capacity of certain areas: agriculture can be based on production systems limited to particular periods of the year, depending on the characteristics of the crop and the climatic conditions of the environment, or intensive production throughout the year (thanks mainly to greenhouse crops which allow for a certain degree of seasonal adjustment). This production may have a higher or lower rate of industrialization and may primarily be geared to meeting market demands, or, conversely, to the needs of self-subsistence. Therefore, in some cases, the characteristics of the agricultural systems analysed diverge widely.

Before proceeding to a comparison of the target areas, it should be pointed out that the picture in Spain is not homogeneous, since the

area of the Maresme (north of Barcelona) has production characteristics and work organization that differ from the areas of Montsiá and Baix Ebre (south of Barcelona). In the first area, which produces mostly vegetables, flowers and ornamental plants, agricultural activity is mainly intensive and predominantly oriented towards all year-round greenhouse crops. In the other two areas, however, labour is of a seasonal nature and the predominant crops are citrus fruits, rice, olives, and fruit.

In the Italian area of the Agro Pontino, the predominant fruit and vegetable sector is quite varied (mostly kiwi, watermelon, artichokes, spinach), grown both in greenhouses and in open fields, which means cultivation and production is all the year round.

In Romania, the agricultural sector plays a very important role in the national economy and is based mainly in the south-east and in the north-east of the country, with a prevalence of cereal crops and oilseeds. However, despite being highly labour-intensive, productivity is quite low and the predominant type of agriculture is subsistence or semi-subsistence and mostly seasonal. In addition, unlike the other countries surveyed, the workforce is still predominantly local, although there has been a growing, albeit still limited, recourse to foreign workforce, mainly because of the massive emigration flows of Romanian nationals⁵.

The Romanian agricultural system differs from the ones found in Spain and Italy, where, agriculture has mostly developed a greater degree of industrialisation and market-orientation, and therefore greater productivity and reduced costs. This, together with the chronic and structural shortage of young people in the agricultural workforce, has led to the massive use of cheap foreign labour. This phenomenon seems, instead, to have seen a more modest growth in Romania, where there is still a large low-skilled domestic labour force with low levels of instruction and fewer resources in terms of human, social and financial capital. On the other hand, the characteristics of farms in Romania (micro enterprises, low level technological equipment, limited ability to attract investment) mean that they lack market competitiveness. The result is, in this case (as in Spain and Italy), low profit agriculture (a source of

⁵ It is difficult to quantify this phenomenon due to a lack of comprehensive data (there is no effective and structured centralised system for monitoring and data collection); therefore, the phenomenon itself is likely to be underestimated.

income that is often inadequate for Romanian labourers, at high risk of extreme poverty and social marginalization) which offloads the costs onto the workforce.

Production organization plays a vital role in determining the working and living conditions of foreign workers, impacting on their ability to settle down and integrate in the host country. Workers stay longer in areas with intensive production methods and greenhouse cultivation, which require the continuous use of labour throughout the year (Maresme and Pontine). Continuity in work produces a tendency to settle down in the area, fostering an increase in family reunions (greater in historic settlements) and a positive integration process, as in Maresme. In the Agro Pontino, the settlement of Punjabi Indians in the area is more recent (having started about fifteen years ago) and the trend towards stabilization is still ongoing.

Another crucial aspect of the production organization regards agricultural enterprise typology. In all target areas, most businesses are family-owned. In Italy, the most widespread typology is small and micro enterprises, usually family-run, with an average land area of about 30 hectares. Among the larger farms (up to 1,000 hectares), the predominant type is the cooperative. In Romania, the majority of farms are very small (the average is 3.45 hectares, over four times less than the European average), with low level technological equipment and a productivity that is strictly limited to self-sufficiency. Hardly any of them have a legal personality (sole proprietors/family run). Also widespread is the use of unpaid family workers, particularly women. As will be shown in greater detail below, the type and size of businesses is one of the factors that seem to affect the spread of the practices of labour exploitation.

2.2 Impact of local production organization on the spread of labour exploitation

Local production organization structure, as emerging from the field research conducted in the three territorial contexts, has a direct impact on the spread of the phenomenon of labour exploitation. The characteristics of local production (prevalence of small enterprises that survive competition by squeezing labour costs) foster exploitative practices both in Spain and Italy, and in Romania.

In Maresme, where employment is mostly continuous and where the tendency is for foreign workers to settle in the area, labour organization had previously undergone a general evolution towards forms work with guaranteed safeguards for workers. In this case, the decisive factor proved to be joint action taken by local institutions and social partners (local government, trade unions, business associations, government department of labour), who adopted policies to combat exploitative practices. This development never happened in Montsià, Baix Ebre or in other target areas. However, now, due to the general worsening of the economic situation, even in the Maresme, working conditions have regressed and cases of exploitation are again emerging.

The field interviews conducted in Spain have shown, though, that views diverge on what type of production organization most encourages the spread of exploitative practices. According to some, it is precisely the continuous and prolonged production in the Maresme that leads to the use of illegal labour for long periods (key respondents reported cases in which workers were employed illegally for 5-6 years). According to many others, in Montsià and Baix Ebre, seasonal work promotes the tendency for businesses to take the risk of hiring illegal labour because of the reduced risk of undergoing inspections. In addition, working conditions in many enterprises based in the neighbouring autonomous community of Valencia are even worse (illegal practices, such as discretionary performance-related pay, dependent on the employer's opinion of the quality of the work). Here temporary employment agencies play an important role in hiring seasonal workers in conditions offering fewer safeguards for the worker but lower costs for the producer.

In Italy and Romania, no differences were found in methods of exploitation in either permanent or seasonal work. In the Agro Pontino, exploitative working conditions are spread evenly throughout the area. Forms of exploitation are found not only among labourers working illegally in the area but also among those who have valid residence permits.

Seasonal work in Romania, often done in illegal conditions, gives rise to exploitative practices. The phenomenon of undeclared work is significant but difficult to quantify. Recent studies show that working conditions are often characterized by the absence of employment contracts, late payment or non-payment of wages, non-recognition of overtime, non-payment of social security contributions, work during days of rest and working hours in excess of the limits established by law,

especially among the younger workforce. Cases of unlawful child labour are not infrequent. However, as mentioned earlier, available data are few and incomplete, and exploitative practices are usually not recognized as such (the Labour Inspectorate monitors and records only cases of illegal work, not exploitation, which is, therefore, not usually subject to criminal proceedings as such). Exploitation involves both nationals and foreigners, and there have been cases of severe exploitation, especially of Bangladeshis, Pakistanis, and Indians. As in Italy, such practices are very often related to the phenomena of trafficking or carried out through networks controlled by criminal organizations, involving both nationals and foreigners. Among the areas most affected are those of Covasna and Bacau⁶.

Another factor that seems to affect the greater or lesser recourse to labour exploitation, especially in Spain and Italy, is the size of the enterprises. What emerges in the two countries is that labour exploitation seems more prevalent among small family-run farms, which manage to survive competition from other producers by reducing production costs, i.e. by offsetting the costs on the immigrant workforce, adversely affecting their working conditions and wages. Large businesses, instead, make more use of legally employed workforce, both Italian and foreign, thanks to their greater financial capacity, which allows them to cover the costs of regular employment. Furthermore, being more exposed to market factors, they are less willing to take the risk of incurring fines.

Nevertheless, it must again be emphasized that the prevention of the spread of illegal practices among employers depends largely on the political will to effectively combat the phenomenon of exploitation through the involvement of all institutional and social actors working in coordination and adopting targeted measures. The greatest impetus may come from agricultural associations. According to key Spanish respondents, the local small farmers' association (Unió de Pagesos), for example, achieved good results in raising awareness on the subject, establishing fruitful dialogue with the unions, promoting compliance with the rules and the application of working conditions established by collective agreements.

In summary, there are two main factors, apart from local differences, that seem to play a key role in promoting, directly or indirectly, the

⁶ ANITP data (National Agency against Human Trafficking).

spread of illegal practices and exploitation: mediation in the production distribution chain and mediation in the recruitment of labour.

The first factor, evident both in Spain and in Italy, concerns the role played by the big mediation and distribution chains in controlling the prices of agricultural produce. By imposing reductions in costs, they squeeze the profit margins of producers, who, in turn, try to recoup profitability by reducing labour costs. In this way, the pressure exerted by mediation in product distribution indirectly influences working conditions, fostering exploitation.

The role of mediation in the recruitment of labour is a factor that acts more directly on the organization of agricultural labour and is evident in the three target countries, although in different forms. In Spain and Romania, jobs agencies play an important role in the recruitment and employment of foreign labour. In Spain, temporary employment agencies negotiate the rights of workers as bargaining tools, thus defining *a priori* working conditions that do not comply with existing legislation and collective agreements. In Romania, the access of migrant workers to the Romanian labour market is also hampered by the lack of any strict regulation of employment agencies and the recruitment of foreign labour. Often, the percentage paid to agencies exceeds the salary received by a worker in a year. The cost of work permits and residence permits is paid directly by the immigrant even before arriving in Romania, or is deducted from their salary during their time at work.

As confirmed by increasing numbers of judicial cases, the mediation of demand and supply of labour in Italy is very often associated with the pervasive presence of organized crime in the various stages of the supply chain, which fosters illegal practices in the management of labour. The reduction of production and labour costs promotes labour exploitation directly and indirectly.

In conclusion, the survey shows that, beyond local differences in the phenomenon, all three countries are permeated with widespread exploitation (less recognized in Romania, though now beginning to emerge). This paints a picture of substantial structural weakness in the agricultural sector, strongly influenced by commercial systems which, by imposing the final price of products and reducing the profit of small producers, cause the greatest cost reductions to fall upon the weakest link in the chain – the immigrant worker. Nevertheless, when the distorting effects of such systems are countered at the political-institution-

al level, with the involvement of all stakeholders (starting with the social partners) to effectively promote the protection of labour rights, the working conditions of immigrants have reaped concrete benefits and discouraged the spread of exploitative practices.

2.3. Legal framework

After having dwelt on the main elements that characterize migrant labour in agriculture in the target areas, focusing on the characteristics inherent in this particular sector of the labour market, in which immigrant labour has increased significantly over the years, and before looking at the forms and methods of exploitation found in the three target countries, we would like to briefly discuss some critical aspects of different regulatory frameworks (extensively covered in the first report on desk research). The material collected in the field research, and broadly confirmed by respondents, essentially reveals a lack of a clear, unambiguous and shared definition of labour exploitation within national legal frameworks, especially as regards: 1) the condition of vulnerability / insecurity inherent in the status of the immigrant worker / foreigner; 2) the inadequacies in systems aimed at bringing cases of exploitation into the open, and the substantial absence of tools that can effectively protect victims.

A comparative analysis shows that in Spain, Italy and Romania, the legal framework provides little protection for immigrant workers and even appears to favour labour exploitation. A residence permit (and renewal of the same) is generally given if there is a prior employment contract, and this undoubtedly places immigrants in a state of vulnerability, which leads them to stay in a country illegally in the event of job loss, getting trapped in the conditions of irregular and exploited labour.

Specifically, foreigners wishing to work in Romania need to get an authorization from their employers before they can be issued with a permit by the Romanian Immigration Inspectorate. By law, a foreigner may be employed only if such a position could not be filled by a Romanian or an EU or EEA citizen. Therefore, it is difficult for an immigrant to be hired in Romania, because in addition to the qualifications and experience required for that job, great efforts and expense are required to get the necessary documents, which need to be signed

or obtained by an employer who wishes to offer a job to third country nationals. The rigid labour legislation in force in Romania, together with the number of documents required, the difficult procedures and expenses incurred by employers who want to hire foreigners, creates an environment conducive to illegal labour and consequently places foreign nationals in a position of vulnerability.

In Italy, admittance of foreign citizens for reasons of employment, seasonal work or self-employment depends on the entry quotas established by the government in annual «immigration flow decrees», issued every year according to the needs of the labour market, after which an employer who wants to hire a foreign worker residing abroad may submit an application for entry clearance and employment. If the application is approved, an authorisation is issued to the employer and forwarded to the Italian embassy or consulate in the country of origin of the person to be hired, to get an entry visa. This is the only formal method of legal entry and there are no forms of «continuous» regularization.

In Spain, too, the existing legal framework for immigration and work does not seem to be able to sufficiently protect immigrant workers. However, Spanish law provides for the regularization of workers that can demonstrate they have resided in Spain for at least three years, have an employment contract and a municipal certificate of social integration (Arraigo social) or have resided regularly for at least two years and have worked irregularly for a period of at least six months for the same employer (Arraigo laboral).

In all three countries, the existing rules on labour are not considered sufficient to allow for verifications of working hours and to ensure an adequate system of sanctions. Also inadequate, though to different degrees, are the procedures to bring irregular situations into the open, since it is difficult for victims to provide evidence of labour exploitation, and exploited workers lack protection. In this respect, the law in Spain provides for procedures to bring labour exploitation into the open by filing a formal complaint (directly, or through trade unions) against employers or middlemen, and collaborating with the judicial authorities (testifying at trial), after which a residence permit may be granted for one year and is renewable. However, it emerged in the interviews that the victims were reluctant to cooperate with the authorities for fear of being deported and this refusal also stems from the difficul-

ty of providing evidence of the labour exploitation they have been subjected to and the need for this to be ascertained in flagrante delicto. In order to obtain protection, exploited workers must file a formal complaint at the Department of Labour, providing convincing evidence that would allow the inspectorate or the police to ascertain that the crime is still being committed in the workplace. In particular, as regards the implementation of Directive 52/2009 into Spanish law, key respondents believe that although recent legislative changes are to be considered positive and help improve the fight against severe labour exploitation and the trafficking of human beings, its effectiveness is hampered by the labour reform laws approved prior to the latter.

In Italy, the legal framework regards two areas in particular: first, the recognition and punishment of behaviours, and, secondly, the legal instruments for the protection and assistance of victims. One problem with national legislation is its lack of a unified vision, being a mix of different systems (criminal law and laws for the protection of the victim) and this fragmentation often makes it difficult to understand and apply. In particular, labour exploitation is covered in the Italian legal system in Article 603a of the Penal Code, which punishes any person taking part in organized mediation activities, recruiting workers or organizing work activities that involve exploitation, violence, threats or intimidation, taking advantage of a worker's state of need or necessity. There are exploitation indices that take into account one or more circumstances: 1) the systematic payment of wages that are clearly lower from national collective agreements or are disproportionately small in comparison to the amount and quality of work performed; 2) the systematic violation of legislation on working hours, weekly rest, etc; 3) infringements of legislation regarding health and safety in the workplace; 4) particularly degrading working conditions, surveillance methods or accommodation. Although Article 603a fills a gap, in the sense that until 2011 Italian law did not have a crime typology that covered the increasingly serious situations of illicit mediation and exploitation of labour, especially in the agricultural sector, it only offers a partial remedy, in that it omits one of the individuals who plays a key role in the phenomenon of the so-called «**copralato**»: the employer. Also excluded from the effects of this law is anyone who recruits workers and organises work directly, without the mediation of other persons, as long as it is the same person that makes use of the work done.

Unfortunately, the implementation in Italy of Directive 2009/52/EC has been slow and partial. Some changes have been made to the Immigration Act, and in particular Article 22 paragraph 12, which already punished the mere employment of illegal foreigners regardless of any unfair profit made by the employer and irrespective of the duration of employment (punishable by imprisonment from six months to three years and a fine of 5000 euros for each worker employed). Paragraph 12a has been added, which provides for aggravating circumstances (punishment increased by 1/3 or 1/2) for particular types of labour exploitation. Another change is that residence permits may be issued for humanitarian reasons in the event of severe labour exploitation. Any foreigner who has filed a complaint and cooperates in criminal proceedings brought against the employer may be granted a permit, to be issued by the head of the police, as proposed or approved by a public prosecutor. The permit lasts six months and is renewable for one year or for as long as it takes to conclude the criminal proceedings. The rules in Legislative Decree 109/2012 (Article 22 paragraphs 12a and 12c of the Immigration Act) adopt a notion of exploitation that is too narrow, not as broad as the definition contained in the European directive, and only partial compared to the severe exploitation indices contained in Article 603 of the Criminal Code. Above all, the chances of being issued with a residence permit on humanitarian grounds are faint⁷, since the aggravating circumstances include: a) employment of more than three able-bodied workers without residence permits by the same employer; b) employment of minors of working age; c) exposure of workers to dangerous health and safety situations. Therefore, there is a wide range of labour exploitation situations which, though falling within the Community definition of «severe exploitation», are not included in the field of application for the residence permit referred to in paragraph 12c of Article 22 of the Immigration Act, as they are not included in the much more limited range of cases defined by paragraph 12a of the said article. Moreover, in the Legislative Decree transposing Directive 52/2009, some indications in the Directive were not adopted, such as certain restrictions imposed on an employer who fails to comply with the prohibition of illegal employment.

⁷ Proof of this is the small number of residence permits issued for humanitarian reasons as a result of Article 22 paragraph 12c in 2013 (8) and in the first half of 2014 (2).

In Romania, too, an analysis of the legislation highlights that European Directive 52/09 has only partially been implemented. Romanian legislation does not address the conditions of illegally employed foreigners, who are thus excluded from the provisions in the Directive that regard complaints against employers, the possibility of starting legal proceedings and the possibility of asking competent bodies to start procedures for the recovery of unpaid remuneration without having to file a complaint.

In particular, illegally employed foreigners do not have easy access to the system of filing complaints against employers, directly or through third parties. As regards the chances of obtaining a temporary residence permit, legislation provides for this possibility only in cases of trafficking and provided that the victims choose to cooperate with investigative bodies, that they are no longer in contact with people suspected of having committed the crimes committed against them, that their stay in Romania poses no danger to public order and national security, and that it may be demonstrated that the granting of a residence permit can aid criminal investigations.

Finally, although Romania is considered a country of origin, transit and destination of men, women and children that are victims of trafficking for labour exploitation (often by Romanian organizations), and despite the fact that a provision in the Criminal Code punishes aiding the exploitation of citizens abroad by recruitment agencies registered in Romania, the authorities have yet to punish any agency for activities related to trafficking in persons ⁸

⁸ The US Trafficking in Persons Report 2014, http://romania.usembassy.gov/2013_tip_ro.html

3. Forms of exploitation

When comparing the results of the field work carried out in the three countries included in the study of foreign agricultural workers, one must bear in mind the differences between the research conducted in Romania on the one hand, and in Italy and Spain on the other. This is especially important if the aim is to draw general conclusions that can provide the basis for Europe-wide policies in the struggle against severe forms of labour exploitation in agriculture.

The aim of the fieldwork was to discover how this phenomenon functioned in each of the areas analysed and the proposals made by experts in each area to combat this form of exploitation. After research was completed in each area, the work done in Spain and Italy corresponded to the initial objective of the research project, i.e. to offer an analysis of the exploitation of foreign workers in agriculture in areas with significant numbers of foreign agricultural workers. However, in the case of Romania, the results of the research indicate that there are no foreign workers involved in agricultural production in the country. The demand for farm workers in Romania is covered by workers of Romanian nationality and, therefore, cases of labour exploitation in agriculture would involve the exploitation of Romanian citizens. In fact, with regard to the subject of the present investigation, Romania is still primarily a country of origin for immigrants and the source country with the highest number of trafficked and exploited persons, both internally and in the European Union, together with Bulgaria.

The fact that Romania is basically a country of origin in terms of migration means that the possible comparative analysis of the forms of exploitation observed in the local research is limited to the situations in the agricultural areas studied in Italy and Spain, and in particular, to Agro Pontino in the Lazio region of Italy and the Maresme, Baix Ebre and Montsià regions in the Autonomous Community of Catalonia in Spain. This is due to the fact that the results obtained in the research carried out in Rumania on the forms of labour exploitation of foreign

workers in agriculture provide information on the exploitation of Romanian citizens in Italy and Spain. Therefore, the information on forms of exploitation arising from the Romanian research will be complementary to the comparison made between the situations in Italy and Spain.

The complementary function of the results of the Romanian research is especially useful since Romanian agricultural workers do not play a major role as a specific national collective in the research carried out in Catalonia and in Italy. The research in Italy and Spain focuses on non-EU collectives – practically exclusively from India in the case of Agro Pontino, and while the research carried out in Catalonia does include references to the collective of Romanian workers by some of the interviewees, the main groups mentioned are of African origin. While it is evident that the fact that a foreign worker, as is the case of Romanian workers, has the guaranteed right to a work and residence permit implies, a priori, a fundamental difference with respect to workers of non-EU origin, the results of the research carried out show that a formal condition of legality is not always a protection against abuse, though it can be a tool that limits it. In any case, the fact that the research carried out in both Lazio and Catalonia makes little reference to Romanian workers suffering severe exploitation in agriculture may mean that their presence in the sector is lower than that of non-EU workers or it may indicate a greater degree of invisibility.

3.1 Wages

One of the main characteristics of the labour exploitation of foreign agricultural workers in both Agro Pontino and in Catalonia is the extremely low wages. Workers in both locations are usually paid by the hour for the time they theoretically work, but the amount paid per hour tends to be 50% of the wage specified by the collective agreements for each territory, which is to say that foreign workers are paid half, or even less, of what they should be paid according to applicable labour regulations. These low hourly wages are often accompanied by interventions by the employer or middleman, who reduce even further the rate paid for the hours worked. In Agro Pontino, what is striking is the falsification of the hours really worked by workers with a work per-

mit, through the procedure of creating a contract for a working day with few hours of work, while the worker really does three times the stated hours. Even though the workers may be paid for part of the undeclared hours worked, they usually end up working more hours than they are paid for. In the case of Catalonia, the general agreement regulating agricultural work prohibits part-time contracts and only full working day employment is allowed, with established rates for overtime. That does not mean that these rules are always adhered to, but in practice it does make it possible to report breaches and take legal action when necessary.

In any case, labour regulations really only count for workers with contracts, residence and work permits, without which they could not be hired. However, a significant number of workers do not have work permits and are therefore deprived of legal coverage of any kind, finding themselves in a situation of legal defencelessness and greater dependence, which enables a still higher degree of exploitation.

Another general aspect to consider, both in Italy and in Spain, in relation to the wages of these workers is their arbitrariness. When a worker is hired, the employer, if the worker is dealing directly with him, offers him a price per hour of work, together with other conditions. This price is therefore decided by the employer and the worker may reject or accept it, though given the situation of need that most of these people find themselves in, their bargaining power is null. There are cases in which the same employer offers different rates to different workers. This is more common in cases in which a middleman agrees on a rate with the employer on one the one hand, and the worker on the other, since his position allows him to speculate with his part of the profit. This arbitrariness is also sometimes expressed in the form of unexpected wage cuts that are justified by business difficulties.

This issue of arbitrariness in pay is one of the points in which the results of the research carried out in Romania provide information confirming the results of the other two research projects. The Romanian workers interviewed speak of arbitrariness in the price per hour, irregularity in payment, unjustified postponements and some cases of withholding or non-payment of wages during their experiences in Spain and Italy. These also appear to be arbitrary, both in Agro Pontino and in Catalonia.

Payment in kind, specifically in the form of food, generally using the

farm's own produce, and the provision of accommodation by the employer, also appears as a phenomenon in Catalonia. A number of interviewees view it as a form of complementary salary, used to compensate the difference between what is paid and what should be paid. But in some cases, it is, in fact, the only form of salary paid, though usually accompanied by the promise of an eventual work contract and the possibility of applying for a residence permit in the case of non-EU workers. Payment in kind can also be seen in some of the accounts given by Romanian workers when they describe being paid extremely low or non-existent wages while receiving lodging and meals, although, as we shall see later, these interviewees describe these living conditions as being extremely precarious.

Finally, we should highlight two other wage related issues that have only been reported in one of the areas under study, namely Agro Pontino, and in an area of Spain bordering on the Catalan areas in which research was carried out.

In Agro Pontino, one form of fraud consists in telling workers how much they will earn in liras instead of euros, with the aim of making them believe they're being paid a higher amount than they really are. For example, instead of telling the workers that the hourly rate of pay is €3.50, they tell them the equivalent rate in liras (6,000 liras), in order to make it sound like «6,000 rupees» in Indian terms. This tactic is designed to cheat Indian workers into accepting more readily wages that are more than 50% below those set out in the applicable agreement regulating agricultural work in the area by making them believe that they will be earning higher wages than in their home country.

In the Spanish research, a number of accounts by both employers and exploited foreign workers highlight the situation existing in the region of Valencia, bordering the Catalan regions where research was carried out, where wages are not paid at an hourly rate but rather on a piece work basis depending on the number of boxes of oranges filled. In addition, wages are subjected to a revision by the employers depending on his evaluation of the quality of the product harvested. The result is the need to work much longer hours than in Catalonia in order to earn the same wages.

3.2 Working Day

Abuses in working hours are the norm in all the territories investigated and are mainly due to the fact that the length of the working day is not usually prearranged but is subject to the same type of arbitrariness that applies to wages. The working day therefore depends in great part on the whim of the employer. This is true of many cases reported in Catalonia and is the general practice in Agro Pontino. Employers want to take maximum advantage of the daylight hours, and the working day therefore varies with the season. But the fact that the working day can be extended in this way does not necessarily mean that the worker is paid for this unofficial overtime.

Interviewees in Agro Pontino and in the Romanian research describe working days that last from sunrise to sunset. There are reports in Italy of employers who even use their vehicle's headlights to artificially lengthen the working day. In accounts emerging from Romania there are descriptions of working days lasting 17 hours with few rest days per week, usually a Sunday, but sometimes not even that.

3.3 Health and Safety at Work

Health and safety conditions in agricultural work are, in general, bad or very bad. Employers tend to pay scant regard to the issue of accident prevention and pass the costs of prevention and protection onto the workers themselves.

In the areas studied in Catalonia, the situation of greatest vulnerability is usually one in which the employer hires a middleman (known locally as the *cap de colla*, meaning group leader). In these cases, the farm owner pays a certain amount of money to the *cap de colla* for which the latter guarantees the completion of a specific task, such as the harvesting of a field, and brings the workers and pays them what he wants. In this way, the employer completely disregards the issues of health and safety and accident prevention, as well as the other conditions of the people working on his property.

One must bear in mind that agricultural work has some inherent health hazards. This aspect is reflected particularly in the accounts from Agro Pontino, especially for foreigners working in plant nurseries. We

believe that though this does not appear so prominently in the research carried out in Catalonia, the fact that the same type of work also exists there, such as in the plastic greenhouses in the Maresme regions, the risks must be the same. However, it is true that in the case of Catalonia it seems that workers with contracts have somewhat better health and safety conditions.

Health risks are clearly greater for workers who do not hold work permits, especially from the point of view of the responsibility of the employer. In the accounts from Agro Pontino and the Catalan regions studied, there are two cases that illustrate this point. A worker from the Maresme region in Catalonia spoke of an accident he had when he cut his leg with a radial saw. The owner took him to hospital and reported that the cut had been inflicted during a fight, failing to recognize their employee-employer relationship and, therefore, his responsibility in the incident. One of the interviewees in the Italian study suffered a severe injury to his right hand when wrapping plastic greenhouse film. Although his employer accompanied him to accident and emergency, he told him not to inform the doctors of the circumstances surrounding the injury. These ways, employers shirk their responsibilities for hiring workers and for the lack of coverage of health and accident prevention in order to escape administrative and criminal sanctions for employing illegal workers, thereby abusing their positions and putting workers' health at risk.

3.4 Living Conditions

All three research projects show that immigrants try to find a place to live near to other immigrants of the same nationality. The trend is therefore to group together according to national origin. This phenomenon is the result of several practical considerations.

In some cases, the area of arrival and first settlement is related to migratory routes, some more organized than others. Although the research undertaken in the Lazio region and in Catalonia failed to establish the existence of organized transnational networks, it is clear that many immigrants can rely on fellow countrymen in their areas of destination, who may be family, friends or simply contacts. Specifically, it was observed that in Agro Pontino area there was a network com-

posed of individuals who provide a bridging function by organizing the arrival and placement of immigrants in agricultural companies. In many cases, these people provide housing, the information that the recent immigrant needs to know and, above all, tips on where and how to find work. In the interviews carried out in Romania, in which real cases of human trafficking for labour exploitation are described, we cannot assess the location of immigrants' places of residence in relation to the proximity or coincidence with respect to other groups of Romanian citizens. In fact, what is described in these accounts are isolated places without outside contact, where the only references are exploiters, middlemen and farm owners.

The Romanian interviewees describe very precarious conditions, in terms of both the comfort and sanitary conditions of the living space and from the nutritional point of view. This situation is made even more serious by the fact that they are not allowed autonomous mobility and are prevented from making contact with the outside world, through the use of threats and physical abuse. These are situations of semi-slavery or straightforward slavery. These situations of threats and physical abuse do not appear in the results of the research carried out in Agro Pontino or in Catalonia. However, there are reports of some cases of very poor living conditions, restrictions on mobility and isolation from the outside world in the interviews carried out in Catalonia. Some interviewees in Catalonia mention cases of particularly precarious living conditions, related to other factors of severe exploitation. A number of cases of uninhabitable living quarters located in the workplace itself are reported. However, these are considered to be exceptional cases and it is believed that most foreign farm workers do not have to endure these extreme living conditions.

Both the Italian and the Spanish research reflect a certain progression in the quality of the living conditions of most foreign agricultural workers. This progression is associated with the migratory phase in which they find themselves, with conditions improving in line with their work situation. All of the respondents interviewed in Catalonia were of the opinion that, in general, foreign workers lived in villages. The newly arrived immigrants, who have yet to achieve a stable legal and working status, usually share a flat with people of their own nationality, sometimes in overcrowded and precarious conditions. Those who have been in the destination for longer can generally pay more for housing and

tend to live in better conditions. In a more advanced phase, workers with residence and work permits and with a sufficiently long period of residence can bring their families to live with them, constituting a family unit with living and housing conditions that are comparable to those of the local population.

In the Agro Pontino, there is a wide variety of housing options due to the locality's dual vocation as a centre for both tourism and agriculture. Here there are three options that correspond to different phases in the migratory process. Abandoned country shacks provide homes for newly arrived immigrants. Most are dilapidated and can be found on or near farms. Some have neither water nor electricity. Rents are high for the conditions of the dwellings and the problem is solved by cramming in as many people as possible, leading to problems of overcrowding.

Small, unused tourist apartments, some measuring only 20 square metres, are rented to immigrants for about €250 per month. They often do not have amenities such as heating and hot water. They tend to be inhabited by 5 or 6 people who may even share beds. Despite this overcrowding, some employers are able to obtain the housing certificate needed for the immigrant workers to apply for family reunification. Finally, those who have been in the area longest tend to live in the suburbs of local towns, usually near to the farms on which they work.

In Catalonia, the collective agreements regulating the hiring of temporary workers during specific agricultural campaigns obliges the employer to provide decent housing for each worker. Most interviewees mention cases of housing that does not meet the minimum required standard or cases of employees not being provided with housing at all. Nevertheless, in cases of legal hiring of workers with work permits, the conditions provided are usually within the limits set out in the relevant collective agreements. In the research carried out in Lazio, no reference is made to the employers' legal obligation to provide decent housing to temporary agricultural workers.

3.5 Local middlemen and the application of employment regulations

There are various forms of local intermediation between employers and landowners and foreign workers in the areas under study. In both Agro Pontino and the regions of Catalonia, the most generalised system is

intermediation by foreigners, usually of the same national origin as the person seeking employment, who have been in the area for longer and have built up contacts with employers interested in hiring workers. This type of intermediation may or may not be motivated by personal profit. In some cases, it is carried out by family members who are trying to help a brother, cousin or brother-in-law, and in others it is done by people attempting to take advantage of their situation of privilege in order to bargain with the working conditions of newly-arrived workers or people who have lost their jobs and urgently need to find employment, not only for money reasons, but also to maintain their residence and work permits, or even to be able to apply for these permits.

The results of the research carried out in Italy on these systems of intermediation only mention this system, in which longer-standing immigrants act as «mediators» (*mediatori*) in the search for agricultural employment. In contrast, the interviewees (both experts and immigrant workers) in Catalonia mention at least three additional systems. Some of these systems are completely outside the law and operate especially when the immigrant worker does not have a work permit, while others operate in a mode of semi-legality. All of these systems result in the severe exploitation of foreign agricultural workers. The most irregular system is a throwback to a form of traditional recruitment consisting in offering workers to employers in a kind of improvised clandestine market. The workers gather at a meeting point early in the morning and the employer offers work for a certain number of them at a certain rate. If the workers accept the deal, the employer chooses the ones he wants to work that day and takes them to the workplace in his own vehicle.

There are also cases in which the previously mentioned «*cap de colla*» operates. This is a middleman who negotiates the working conditions of a group of workers for his own profit. According to the interviewees, this person collects the wages for the whole group of workers, sets out the working hours and even controls where they live. Finally, there are also temporary work and agricultural services companies that hire workers and offer their services to landowners. The owners of these companies know nothing about their working and living conditions, especially in the citrus and sweet fruit harvests in the regions surrounding the Ebro. In practice, the workers are paid less and work in worse conditions than those stipulated in the collective agreements regulating

this type of work and the company takes advantage of this difference. In some cases, the company may even charge the workers for transporting them to the workplace. This is a type of organization that is legally constituted but which involves illegal practices. Trade unions and the work inspectorate are acting against this type of practice.

None of the forms of intermediation described above appear in the interviews undertaken in Romania, where the interviewees highlight the control exerted over the workers during all the stages of the migration process, as well as their complete isolation from the social environment of the area in which they are exploited. The *cap de colla* and black-market recruitment systems require a high degree of autonomy and mobility by the worker in order to function. Similarly, in the case of the agricultural services companies, the high degree of visibility and the partial legality of their activities do not fit in with the need for opacity and isolation described in regards to the Romanian workers.

But what does seem compatible with this profile is the general system that operated in both the Agro Pontino and in the Catalan areas under study, namely the intermediation undertaken by foreign immigrants of the same national origin and who have been in the area the longest. This is especially true when the middlemen are involved in some way in the process of arrival and accommodation of the foreign workers. This type of intermediation can operate in an opaque way and can also operate as a way to control, to some degree, the mobility of the foreign workers.

With regard to illegal forms of recruitment, the research carried out in Italy suggests that the most common type is fraudulent hiring (for a false wage), although there are also cases of people working without contracts and without residence permits. In the interviews carried out in Catalonia, undeclared work seems to be as significant as the severe exploitation of workers recruited legally. Recruitment practices that are apparently legal while hiding abuses, fraud and illegalities are described in both territories, and these have an obvious repercussion on the working and social rights of the workers affected. All three research projects highlight the importance of foreign workers' lack of information which, together with their difficulties with the local language, places them in a situation of vulnerability that may lead them to accept illegal working conditions out of ignorance of local labour regulations. This issue comes up repeatedly in the interviews with Romanian migrant workers.

In the Agro Pontino, for example, the research reveals cases of incorrect use of domestic service contracts. Since the passing of a law designed solely to legalise the situation of domestic workers, landowners and other people, some from the same national community as the workers involved, charge immigrants for the regularisation of their situation through this administrative channel, even though the contract is not legally applicable to the activity they will carry out. Finally, we would like to highlight two other cases of the use that is made of the need for foreign workers to legalise their situation.

In Catalonia, a judge speaks of a case in which he came across a lawyers' office specialised in the falsification of contracts and the irregular legalisation of foreign workers for organizations that trafficked in humans. Also in Catalonia, in reference to the fraudulent practices of some agricultural service companies, it is said that some of these companies also function as a tool for obtaining work and residence permits for undocumented workers. That is to say, that on the one hand these companies subject the workers to severe forms of exploitation and, on the other hand, they facilitate the regularisation of their legal situation. In this way, the workers' rights are being traded in the most comprehensive way possible.

In The Agro Pontino, interviewees describe a form of fraud that is practised on Indian workers that uses the *Procedura di emersione* regulations. This regulation, which has been in place since 2012, allows a company or employer that employs foreign workers without work permits to legalise this situation by reporting themselves to the authorities. The research carried out reflects the events occurring in the town of Latina, in which the workers had paid companies for legalising their situation through the *Procedura di emersione*, although this legalisation procedure failed to happen.

4. Forms of informal and/or illegal mediation

4.1 Recruitment in the country of origin

With regard to the phenomenon of human trafficking in the three research areas, field research identified different situations, which derived in part from the fact that, as already highlighted, Romania is still a country of origin of flows of people who are victims of trafficking, in part because in Spain and Italy the countries of origins and migratory patterns are different.

With regard to Romania, the possibility of being victims of trafficking for purposes of labour exploitation seems to depend very much on the vulnerability and fragility of the people who fall into these dynamics. Romania continues to be mainly a country of origin, with the highest number of people trafficked and exploited both internally and in the European Union, next to Bulgaria. Although cross-border trafficking is predominant, during the last years, the internal trafficking phenomenon has become more and more visible, both with regard to sexual and labour exploitation. The hypothesis of the increased number of foreign victims issued by the national and international institutions after Romania's accession to the EU, as migration related phenomenon, was not confirmed by field research in agricultural context.

With regard to Spain and Italy, as said before, the situations of exploitation depend, and are strictly related, to immigration laws. But field research in both territories shows some differences. In Maresme and Baix Ebre, during interviews, when respondents were asked about the existence of networks of middlemen and human trafficking for the purpose of labour exploitation, understood as transnational organizations that capture people in their countries of origin, get them into the country and once in place, overexploit them against their will, all respondents claim not to have seen any evidence of a phenomenon of this nature.

In Italy, in the Agro Pontino situations detected change in relation to

the arrival periods of Indian migrants. In the past, organizing a journey and entering Italy was quite simple – the «pioneers» arrived with an entry visa. However, as of 2000, with the increase in Indian emigration, procedures for the issue of entry visas became stricter. In recent years the complexities and scale of the journey from India to Italy, has made planning necessary, involving not only the family but also middlemen to organize journeys to Italy. We shall now look at the phases which have produced the dynamics that transform migration journeys into trafficking routes.

Migrants reach Italy in different ways. The journeys of some of the respondents were complex, long and very expensive, and once here, they lived in a state of illegality for years. These travel arrangements and this overstay strategy are used less frequently today. More recently, the travel arrangements of some Indian workers have become more opaque, and have involved what key respondents describe as «international agencies» or «dual-country organizations», which have channels in both the country of origin and country of destination. According to respondents, confirmed by the police, there is a well organised international system of recruitment of labour in the country of origin for the Agro Pontino market. Until a few years ago, this was the most common method of entry, which, because of the high numbers involved, offered immigrants a guarantee of receiving a «call» from employers.

Today, almost all Indians enter the country legally, with a tourist visa, and then try to formalise their position through the provisions of the seasonal «Immigration Flow Decree». According to key respondents, we are witnessing a kind of «grey trafficking», which involves the arrival of migrants, who, within a few days, find a job in a local enterprise and at the same time accommodation with their fellow citizens. Once in Italy – or to be precise, according to our key respondents, the airport of Rome – Fiumicino – the Indians are sent directly to towns in the Agro Pontino, where they find both work and accommodation, through the «help», as we shall see, of a middleman.

4.2 Job recruitment and management

Field research has shown a very interesting thing that can be traced to the common rural roots of the three countries. Despite the different

histories that the three countries have had, one common element is that in all three there have always been forms of informal labour intermediation, so as to meet demand with the supply of labour in their local agricultural economies.

In Romania the expedient of agricultural workers from other parts of the country is not a new form of labour; for example, in areas where cereals cannot be grown, the tradition of people migrating to other areas for seasonal works has continued for centuries. Therefore, workers have always gone for harvesting from Maramures to Partium and Hungary. At present, things are changing and people in Maramures are doing quite well from an economic point of view, so they probably don't do it so much, but people in Moldova and Roma people are starting to do it. And in many cases there is a middleman who recruits workers and, if he is present, he is responsible for labour and payment.

Even Spain and Italy have always had these internal migrations for seasonal work in agriculture, and with them, sometimes, there was the need for a form of intermediation between landowners and poor landless labourers.

In Spain there seems to have been a return in recent times to traditional recruitment methods, which consist in offering workers to employers in a kind of underground market. The workers know that at a certain location at a certain time, the landowner will be hiring the workers he needs for that day, offering the lowest possible conditions in the market. In Southern Italy, too, agricultural labourers moved to areas of large estates to offer their labour in periods of more intense work.

In both contexts, there were middlemen who supplied the demands of the owners of the means of production with labourers. This was done by team leaders, sharecroppers, *cap de colla* in Catalonia and *corporali* in Southern Italy. In traditional agricultural production these people were essential, and field research in Italy and Spain has shown how these traditional figures were indispensable in the past as today. These social figures have now made a comeback, shaped and organized to meet the new needs, arising from the fact that labourers are frequently undocumented migrants that can be fooled and whose weakness can be exploited. Both in Spain and in Italy, all of the interviewees attribute these cases of severe exploitation to inadequate legislation and migration policies.

4.3 «*Cap de colla*» and «*Caporali*»: new forms of organized exploitation in local areas

In Spain, two types of organized exploitation are mentioned. On the one hand, there are small groups of 2 or 3 individuals, or even a single individual, typically from the same group of origin as the groups of workers, and, on the other hand, the aforementioned temporary employment and agricultural service organizations.

In the first case, we are speaking about people who either have prior knowledge of the arrival of new immigrants to the area, or are simply known to be useful to foreign workers from a certain area of origin who are without work and residence permits. This information is transmitted through friends and family and there is no need for a larger structure with connections to the country of origin or with organizations that organize cross-border trafficking. These individuals may simply put immigrants in touch with the employer, but there is also a middleman known in Catalan as «*cap de colla*», a traditional figure, who had the function of establishing contact with the landowner and agreeing on working conditions, wages, working hours and, if necessary, also providing accommodation. This figure, which has disappeared from the patterns of labour relations of local workers, seems to have been revived for foreign workers in the agricultural sector. This new «*cap de colla*», unlike the traditional figure who participated in the working activities of the «*colla*» (group of workers), is a middleman who negotiates the working conditions of his workers for his own benefit. These people can collect the wages for the entire group of workers, impose working hours and even control where they live, which in turn reduces their contacts with local workers and their opportunities of receiving information about their rights.

On the other hand, in Spain there are agricultural service firms, described by one respondent as «shell companies» and which are often legally constituted as franchises of general service companies or dubious temporary work agencies. Workers' wages and hours are worse than those laid out in the collective agreement for the sector and the company takes advantage of this difference. In some cases, they can also charge workers for transporting them to their workplace. It's a kind of organization with a legal format but carrying out illegal practices. Some of these companies also serve as a way for undocumented workers to

obtain residence and work permits. So, on the one hand, they severely exploit workers and, at the same time, facilitate the regularization of their situations, thereby commercializing their rights completely.

With regard to the figure of the middleman, Spanish field research illustrates three experiences. On the one hand, the experience of a labourer picking oranges in Valencia, in which the figure of «*El Cabo*» (The Boss) appears. The Boss contacts the employer, who tells him how many people he needs. He then finds these people, takes them to the workplace and charges them for transport and for dealing with the employer. Everything is deducted from their final wages. Another labourer had the experience of an acquaintance of his concerning a Moroccan who acted as a middleman for a group of sub-Saharan workers. In this case the middleman hadn't paid his workers for a year. Then research collected the experience with the agricultural service company in Murcia which supplied workers for French farms and made its profits by compromising the rights of its workers. These cases also confirm the idea that emerges from the Spanish interviews that the middlemen mentioned in interviews have no direct relationship with those that brought the immigrants from Africa to Spain.

What is highlighted by field research in Italy is that the unlawful acts of Indian and Italian middlemen are committed within a legal context that is unclear. Those who dupe Indian labourers in the Agro Pontino act within a legal framework characterized by a continuous production of laws that are unnecessarily onerous and often inapplicable, only complicating the lives of immigrants and their relationship with the institutions. This regulatory framework continues to operate in a situation in which the middleman is seen as a bridge and indispensable link between the supply and demand of labour within a production system characterized by small and medium-sized enterprises whose production system habitually relies on undeclared work and who feel entitled and encouraged to employ workers without a contract, thanks to a system of hiring immigrant farm labourers that is inadequate.

The decision to refer to this important figure with the term «middleman» rather than «*caporale*» is due to different elements. One is connected to local custom and the testimonies of Indian labourers and key respondents. In fact, only one respondent used the word «*caporale*» to refer to the person who procures work. While labourers used the circumlocution «good friend and bad friend» to distinguish two different

relationships, one of disinterested friendship and the another of opportunity and advantage for one of the two parties.

From the point of view of employers, requests for the Punjabi to provide other labourers for the Pontine enterprises have become a common practice because of the need to recruit new workers. Local enterprises would not know where to look, because there is no public employment exchange in agriculture and although local unions are trying to address this situation, the use of «informal mediation» in a legislative framework which limits illegal entry is not only tolerated but seems to be the only viable alternative, particularly for small and medium local entrepreneurs.

Middlemen also play an essential role later, after the immigrant has been given his or her first job. They are directors for the work to be done, instructors, foremen who communicate and translate the instructions given by the entrepreneur on the work to be carried out. «They also provide a kind of guarantee for the worker and the employer. Employers can rely on the services of workers who have «references» and who have been trained and are disciplined. In this sense, the middleman is also responsible for the conduct of the labourer.

Over time, this function has also taken on a certain economic importance. The employer pays the middleman for his services of mediation, worker training and «guarantor».

From the point of view of the labourers, the middleman is the person who finds them work in an enterprise, finds them accommodation on first arriving in the Agro Pontino. In some cases, the middleman keeps in touch with the labourers throughout the period of work and, as seen above, also gives them instructions on the work to be done. The middleman is responsible for recruiting teams of workers in the busiest periods of production, when teams of labourers have to do the same work in many local enterprises, and it is the middleman who organizes working groups and where they work.

The middlemen is an instructor and a linguistic interpreter at the same time, This link, which makes a labourer dependent on the instructions of the middleman, eventually breaks rather banally when the labourer learns to speak Italian. The immigrants introduced into the Agro Pontino environment by middlemen have no knowledge their rights. This aspect, as we shall see, makes the labourer dependant on middleman. The forms of blackmail and harassment practiced by mid-

dlemen on labourers, as recounted by respondents at the time of the survey, involve usury. As noted earlier, according to local practice, labourers are paid weekly or monthly by the employer. For two years now, labourers have been complaining of long delays in payment, which can be as long as three months. It may be that a part of their earnings is paid when the agricultural produce is sold, or a month is paid 2/3 months late. The labourers are thus unable to meet daily expenses and are forced to turn to the middleman to pay the rent, for example. So the middleman also makes money in a later phase, when a labourer is hard up.

This aspect highlights how various parties profit from the vulnerability of labourers. But the fact remains that the middlemen play a fundamental role. They can meet demands for labour in the absence of other mechanisms and they can guarantee an immigrant worker a number of essential services, both work related and personal. This dual economic and social function means that the role of the middleman, in social contexts where there are no alternative institutionally recognized mechanisms, is still important and has even become more powerful as a result of the persistence of a dysfunctional labour market. On the other hand, the existing legal framework does not make it easy for workers to seek guarantees from institutions and make use of the regulatory tools that are theoretically accessible to them. A law that does not allow you to stay in the country unless you have a regular employment contract, which is not issued unless you have a residence permit, confines illegal immigrant workers to the vicious circle of illegality. The middleman, often a compatriot who is not always moved by feelings of solidarity, is seen as an institution to turn to for help instead of a superfluous and, at times, duplicitous mechanism that could be avoided. In conclusion, the legal recognition of undeclared immigrant labour could trigger a virtuous process that would enable these workers to escape from the world of illegality and labour exploitation.

4.4 Romania. Recruitment scenarios

Field research in Romania, underlined recruiting phases, providing information on recruitment situations as well as indications on the profiles of the people involved. Recruitment is generally performed through

friends, neighbours both for severe exploitation abroad and in the biggest farms in Romania, too. Interviews underlined one of the elements in recruitment is somebody familiar to the victim; based on the trust in an acquaintance from the village, who ask if somebody is looking for people for a job. It also happens that the victim approaches the trafficker, knowing him from his/her experience abroad. Often victims were approached in public spaces, such as the market, and asked if they wanted to harvest potatoes in the country, for example. The fact that recruitment is done in open public places, gives us an idea of how normal the situation still is.

Field research also shows that recruiting also happens online, by means of different sites that, at first sight, act as mediators in the labour force market, but also on the phone or by means of social networks (more frequently for sexual exploitation). According to some specialists' statements, there are private recruiting companies that trick people into working abroad. They sometimes don't observe the law, and many illegal things can happen in private recruiting companies. Many people go to these companies and then come to police force and say they were asked for money in advance for contracts, but the job was not obtained.

Traffickers are people who inspire trust at first. They promise good salaries, good accommodation, transportation and they talk nicely. All this changes when they reach the destination, sometimes even after embarking for transportation – when strategies change, replaced by others who inspire fear, isolate the victim and discourage him/her from asking for help. Recruiters were usually Romanian citizens, but other people were involved, too, of different nationalities (Albanians, Serbians).

In the reconstruction of the socio-demographic profiles of exploited persons, the results showed that a significant number of profiles are part of the most vulnerable social categories: non-qualified persons, who live under the subsistence level, with low education levels, young people from foster homes, many of them part of the Roma population in conditions of particular social and psychological vulnerability. But there are also other categories: persons that say «It can't happen to me.» Romanian field research shows also that unfamiliarity with European languages represents an element of vulnerability for those who leave to work abroad.

With regard to gender differences, notwithstanding the aforementioned, there are many exploited women, but the difference between the ways women are exploited as compared to men is the combination of labour exploitation in agriculture with sexual exploitation or at least sexual violence (most often) or other types of impositions.

5. Actors involved and policy proposals

5.1 National actors involved

Field research shows how different actors in the three countries are involved in different ways and to different degrees in the fight against labour exploitation, of both migrant and national agricultural workers.

In Italy the main actors involved are:

- social partners (trade unions and employers' associations);
- local institutions (Regions and ASL – health institution);
- local associations (NGO's);
- Police forces and Carabinieri;
- Labour Inspectorate.

At the local level, field research shows the social actors that play a significant role in this field are the trade unions. They focus on preventing the work exploitation phenomenon, and also on providing assistance to migrant workers. The trade unions have constantly been involved in the process of combatting and bringing into the open the labour exploitation of immigrant workers (Indian workers) in the province of Latina, carrying out actions and initiatives which have managed to break the barrier of natural distrust, gaining their trust and increasing participation, like establishing a cultural mediator to address the language problem, translation into their native language of documents and acts and any information that could affect them, free Italian language courses, opening an information and legal assistance desk, raising awareness among public institutions of the conditions of labour exploitation to which the Indian workers are subjected. The public authorities in the Lazio region are also starting to channel efforts in fighting the phenomenon.

At national level, police forces and Carabinieri are responsible for intervening by conducting labour inspections or investigating serious incidents at work. The Labour Inspectorate deals with issues such as illegal work, forced labour and trafficking, including child labour. It

operates throughout the country and ensures the implementation of all labour laws and regulations on social security in industrial, commercial and agricultural sectors as well as in all wage earned situations.

In Spain the main actors involved are:

- Labour Inspectorate;
- Police;
- trade unions;
- NGO's;
- employers' associations;
- local councils.

At national level, the leading role in this is played by the police and the labour inspectorate, followed by trade unions, and to a lesser extent, local councils, which control the services of housing, reception and integration of immigrants and employers' associations, and also, NGOs that offer support to immigrants. There was also a proposal that forest rangers working for the governments of Spain's autonomous communities could play an important informative role, given their widespread presence in rural areas. The police investigates cases of human trafficking, including trafficking for labour exploitation, identifies victims of trafficking and registers trafficking cases in their file database.

The Labour Inspectorate has the power to inspect and sanction business owners. Employees are informed of their rights, working relationships are documented and they are given the chance to cooperate with the authorities in exchange for a residence permit. The Inspectorate does not carry out campaigns to detect cases and inspections are very sporadic and carried out with little prior information. The Labour Inspectorate isn't well enough equipped to act effectively, especially in the agricultural sector, due to a lack of personnel, lack of resources, lack of planning and due to the territorial disparity that can exist, requiring a highly mobile team and plenty of people.

Trade unions inform foreign workers of their rights, filing complaints to the labour inspectorate, supporting foreign workers in their workplace whenever possible, signing agreements or arrangements designed to enable companies and farmers to implement good labour practices. Immigrants come into contact with unions through family and friends, but also through the social services departments of local councils and they normally contact unions when their situation becomes extreme. Unions and business owners collaborate in the organisation of seasonal

campaigns, and until two years ago they also worked together on the calculation of the need for foreign labour in the agricultural sector, which the Spanish government used to determine annual immigration quotas for seasonal campaigns. NGOs are dedicated basically to offering advice and helping foreign workers in the process of applications for residence and work permits. One of these organizations is more focused on these formal issues while the other addresses more general needs, such as integration in the local environment. The organizations maintain a close relationship with unions when dealing with work-related issues, as well as services related to social assistance, housing and employment offered by local councils.

In Romania the main actors involved are:

- the National Agency against Human Trafficking, with 15 Regional Centres;
- the Brigade for Combating Organized Crime and Drugs BCCOA;
- the Directorate for Investigating Organised Crime and Terrorism DIICOT;
- the Territorial Labour Inspectorate;
- the General Directions for Social Assistance and Child Protection
- NGO's;
- trade unions.

The National Agency Against Human Trafficking, an institution which coordinates anti-trafficking programs nationwide, along with the Directorate for Investigating Organized Crime and Terrorism and the Brigade for Combating Organized Crime, which investigate cases of trafficking and prosecute human traffickers, play a decisive role. The Labour Inspectorate also contributes to fighting illegal work. The NGOs provide assistance to trafficking victims and implement several prevention programs. The National Agency against Human Trafficking is the main public authority which coordinates, evaluates and monitors nationwide the implementing of policies in the human trafficking sector by the public authorities, and the protection and assistance services provided for these victims. The agency is the bridge between the trafficking victims and the law enforcement institutions, as well as between the victims and the national NGOs which provide dedicated services. ANITP's main responsibilities are to collect nationwide data on the situation of trafficked persons, to analyse and upgrade the official database on traffic victims, to provide assistance and promote social reinte-

gration, to set the indicators and the assessment criteria for evaluating the extent and the characteristics of human trafficking. ANITP also operates through 15 Regional Centres that coordinates anti-trafficking activities at regional level.

At national level too, DIICOT and BCCOA are two institutions that play an essential part both in the criminal investigation stage, and during trials. Legal investigation is performed by the two institutions and coordinated by the case prosecutor from DIICOT. In the trial stage, the case is handled by the DIICOT prosecutor in court. The main objective of the Territorial Labour Inspectorates is to check if the legal provisions on labour relations, labour security and health and protection of employees who work in special conditions are enforced, as well as the legal provisions related to social security. As regards the workers, trade unions defend the rights of their members, the rights included in the labour legislation, in public sector statutes, collective labour agreements and individual labour agreements, as well as in agreements related to public sector jobs relations, before courts, legal bodies or other public institutions or authorities, by their own or chosen lawyers. Trade unions are little involved in activities associated with human trafficking. Besides, agricultural workers aren't usually trade union members, which makes them more vulnerable to not having access to the support and information that trade unions could and should provide for them.

5.2 Agro Pontino: policy proposals and best practices

Policy proposals are strictly related to the findings in target areas. The differences between policy and action proposals on preventing and fighting human trafficking and work exploitation in agricultural jobs are also due the specific aspects of trafficking in the target countries. For example, Spain and Italy are destination countries for Romanian trafficking victims, while Romania is a country of origin, which means that it also has to deal with internal trafficking and exploitation situations, in which the victims are mostly Romanian and in very few cases, foreign citizens.

□ *Agro Pontino: proposals from different actors*

Below are some field report findings for the Agro Pontino, regarding the role of actors and actions taken to uncover and address the problem of labour exploitation in agriculture:

- a) a weak system of governance, where local unions and associations have often operated independently from local and national institutions and in isolation;
- b) an absence of local or national policies organically directed at combating the phenomenon of labour exploitation in the Agro Pontino;
- c) individual policy interventions that seem more a response to exceptional and emergency events than organic policies and strategies that precede them and prevent them from happening;
- d) lack of cooperation from local institutional actors in research activities; in some cases, the existence of the phenomenon of immigrant labour exploitation in the area was even denied;
- e) few early signs of convergence on these issues between local and regional actors.

The proposals made and actions taken by local socio-institutional actors in the area mostly address common issues such as: illegal work, regulations; welfare; work placement; individual and collective protection; support for «law-abiding» enterprises.

In order to combat organized criminal activities, proposals have been advanced by political forces and the InMigrazione association to set up an anti-mafia investigative department in the Pontina area, boosting the numbers of police and judiciary (proposal made by local associations, NGOs). Networking would be a particularly desirable practice to set up, involving all local political-institutional forces and associations that take an active part in uncovering and combating the phenomenon of labour exploitation in agriculture.

Then policy proposals concerning regulations on illegal work, mentioned in the field research, are needed to address the problem of contractual irregularities and undeclared labour and to overcome the limitations of inspections carried out directly in enterprises (which do not always succeed in verifying the regularity of employment contracts and the working and health conditions of workers). The union proposed the use of congruence indexes: parameters that define the relationship between the quantity and quality of goods and services offered by employers and the amount of hours worked, as a tool for targeted inspections (proposal made by the trade unions).

In particular, EU Directive 52/2009 regarding action against employers of overstayers, and the directive of the Ministry of Labour on inspection services and supervisory activities (2008). In the first case, the union believes that applications for legalisation could cover thousands of cases. The main weakness of the provision is that it is the employer that is supposed to report the illegal hiring of labourers, which precludes any possibility of following up the formal application procedures. In the second case (inspection services and supervisory activities), the union's proposal is to set a deadline for the Territorial Labour Directorate to carry out inspections at enterprises after receiving complaints, a deadline not envisaged at present (proposal made by the trade unions).

The phenomenon of illegal hiring is also combatted through criminal prosecution. To this effect, the association InMigrazione supports a proposal to include the crime of illegal hiring in Law 416bis, which concerns the crime of criminal association, given the recruitment methods, mediation, exploitation, and subordination, and the violence that is sometimes practiced in the Pontina area and, more generally, in much of Italy.

Other proposals regard the introduction of a public employment exchange and stricter rules to combat the illegal hiring system, for which the law currently in force is considered important but ineffective, given the widespread nature of the phenomenon, and thus needs improving. One weakness is that it is difficult to catch someone actually committing the crime. The second concerns the fact that the onus falls on the exploited worker to report a situation of exploitation, and exploited immigrants who need to work will be unwilling either to do this or follow all the bureaucratic procedures required before the start of proceedings (proposal made by local associations, NGO's).

Combatting and uncovering contractual irregularities and undeclared work: in a recent bill (January 2014), the Lazio region proposed a law to combat and uncover undeclared work in agriculture. In particular, the proposal covers the areas of monitoring, inspections and territorial economic development. The key points of the bill include: a) the establishment of congruence indexes: parameters that define the relationship between the surface area of an enterprise, the amount of goods and services offered by employers and the amount of hours worked. Congruence indices can be used to map the area and direct inspections,

through the collaboration of the Region, social partners, universities and labour inspectors; b) company compliance with the law and collective contracts in exchange for regional benefits. Regional funding and incentives for employers will be immediately revoked should they fail to comply with the obligation of submitting to the territorial employment centre documentation containing the date of employment of any new workers no later than the day before they actually start working at the company. In addition to the cancellation of funding, any employer not complying with this requirement will have to return the amounts received and will be excluded, for a period up to three years, from being granted loans or other benefits. When applying for benefits and for the duration of the loans, employers must provide a copy of their annual VAT statement and single employment ledger; c) the establishment of job availability lists for the agricultural sector at provincial job centres, to which workers can add their names for work in the region's agricultural enterprises. This measure aims to address the problem of illegal hiring. A legality rating is to be established for enterprises and companies. It will be known as the «Lazio Region legality and quality stamp/logo», which will accompany agricultural products and will be used as an evaluation index for the granting of loans and financial aid provided by the Region and associated institutions (proposal made by Lazio Region, local institution).

□ *Trade union policy proposals for work placements*

One proposal is for a public employment exchange, a sort of register of agricultural workers displayed in a public place: town hall, prefecture, job centre, where companies can apply for workers – a system for combining demand and supply of labour. Any company applying to the employment exchange would get tax relief or another type of benefit. This would facilitate the emergence of undeclared work, and would break the bond of subordination between the worker and «*caporale*».

Collective recruitments (the recruitment of the same workers by a number of companies, which have to comply with specific regulations) could also counter the illegal practice of using middlemen to procure labour. Agricultural enterprises belonging to the same group, and cooperatives, would be able to jointly hire employees to carry out work in their enterprises. Joint recruitment can also be used by companies

linked by a network contract, when at least 50 percent of them are agricultural enterprises.

□ *Policy proposals for the welfare sector and for joint action – NGOs, public institutions and trade unions*

Another proposal concerns the welfare sector, which to date is open to possible abuses and fraud. The proposal is an amendment to the law making it a requirement for an employer to send a daily communication to the INPS (National Institute of Social Security) so that the work performed may be tracked and monitored. This current system, in addition to being a breeding ground for the proliferation of illegal labour, can also be exploited to get unemployment benefit illegally, a way of defrauding the INPS and taxpayers. Setting up a multipurpose centre to provide the Indian community of the Pontina area with fundamental services can promote social inclusion and break their social isolation and cultural ghettoization, which is a contributory cause of the conditions of exploitation that primarily characterize work in agricultural fields.

□ *Policy proposals concerning individual and collective protection*

In 2012, an agreement was signed between the regional INAIL Offices of Lazio, the Latina ASL and FISLAS Latina (Joint Committee for the Management of the Integrated Medical Fund for the Farm Workers of the Province of Latina), which provides for the implementation of health and safety rules for farm workers. Known as «Safety in Agriculture», it includes: training and information courses for both employers and agricultural workers directly in fields and on farms, to reduce the occurrence of accidents and occupational illnesses; technical experts (agronomists, etc.) that travel to farms to identify risk situations, such as the use of pesticides, and check the use, maintenance and compliance of agricultural vehicles, the compliance of facilities (electrical system, dormitories for workers, etc.), and give advice on safety in the workplace (proposal made by Lazio Region, local institution).

Access to healthcare and preventing accidents at work. In 2005 a centre was opened for the coordination of health activities for foreign citizens in the city of Latina. In 2007, in response to an increased need for healthcare and to ensure greater and more widespread territorial coverage, the local health authority extended the network by opening a

further five outpatient centres that offer free services, vaccinations, information, and cultural mediators to liaise with agricultural workers (proposal made by the Local Health Centre, local institution).

Many accidents occurring in the workplace in the Pontina area, some very serious, are not reported or reported as accidents in the home and never in the workplace. To keep track of this type of injury, the Latina ASL (local health department), in cooperation with the Carabinieri and local police forces, signed a protocol, so that every injury that is considered suspect and thought to be due to an accident at work is communicated to the ASL, which sends inspectors to verify the cause of the accident. If it is established that the accident took place at work, a procedure would be implemented to identify the employer (proposal made by the Local Health Centre, local institution).

□ *Policy proposals concerning support for «law-abiding» enterprises*

Protecting law-abiding companies. In addition to leaving workers unprotected, undeclared work breeds a system of unfair competition between companies, placing law-abiding enterprises at a disadvantage on the market. In this system, the risk is that law-abiding enterprises will try to copy the forms and characteristics of the illegal economy adopted by companies that break regulations. Thus, there is a need to identify mechanisms that provide incentives for businesses that abide by the rules, that make them recognisable to the consumer, through a logo, for example. Companies that comply with all the rules, those that give contractual and occupational security, should be granted a financial contribution or a tax rebate or another type of benefit (proposal made by the trade unions).

5.3 Maresme and Baix Ebre: best practices

Field research in Spain found a number of best practices in terms of governance models, as detailed below:

- existing experiences in the area of participation and collaboration in the field of work and employment, some institutionalized and others operative, based on the practices of each social agent;
- committees in the agricultural sector with the participation of business associations, trade unions and local councils, where the hiring

and working conditions, the control system for both of these, and the facilities for accommodation and reception in the area are agreed on;

- the assessment of the demand for foreign labour in agriculture in order to set annual quotas for migration, involving social agents and labour administration;
- collective agreements setting out labour-related criteria and conditions, including housing facilities for temporary workers (a bargaining space for unions and business associations);
- joint actions, involving the Labour Inspectorate, police and unions for the detection and sanctioning of situations of severe labour exploitation in agriculture;
- collaboration at the municipal level, involving campaigns for decent housing for immigrants, for example, or boards of public safety with the participation of NGOs and immigrant associations, together with local and regional police forces.

Three types of policy proposals

Interviewees' opinions underlined there are three kind of policies can influence the struggle against severe forms of labour exploitation:

Proposals concerning general policies that can have an indirect influence on severe forms of labour exploitation of foreign agricultural workers.

Proposals concerning policies that can have a more or less direct influence on the management of migratory flows.

Proposals concerning concrete interventions in cases of severe forms of labour exploitation.

□ *General policy proposals*

We can mention, in this group, the need for the government to develop policies for promoting economic activity in order to create employment. Creating jobs and reducing unemployment can help to reduce labour exploitation. Also mentioned was the need for the government to plan agricultural production and control the agricultural produce market and prices to ensure that farms are viable without the effects of speculation by large wholesale distributors affecting the working conditions of agricultural workers. At the same time, the government should promote the signing of a collective agreement for the

whole of Spain to eliminate competition between regions and the unfair use of differences in legislation that allow for the abuse of foreign workers.

The fight against the black economy can also have an indirect effect on severe forms of labour exploitation, so there is a need to modify the current model of indirect taxation of economic activity, particularly value added tax. Another measure involves making it obligatory to present invoices for all purchases made to improve the effectiveness of real economic activity controls.

Also mentioned was the need for awareness raising campaigns to sensitize local people to the seriousness of the problem of the severe labour exploitation of these workers.

□ *Proposals for the management of migratory flows*

We can mention in this group the need to allow foreign workers to move throughout the Spanish territory. This would allow for the planning of a more transparent participation of foreign workers in different seasonal agricultural activities, while reducing unemployment and giving more opportunities to these workers. In relation to the movements of foreign workers, the need to modify existing repatriation programmes (in order to help people to return home when they have finished working); another suggestion is to give priority to the local population when recruiting. At the same time, in a more global perspective, it is important to invest in immigrants' countries of origin in order to decrease the amount of economically motivated immigration.

□ *Interventions in specific cases*

There exists a general demand for planned interventions with the coordinated participation of the diverse agents that are involved in the issue. In particular, bodies such as the police and the labour inspectorate call for coordination with agents that do not form part of the administration, such as NGOs, businesses and unions. In this sense, it is necessary to involve more agents in the protocol of already existing actions.

Both the need for a regulatory system that sets out specific forms of control and a system of sanctions (although existing legislation is sufficient, regulation is not particularly useful since it offers few concrete tools to enforce the legislation), and the need to increase the resources

available to fight severe forms of exploitation, together with the need for more interventions by the labour inspectorate, but in a more regular and planned way, increasing numbers of inspectors throughout the country in order to exert dissuasive pressure. In order to carry out this type of work, labour inspectorate staff needs to be increased.

Specific resources are also called for, such as those that would enable NGOs to perform a crucial function, to act as an intermediary for the foreign worker in their dealings with the labour inspectorate and the police, in order to reduce the worker's fear of the authorities. At the same time, it would be necessary to increase the resources needed to keep foreign workers informed of their rights (the importance for employees to be informed of their rights).

5.4 Romania: policies and best practices

Romanian field research shows that policies and good practice in the field of preventing and fighting trafficking for labour exploitation have been initiated both at public level (institutions with a mandate in this field) and at private level (nongovernmental organizations and trade union organizations), mostly in the form of partnerships. Policies regarded national strategies, cooperation policies, national and regional campaigns, other initiatives.

Several national strategies were formulated in the anti-trafficking field, in the illegal labour field, in the field of immigration, and also bilateral, trilateral and regional cooperation policies and instruments for the anti-trafficking campaign and for Romania to develop strategic partnerships with third countries to prevent and fight human trafficking (for example, in the context of trafficking for labour exploitation, the regional cooperation partnership with organizations and institutions from countries such as: Hungary, Bulgaria, Cyprus, FYROM and Greece).

During recent years, several campaigns were launched in Romania at both national and regional level, in public-private partnerships, which aimed at preventing and fighting trafficking for labour exploitation, with a focus on persons who leave their home for work. There were no campaigns carried out by public institutions and/or private institutions that exclusively aimed at preventing and/or fighting trafficking for

labour exploitation in agriculture, the campaigns focusing on labour in general.

A trade union initiative meant to support immigrants in Romania is the one developed by the National Trade Unions Block, who set up a Counselling Office dedicated to migrant workers where they can ask for information related to labour legislation in Romania, in the event their rights are not observed, in cases of labour conflicts, in cases of communication problems with authorities or with employers or even if they have trouble integrating into society. The office is also meant for social partners, who can benefit from counselling and information regarding immigrant workers' statute on the labour market, their legal and social situation, thus meeting the needs of immigrant workers who work in the Romanian labour market.

The experts interviewed for the field report underlined what needs to be changed and improved, in terms of both combating the phenomenon and prevention:

1. More awareness campaigns – more information campaigns on labour exploitation, on legal employment of vulnerable groups that have little information (poor communities, Roma population). It is necessary for these campaigns to be assessed and analysed and adapted to the needs of the most vulnerable categories and for good practice methods to be developed for prevention activities.
2. More inspections performed by authorized institutions.
3. More substantial sanctions for companies that do not comply with legal provisions and also for the traffickers.
4. Change of national legislation in Romania, Italy and Spain or the application of regulations and also a change of attitude (greater labour security, less bureaucracy, which in some cases may lead to illegal work;
5. More efficient collaboration between the authorities of the countries of destination and origin (especially regarding responses to information requests)
6. More working points abroad, where victims may go to (like Romanian consulates or police sections)
7. Business environment motivation (fewer taxes for businessmen that do not encourage labour illegalities and exploitation)
8. Adequate policies and practices against poverty.

6. Recommendations

The survey highlighted the different characteristics of the three agricultural systems and the legislation governing them, identifying the most critical aspects and analysing, at the same time, the main stages along the «path of exploitation», the difficulties faced by workers in reporting the situations and the problems encountered by local institutions in their contacts with exploited workers.

In all three countries, the sector is characterized by informal and illegal work. Furthermore, the case of Romanian workers shows that the immigrant status (whether EU or not) has little importance in terms of having access to rights.

The agricultural sector continues to be an «open» labour market that can be used to offset periods of unemployment and the «precariousness of life». The individual situations of illegally employed workers are varied and diverse. Today, there is a need for new policies to tackle the question of the illegal employment of severely exploited immigrants. The responses illustrated below, addressing the phenomenon of exploitation in agriculture, stem from these considerations, which, in turn, are based on the main findings and the issues identified.

A proposal for a definition of Severe Labour Exploitation of Foreign Agricultural Workers

A. References to take into account

In its report «Severe Labour Exploitation: workers moving within or into the European Union»⁹, the European Union Agency For Fundamental Rights defines severe labour exploitation by differentiating the terms «exploitation» and «severe» in the following way: the term

⁹ <http://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>

«exploitation» describes working situations that diverge significantly from «normal» working conditions as defined in the applicable legislation and other applicable regulations, especially in relation to wages, working hours, health and safety rules and dignified treatment; the term «severe» is in reference to the forms of exploitation of workers that are illegal in the legislation of the Member State of the EU in which the exploitation takes place. The forms of exploitation in the study include coercive forms of exploitation, such as slavery, forced or obligatory labour and trafficking (article 5 of the Charter of Fundamental Rights), as well as severe forms of exploitation within the framework of a labour relationship and especially the labour conditions set out in article 9 (1) of the Directive of Sanctions against Employers.

We have gathered the following points in our research.

In most of the texts used for the research project, the concept of overexploitation is used or the idea of a form of exploitation that goes beyond what is considered to be normal or habitual appears. The ACCEM report¹⁰ mentions «abusive» working conditions when speaking about interminable working hours, scarce or non-existent rest periods, wages that are considerably lower than those established by applicable legislation (either labour law or collective agreements) and especially precarious living conditions which, in the case of agriculture, should also be considered to be working conditions since they play an important role in the negotiations of collective agreements. Severe working conditions that take advantage of the situation of defencelessness, legal vulnerability and financial need of foreign workers are defined as crimes by the penal code and case law relating to offences against workers' rights.

Finally, taking into account the results of the interviews carried out during the field work on what the interviewees considered to be severe labour exploitation, the following ideas emerged as particularly important:

1. It does not merely involve a partial application of labour laws.
2. It involves an abuse of power that takes advantage of the defencelessness, fear and need of foreign workers.
3. This abuse is possible because the worker is totally dependent on the employer, through the promise of a work contract and, in many cases, because of workers fearing the loss of their living quarters and

¹⁰ ACCEM, *Human trafficking for labor exploitation*, Madrid, 2008.

other facilities that make up the conditions of exploitation that they are suffering.

4. The aim of the employer is to increase profitability and, in the case of middlemen, to make a personal profit from the situation.
5. This situation is based on the complete willingness of the worker to accept these conditions and their arbitrary nature, in terms of wages and forms of payment, rest periods and living conditions.
6. Extreme cases are referred to as cases of semi or outright slavery, especially when dealing with cases of workers being kept at their work place, which is also their living quarters.

B. Proposed definition

We have based our proposed definition on these different approaches to the concept:

In our project, we use the term «Severe Labour Exploitation of Foreign Workers» to refer to the abuse perpetrated by an employer to generate greater profitability for him or herself and the middlemen, involving the imposition of working conditions that are significantly worse than those set in applicable legislation (labour laws and collective agreements), and taking advantage of the situation of need of these workers, their weak bargaining power and their dependency on the employer.

We are referring especially, but not only, to the workers' need to obtain and maintain a residence permit that can only be obtained and renewed if the worker can prove the existence of a working relationship, which depends on the willingness of the employer. We are also referring to the special financial needs of the foreign worker, which extend beyond his or her own sustenance to include both the family members who emigrated together with the exploited individual and those who remain in the worker's country of origin. We are referring to the weak bargaining position that is derived from the situation described above, as well as to the worker's lack of resources, due to ignorance of the language and environment, and especially ignorance of his or her legal rights and benefits entitlements. And finally, we are referring to the relationship of dependency on the employer, through the employer's promise of a work contract and possible loss not only of the worker's job but also his or her housing and other resources. This dependency limits the worker's freedom of choice.

These deplorable labour conditions include especially:

1. A wage that is more than 50% lower than what is stipulated in the collective agreement for agricultural work and is subject to frequent and arbitrary reductions.
2. Extremely long working days that are arbitrarily prolonged beyond legal limits.
3. Weekly rest periods that are inexistent or less than the stipulated duration.
4. Particularly in agricultural work, living conditions that are inferior to the regulated minimum standards established by law or by the collective agreements regulating the sector, including cases of evidently uninhabitable housing.

Recommendation

A. IMMIGRATION REGULATION

The current **criteria for legal immigration** (reuniting families, quotas, Blue Card, etc.) are not completely successful in handling admission to target countries, and as a result there continue to be flows outside the legal channels. Our proposals involve:

1. **Greater combination of measures in MS.** «In the EU Commission's words, a credible approach to irregular immigration needs a combination of measures. But this combination still relies on policies enhancing the "security side" of the problem which have proved to be insufficient. Indeed, it is recognised that the offer of illegal labour opportunities by employers is a factor that encourages irregular migration or a cause for migrants to fall into an irregular position»¹¹.
2. **Greater coordination, integration of MS immigration policies.** «Enhancing EU legislation, investing more on a structured dialogue on migration with DG Home Affairs, in coordination with DG Employment, pursuing different objectives: an enhanced implementation and enforcement of existing acquis; reduced fragmentation of the current legislation on economic migration; legislation supporting stable or stabilization of migration flows»¹².

¹¹ ETUC position on the new European Commission's five-year programme on migration (EC Communication «An Open and Secure Europe: Making It Happen») Adopted at the meeting of the ETUC Executive Committee on 11-12 June 2014, pag. 5.

¹² Idem, pag. 2.

3. **Regularisation of those working without a regular residence permit.** «Encourage undocumented migrants to report their irregular condition or undeclared employment»¹³. Thus, «the EU needs a framework of action both on legal channels of migration, not limited to high-skilled professionals, and on regularisation of migrants. The employer sanctions directive is not a sufficient instrument to discourage irregular employment of migrants. Most of all, it is not a suitable instrument to ensure migrant workers their rights and provide them with appropriate opportunities for transforming their irregular jobs into regular ones, after evaluating individual cases. The EU should address this issue with a view to offering opportunities of regular stay, granting residence permits and fully equal treatment, for immigrants drawn into and exploited in the informal economy. This also implies more effective prosecution of employers perpetrating offences against migrant workers»¹⁴.
4. **Introduction of instruments to support workers who lose their residence permit as a result of losing their jobs.** Research has shown that, in the current economic and employment crisis, foreign workers are highly exposed to this risk.

B. UE DIRECTIVE 52/2009 AND 36/2011

1. **The cases identified in Article 22 of Dir. 2009/52/EU, are too general to be applied in the same way by different states:** «To guarantee the full effectiveness of the general prohibition, there is a need for more dissuasive sanctions in serious cases, such as persistently repeated infringements, the illegal employment of a significant number of third-country nationals, particularly exploitative working conditions, the employer knowing that the worker is a victim of trafficking in human beings and the illegal employment of a minor».
2. **In target countries, Dir. 2009/52/EU has not been fully implemented.** Thus, «In order to strengthen the instruments available to prosecutors to address smuggling networks, the Commission will improve the existing EU legal framework to tackle migrant smuggling and those who profit from it. In order to take specific action against traffickers' networks and provide assistance to victims of trafficking,

¹³ Idem, pag. 2.

¹⁴ Idem, pag. 5.

the Commission will also complete the initiatives foreseen in the current strategy against trafficking in HB and look at how work can be further improved in 2016. Another potential source of exploitation comes from employers inside the EU. Whilst promoting better integration into the labour market of legal migrants, the Commission will step up action against illegal employment of third country nationals, inter alia through better enforcement and application of the Employers Sanctions Directive, which prohibits the employment of third-country nationals who have no right to stay in the EU. It will also prioritise infringement procedures relating to this Directive»¹⁵.

3. **Limited application of the directive.** The research has shown that in the three countries recourse to Dir. 2009/52/EU has been minimal.
4. Moreover, in the three countries, also the application of **Dir. 2011/36/EU**, which expressly provides for the obligatory compensation of victims of trafficking, has been **limited and restrictive**.

C. SYSTEMS TO UNCOVER CASES OF SEVERE EXPLOITATION

1. **Improve ways of uncovering the phenomenon and ensure effective response measures** that are coordinated with activities aimed at uncovering victims, being **particularly careful to distinguish cases of severe exploitation and trafficking**.
2. **Monitoring the phenomena, developing systematic procedures for reporting illegalities** so that they can be adopted throughout the country and modulated according to the impact that such phenomena have on the target areas.
3. **Report cases identified to the competent authorities.** We emphasize the important role played by both the European programs devoted to the phenomenon of exploitation at work and the contribution made by the research to the monitoring and understanding of the dynamics in the target areas.

D. ORGANISATION OF PRODUCTION

Labour exploitation seems to be more commonly found among **small and medium-sized family farms**, which compete for the **lowest pro-**

¹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda On Migration, Brussels, 13.5.2015 Com (2015) 240 final, pag. 9.

duction costs, often achieved to the detriment of the immigrant workforce. Thus, it is important to:

1. **Strengthen trade union action in social dialogue (at several levels) especially within the European context**, as highlighted by the CES: «The ETUC demands a structured dialogue with DG Home Affairs. A dialogue on migration policies can be structured drawing inspiration from existing practices in other EU Commission services such as the Advisory Committee on Free Movement in DG Employment, or other forms of structured social dialogue in DG REGIO and DG EAC. DG EMPL should be charged with ensuring uniform protection for migrant workers or detect risks of under-protection or distortions of the labour market including undesired practices of social dumping. DG EMPL should make a better use of the competences in 5 ETUC/code article 153 of the TFEU and finalise a proposal for a framework directive on the rights of third-country nationals at work».

2. **Plan and carry out policies to avoid and prevent unfair competition, in particular through instruments that provide support to law abiding enterprises**, such as the ethical product certification. This means working both to raise awareness directly among consumers, and to enhance enterprises responsibilities vis-à-vis working conditions.

E. LABOUR INTERMEDIATION

Excluding local differences, two main factors seem to play a key role in the spread of illegal practices and exploitation in the target countries: **intermediation in the distribution phase of the production supply chain, and intermediation in the recruitment of labour.**

Thus, the research highlights the importance of:

1. **Implementing and strengthening policies to combat illegal labour intermediation**, while it is also important to ensure that labour recruitment agencies comply with the rules.

2. **Introducing more stringent forms of control over the role of private actors in labour recruitment, and greater coordination and integration of ways to access work at European level in order to avoid harmful dumping effects.** In accordance with the statement of the CES «temporary agency work should only be used for specific, short-term tasks, and should not replace permanent employment, which is a safer and better way of working¹⁶».

¹⁶ ECJ opinion threatens agreed limits on temporary agency work 2014.

3. **Full transposition of Dir. 2009/52/EU, paragraph 20** «In view of the prevalence of subcontracting in certain affected sectors, it is necessary to ensure that at least the contractor of which the employer is a direct subcontractor may be liable to pay financial sanctions in addition to or in place of the employer. In specific cases, other contractors may be liable to pay financial sanctions in addition to or in place of an employer of illegally residing third-country nationals. Back payments which are to be covered by the liability provisions of this Directive should also include contributions to national holiday pay funds and social funds regulated by law or collective agreements».



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