

**NO Trafficking! Another point of view**  
European Equal Project for social information on the issue of human trafficking  
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**RACCOMANDATION**  
**to the Ministry of Labour and the inspection bodies**  
**within the framework of preventing and combating**  
**the trafficking of human beings for labour**  
**exploitation**

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**Un altro punto di vista.**

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**NO Trafficking!**  
**National Network of Equality Women Advisors**  
**ACLI** (Italian Workers Christian Associations)  
**AICCRE** (Italian Association of the Council of European Municipalities and Regions)  
**IOM** (International Organization for Migration)

## **Introduction**

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**Communications of acceptance** of the "Recommendation" sent from the proposing realities to CIP Equal " NO Trafficking!" containing the adopted modalities of diffusion of the document:

- National Network of Equality Women Advisors: letter of 09 May 2007, prot. no. 13/UCNO/12754
- National ACLI, immigration-emigration: letter of 09 May 2007
- AICCRE, letter of 17.09.07
- IOM, letter of 9.10.07

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European Equal Project "NO Trafficking! another point of view."

## CONTENTS

This document is the result of an in-depth examination on the issue "*Trafficking and labour exploitation*", fostered by the European Equal project "**NO Trafficking!**" in partnership with the **National Network of Equality Women Advisors, ACLI, AICCRE** and **IOM**, as instrument of awareness-raising and mainstreaming on the trafficking of human beings.

The initiative is included in the national campaign called "NO Trafficking!... NOW YOU KNOW" fostered by the Project in partnership with the Ministry of Rights and Equal Opportunities of the Presidency of the Council of Ministers and valorises the integrated approach preferred to strategies of diversified information strategies, thus deepening a specific aspect of the complex phenomenon of trafficking.

In fact the work on the preliminary analysis of the phenomenon at first and, later, the comparison with the territorial actors realized during the NO trafficking! animation workshops carried out in various Italian towns, pointed out the necessity and the urge to deal with the issue of *human trafficking for labour exploitation*, a seldom discussed and scarcely known phenomenon.

The I.L.O. (International Organisation of Labour) estimates that around 2.5 millions people are trafficked each year for exploitation in agriculture, domestic labour and care, construction sites and manufacturing. Moreover it points out the importance of preventing the structural conditions which contribute to the forced labour: a large offer of labour force from the migrants, a large demand from employers, and a great difficulty for migrants to enter legally. These elements favour the traffickers, who earn money exploiting the victims' vulnerability. Nonetheless the perception of this specific aspect of the phenomenon remains low, if compared to the different forms of exploitation connected to trafficking, particularly to sexual exploitation.

Starting from these premises NO Trafficking! has started up a first path of reflection with the National Network of Equality Women Advisors and its territorial articulations – as institutional reality in charge for preventing and combating labour situations of discrimination and illegality – and the National ACLI (Italian Workers Christian Associations), which brought forth to the drafting of a first document of reflection. This document was the starting point of an exchange of ideas which involved the Department of Rights and Equal Opportunities, an inter-institutional conference summoned by the Prefecture of Florence and, finally, AICCRE and IOM.

It resulted in the elaboration of this recommendation which, in accordance with the guidelines of the EU Commission, points out the strategic role of the inspection bodies in charge for verifying the regular compliance and application of the laws and of the collective employment agreements, in uncovering the phenomenon along with all the institutional and private actors in charge for applying the legislation in force on trafficking prevention and contrast. Moreover, it underlines the importance of: awakening and training such professionals; creating inter-institutional frameworks able to point out the involved actors, namely the institutional and private actors appointed to recognize and contrast the phenomenon; define the indicators and the procedures to be used in the identification of the victims of trafficking for labour exploitation, as well as the procedures of connection and notification to the competent bodies in application of what foreseen in art. 18, Legislative Decree 286/98 and L. 228/03 on the defence of the victims' rights and the persecution of crime perpetrators; promoting the improvement of the economic-social perspectives of the victims' countries of origin through the transnational cooperation, in order to prevent the causes of poverty which often give rise to the phenomenon; analyzing the legislation in force to solve the ambiguities connected to the trafficking and verify its application, particularly in the labour exploitation framework.

The proponents are diffusing in their networks the recommendation - made official in 2007 - as a useful instrument for the pursuance of the exchange of ideas on the issue.

# 1. PREAMBLE

## Granted that:

- the phenomenon of trafficking for labour exploitation is a trafficking typology under observation since many years in many countries and that it has been denounced with growing alarm by the International Labour Organization - **I.L.O.** – and by the International Organisation for Migrations – **IOM**;
- the Organisation for Security and Cooperation in Europe - **OSCE** – has structured within its organization a special Section committed to the Trafficking in human beings, with a particular focus on the labour exploitation. This Section invited the members Countries to the OSCE to give a strong impetus to the pursuit of the crime of Trafficking for labour exploitation, encouraging the awareness-raising on the phenomenon in their respective countries through the inspective action of the qualified institutional organisations together with its prevention, and to legislate for its repression;
- **Italy**, in accordance with and in pursuance of the ONU Protocol of 2000, from 1998 to 2003 **has created an innovative regulatory system at a European and international level** to preventing and combating the phenomenon, characterized by a corpus of juridical instruments on the exploiters' prevention and prosecution (L. 228/03) in addition to the existing regulations on social protection and victims' integration already introduced to the legal order (see art. 18, legislative Decree 280/98 and draft implementing decrees) before the approval of the aforesaid protocol
- the **bodies involved in applying this system** are paying more attention to the different forms of exploitation related to the trafficking in women, men and children (not only sexual exploitation, but also forced works, begging, selling organs, forced marriages, etc.), and have pointed out the growth of forced labour;
- the attention focused on the issue by the **international organisations**, especially by the European Union (see the already mentioned UN Protocol of 2000, the EU framework Decision of 2002, the **Council of Europe** Convention on Action Against Trafficking in Human Beings opened for signature in Warsaw on 16 May 2005); the 2005 report of the EU Experts designed by the Commission on trafficking in human beings; the EU Action Plan of December 2005; the declaration of the Local Authorities of the Council of Europe on the "Fight against trafficking in human beings" of 2006;
- the "**Opinion** of the Committee on Employment and Social Affairs for the Committee on Civil Liberties, Justice and Home Affairs **on fighting trafficking in human beings – An integrated approach and proposals for an action plan**" of February 2006, draftwoman J. Lambert, suggesting an integrated approach to the issue, underlines some aspects, among which:
  - .....1. welcomes **the human rights based approach** of the integrated approach and action plan and recognises that this requires an **emphasis on the forced labour or services, slavery and slavery-like outcomes of trafficking**, and that the victims of this serious crime have to be given general and social support;
  - ..... 3. **considers that a demand for low cost, undocumented and docile workers in the EU contributes to the illegal trade of trafficking in human beings**; believes that the existence of such a workforce may drive down costs but at the expense of human dignity and that it undermines labour standards, fair pay and local and/or state income through a failure to pay taxes and social contributions;

- ..... 4. considers that **Member States should sign and comply with relevant international Conventions**, including the UN Trafficking Protocol, the UN Convention on the Protection of the Rights of all Migrant Workers and their Families, International Labour Organisation Conventions and core labour standards, in particular no. 29 concerning forced labour, no. 182 concerning the worst forms of child labour, and those relating to freedom of association, labour inspection and employment agencies;
- ....7. **considers that the inspection and enforcement mechanisms relating to labour law are feeble in some Member States, thus implying a scarce ability in recognising the exploiters of vulnerable and trafficked workers**; considers also that Member States should ensure that they have the necessary legal framework in place and that the relevant mechanisms, training and adequate technical resources are there to fulfil their legal obligations; considers that a network of inspectorates relating to employment could serve a useful purpose in the exchange of best practice;.....

## 2. CONSIDERATIONS

**Considering that the functions of the professionals of the inspection bodies** charged of verifying the regular compliance and application of the laws and the collective employment agreements are the following:

**- Ministry of Labour and Social Security, through the territorial offices called Provincial Work Directorates.**

The Legislative decree 124 of 23 April 2004 establishes the Directorate-General for Inspection Activities, vested with the direction and coordination of the inspection activity; the ministerial bodies emanate the strategic regulations on the inspection activity on the territory.

The inspectors working with the Regional and Provincial Work Directorates were also vested with judicial police powers when performing their duties under current legislation (Labour, Social Security and Contributory Law) have the task to supervise:

- on the execution of all the laws in matter of protection of employment and of social and welfare legislation;
- on the correct application of collective employment contracts and agreements;
- on matter of hygiene and safety at work (particularly in the building trade, inasmuch more subject to injury risk);
- on the employment of young persons and children on the allowed sectors;
- on working mothers during the periods of compulsory abstention from work;
- on the timetable and the working times in all sectors;
- on the application of the workers' statute (law n. 300/1970), such as remote surveillance of workers by video camera or other devices with the aim of monitoring employee activities, work discriminations on the workplace etc;
- on the infringements of penal nature concerning employment, such as: tax avoidance; embezzlement; frauds; fraudulent or illicit brokerage and supplying of manpower; safety at work and application of regulations to prevent accidents and occupational diseases; employment of clandestine foreign workers or without work-residence permit, of young persons, etc.

The Labour Inspector has the authority to prescribe labour crimes punishable by arrest or amends, the power of search and seizure, etc.

He/she carries out the activity of prevention and promotion on issues of general order according to art. 8 of the Legislative Decree 124/2004.

The carabinieri Command for Protection of Labour operates in every province with the Provincial Work Directorate, and is subordinated to the Director of the Inspection Service of the Provincial Work Directorate, the Carabinieri Headquarters and the Labour Protection.

## - Inps e Inail

The inspection personnel of INPS (National Social Security Institute) and of Inail (National Disability Insurance Institute), according to art. 13 Law 638/83 and Legislative Decree 124/2004, are vested with the same inspection powers of the labour inspectors on employment, finalized to the recovery of illegally deducting contributions:

- of inspection and access;
- of investigation and notification;
- of seizure and warning.

The personnel is not accorded the status of Criminal Police agent or officer.

## - Carabinieri Command for Protection of Labour

The Carabinieri Command for Protection of Labour is tasked from Ministry of Labour and Social Security of the "surveillance on the application of labour legislation and social security" on the framework of the Italian system of Public Security at national level.

Since 1937, with the Royal Decree Law 13 May no. 804 art. 2, the personnel from Carabinieri Command has been assigned for the vigilance on the application of labour legislation.

In 1955 the DPR 520, laying down rules on the "Central and peripheral reorganisation of the Ministry of Labour and Social Security", reconfirms the assignation of the aforementioned personnel on the national territory.

On 1 October 1997 - in accordance with D.M. 31 July 1997 referred to in Law 28 November 1996 n. 608, art. 9 bis, paragraph 14 – the Carabinieri General Command activated a special Carabinieri unit in the Labour Inspectorate, the Carabinieri Command of Labour Inspectorate, thus subordinating the already existing Carabinieri Command for Protection of Labour. The Command assumed its actual denomination on 20 April 2006.

## Considering the role of:

### - Local Authorities

Especially:

- in Italy the Mayor is responsible for Law and Order and security in his jurisdiction;
- the role assigned to Local Authorities from the Italian legislation in force in preventing and combating the phenomenon<sup>1</sup> and in the management of social policies<sup>2</sup>;
- the declarations of the Local Authorities of the Council of Europe on "Fight against the trafficking on human beings" of June 2006<sup>3</sup>

### - Security Forces

In the identification of situation of reduction in slavery, violence and severe exploitation carried out during police operations, in investigations and proceedings on crimes connected to the phenomenon, confirmed at paragraph 1 of art. 18, Legislative Decree 286/98, and giving to the Questore (Public Prosecutor) the authority to grant a special residence permit to the victims, whenever police operations or the social services of a local administration or of qualified private institutions identify situations of abuse or severe exploitation.

**Considering** that the Ministry of Labour, General Department for Inspection Activity has drawn attention (MD of 20.04.06, "**Code of conduct for labour inspectors**") on its

<sup>1</sup> The legislation in force in Italy (art. 18 of the Legislative Decree 286/98, paragraphs 1 and 2, and art. 25 D.P.R. 394/99, paragraphs 1 and 3) assigns to Local Administrations the responsibility to organize social assistance and integration programmes for the victims of trafficking through social services or in agreement with qualified private institutions. This task is confirmed by the D. pr. 19 September 2005 no. 237, in pursuance of art. 13 of Law 228/03 on the institution of special programs for the victims.

Art. 18 of the legislative decree no. 286 of 1998 underlines, in par. 2, that the mayor shall be notified of every operating social assistance and integration program. Since 1998 to present days several local institutions have started programs, and thanks to their action up to 2006 more than 11.000 victims have been concretely helped. Till now the beneficiaries have essentially been the victims of trafficking for sexual exploitation, while a new alert is raising on other boundaries of exploitation. This new emergence has been taken in charge by the annual call connected to the aforementioned art. 18, which since 2006 foresees the co-funding of programmes of social protection for the trafficking victims of the various typologies of exploitation.

Law 146/06 perfected the adjustment path of the Italian legislation towards the directives of the UN International Convention on organized crime of 2000, also through the introduction in the national legislation of the concept of transnational crime governed by art. 3, inclusive of the crime of reduction in slavery.

<sup>2</sup> Laws reorganising Local Autonomies, "Bassanini Law"

- Framework Law for the Creation of an Integrated System of Social Interventions and Services, no. 328/00

(art. 1, paragraph 3... Planning and management of the integrated system of interventions pertains to local authorities...)

<sup>3</sup> ... we remind that it is at local level that the ending phase of trafficking usually comes out and that the local authorities have a fundamental role as guarantors of social cohesion, welfare and security for their citizens. ....

personnel's actions in compliance of the Legislative Decree 124/04 "Rationalisation of inspection functions in the field of social security and employment", whose art. 7 requires – together with other duties - that the ministerial inspection personnel:

- supervises on the execution of the laws in matter of essential levels concerning the **civil and social rights** which have to be granted over the whole national territory, of protection of employment and of social legislation wherever there is the participation in a work activity apart from the different contractual schemes adopted;
- supervises on the correct application of collective employment contracts and agreements,
- carries out inquiries, investigations and surveyings;

**Considering** that the Ministry of Labour and Social Insurance has recently taken, also in compliance of the regulations of art. 36 bis of the Leg. Decree no. 223/06, converted by Law no. 248 of 2006, and of Law no. 296 of 2006 (financial law 2007) a renewed action of contrast to hidden work, particularly to prevent the exploitation of foreigner manpower;

### 3. RACCOMANDATIONS

It will be important:

- **to train and make aware all these different figures**, making them **able to recognize the phenomenon of trafficking in human beings for the purpose of labour exploitation** – a phenomenon similar to other forms of exploitation and illegality – for a complete and operative application of the laws regulating the intervention and integration of the victims, starting from art.18, Legislative Decree 286/98;
- **to create interinstitutional contexts of confrontation** able to highlight the interinstitutional figures/actors appointed to recognize and combat the phenomenon, define the indicators and the procedures to be carried out for the identification of the victims of trafficking for the purpose of labour exploitation, the procedures of connection between the different involved figures and the modalities to be used in the signalling to the competent bodies of the application of what foreseen by the legislation in force on the protection of the victims' rights and to persecute the crime;
- **to augment the efficacy and intervention capacity of the Local Authorities on the issue** through the creation of concertation tables on intervention policies on the issue, involving Security Forces, inspection bodies, Trade Unions, professional associations, and territorial association realities (NGO);
- to stimulate the institutions in charge for the development to a **greater** judicial and police **transnational cooperation** in order to persecute the traffickers starting from the place of origin of trafficking;
- to promote legislative frameworks allowing factual **labour demand/supply** for foreigners;
- **to analyze the legislation in force** to clarify the ambiguities connected to trafficking (explaining how to demonstrate the three fundamental passages of the crime: transfer – coercion – exploitation, in accordance with the definitions formalized in the official international and European documents) in order to verify its application particularly within the trafficking for the purpose of labour exploitation.
- to promote within the competent institutions the Italian Government and the EU **ratification** of the **Convention on the Rights of Migrant Workers and Members of their Families**, as instrument of acknowledgment of the migrant workers' rights and of prevention of trafficking for the purpose of labour exploitation;

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