



*Directorate-General for Immigration and Integration Policies*

Three-year plan to combat labour exploitation in agriculture and '*caporalato*' (2020 - 2022)

National Guidelines on identification, protection and assistance to victims of labour exploitation in agriculture

- accompanying report and proposal -

## Accompanying report

This document aims to describing the process through which a proposal of national Guidelines on the identification, protection and assistance to victims of labour exploitation in agriculture has been validated, in line with the provisions of action no. 9 of the Three-year Plan to combat labour exploitation in agriculture and '*caporalato*' (2020 - 2022), approved by the Operational Table in February 2020 and enshrined in the Unified Conference in May 2020. The Table was established in December 2018 pursuant to Decree-Law No. 119/2018, as converted with amendments by Law No. 136/2018, and is chaired by the Minister of Labour and Social Policies, with the support of the Ministerial Directorate-General for Immigration and Integration Policies, as Technical Secretariat.

The three-year plan is a programmatic document, the result of consultation between various institutional actors involved at central and decentralised level and of discussions with representatives of workers and employers in the agricultural sector and civil society associations. The involvement of the Third Sector represented a high added value of this process. The Plan identifies 10 strategic actions, 7 of which are dedicated to prevention, involving, in a multi-level governance model, the different administrations at central, regional and local level.

Action No. 9 of the Plan aims to planning and implementing a system of integrated services (referral) for the protection of and assistance to victims of labour exploitation in agriculture as well as at strengthening the interventions for their socio-occupational reintegration. In particular, among the expected results of this action, there is the adoption of national guidelines on the referral system to facilitate the identification of victims of labour exploitation, support access to referral mechanisms for protection and assistance, assess immediate individual needs and provide information and access to socio-occupational integration programmes. The action also pays particular attention to critical issues related to the exploitation of foreign workers.

The Covid - 19 pandemic also highlighted how a major global health crisis had a serious impact on national economies. During the epidemic, the agro-food sector showed extraordinary resilience. However, measures to protect the safety and rights of workers are not always adequate. Labour exploitation has been exacerbated by the pandemic and affects many workers in the agricultural sector, particularly the most vulnerable, including women, children and foreigners, even those without residence permits, victims of trafficking, asylum seekers and those with protection status. Interventions to combat these phenomena vary according to the area of reference, are of a multiple nature (exclusively public or private social, or coordinated) and with different operational procedures, with the risk of limited and dispersed effectiveness.

The adoption of common standards and general principles shared at all levels, from the centre to the territory, implementing the principle of vertical and horizontal subsidiarity, is necessary for the creation of a model of public intervention that increases victims' trust in institutions and breaks the chains of exploitation.

The Plan entrusted the Ministry of Labour and Social Policies with the task of coordinating this line of action, in agreement with the Department for Equal Opportunities of the Presidency of the Council of Ministers and the other competent institutions. For this purpose, an *ad hoc* working group was set up, coordinated by the General Directorate for Immigration and Integration Policies and composed of representatives of the General Directorate for Poverty Alleviation and Social Planning, the General Directorate for Information Systems, Technological Innovation, Data Monitoring and Communication

of the Ministry of Labour and Social Policies; by representatives of the Department for Equal Opportunities (DPO), of the Central Service of the Reception and Integration System (SAI) for asylum seekers and holders of international protection managed by ANCI, of the National Agency for Active Employment Policies (ANPAL), of the National Labour Inspectorate (INL), of the Italian Social Security Institute (INPS), of the Regions (Basilicata Region as coordinator of the Group dedicated to transport, Lazio Region, Apulia Region), of the International Labour Organisation (ILO), of the International Organisation for Migration (IOM), of the NOVA Consortium (partner of the projects "SU. PR.EME" and "P.I.U. SU.PR.EME" projects for actions against labour exploitation in the central-southern regions), ANPAL Services Spa and the National Institute for the Analysis of Public Policies (INAPP).

The proposal for national Guidelines is the result of shared work by the group that met on 16 December 2020, 15 January, 5 and 26 February, 9 and 30 April, and 4 June 2021.

Consistent with existing legislation, the key points of the proposal are: (a) the promotion of a governance and coordination system for the implementation of a public-driven National Referral Mechanism on the identification, protection and first assistance to victims of labour exploitation in agriculture; (b) the definition of a victim of labour exploitation; (c) the identification of common operational procedures and measures divided into phases (preliminary and formal identification, protection and assistance of victims of labour exploitation); (d) identification of the actors and actors involved in the different stages; (e) the protection treatment of foreign citizens who are victims of labour exploitation and who do not have a residence permit, according to the current legislation; (f) recommendations in terms of information and awareness-raising, training and capacity-building of the services and actors involved.

With regard to the method of adoption of the Guidelines, the instrument of the Agreement within the Unified Conference is proposed, pursuant to article 9, paragraph 2 of Legislative Decree 28 August 1997, no. 281.

## **AGREEMENT**

on the document entitled "National guidelines on the identification, protection and assistance to victims of labour exploitation in agriculture", pursuant to Article 9(2) of Legislative Decree No 281 of 28 August 1997.

## **THE UNIFIED CONFERENCE**

- HAVING REGARD TO the Treaty on the Functioning of the European Union, in particular article 78 paragraph 2, letter f), article 79 paragraph 2, letter d) and article 151 thereof
- HAVING REGARD TO the Charter of Fundamental Rights of the European Union, in particular Titles I "Dignity", II "Freedom" and IV "Solidarity";
- HAVING REGARD TO the Constitution of the Republic, in particular to articles 2, 3, 10, 11, 13, 14, 15, 21, 23, 27, 32, 34;
- HAVING REGARD TO article 9, paragraph 2, letter c) of legislative decree 28 August 1997, no. 281, which provides that this Conference shall promote and establish agreements between the Government, Regions, Provinces, Municipalities and Mountain Communities, in order to coordinate the exercise of their respective competences and to carry out in collaboration activities of common interest;
- HAVING REGARD TO article 9 paragraph 1 of Law No 199 of 29 October 2016, containing *"Provisions on combating the phenomena of undeclared work, the exploitation of labour in agriculture and wage*

*realignment in the agricultural sector*", which provides that the Ministry of Labour and Social Policies, the Ministry of Agricultural Food and Forestry Policies and the Ministry of the Interior shall jointly draw up a plan of action, subject to agreement within the Unified Conference which provides for appropriate measures for the logistical accommodation and support of workers, including through the involvement of the regions, autonomous provinces and local authorities, representatives of employers and workers in the sector and third sector organisations, as well as appropriate forms of collaboration with the territorial sections of the Network of Quality Agricultural Work, also for the purpose of implementing experimental agricultural placement modulated at territorial level;

- HAVING REGARD to article 25 quater of Decree-Law No. 119 of 23 October 2018, as converted with amendments by Law No. 136 of 17 December 2018 and as amended by Decree-Law No. 34 of 19 May 2020, as converted, with amendments, by Law No. 77 of 17 July 2020, which has established the *"Operational Table for the definition of a new strategy to combat caporalato and labour exploitation in agriculture"*, chaired by the Minister of Labour and Social Policies, in order to draw up a national plan of measures to prevent and combat these phenomena;
- HAVING REGARD TO the *"Three-year plan to combat labour exploitation in agriculture and caporalato (2020-22)"*, approved on 20 February 2020 by the aforementioned *"Operational Table for the definition of a new strategy to combat caporalato and labour exploitation in agriculture"*, in respect of which an agreement was reached at the Unified Conference on 21 May 2020;
- Considering that the above-mentioned *"Three-year plan to combat labour exploitation in agriculture and caporalato (2020-22)"* includes, among its priority actions, the planning and implementation of a system of integrated services (referral) for the protection and initial assistance of victims of labour exploitation in agriculture and the strengthening of interventions for their socio-occupational reintegration;
- Considering that, for that purpose, an inter-institutional working group has been established at the Directorate General for Immigration and Integration Policies of the Ministry of Labour and Social Policies, which coordinates its work, composed of representatives of the Ministry of Labour - Directorate General for the fight against poverty and for social planning, Directorate General of Information Systems of technological innovation, data monitoring and communication; of the Department for Equal Opportunities (DPO) established at the Presidency of the Council of Ministers; of the National Association of Italian Municipalities (ANCI); of the Central Service of the Reception and Integration System (SAI) of asylum seekers and holders of international protection managed by ANCI; the National Agency for Active Employment Policies (ANPAL); the National Labour Inspectorate (INL); the Regions (Basilicata Region as coordinator of the Transport Group, Lazio Region, Apulia Region); the International Labour Organisation (ILO); the International Organisation for Migration (IOM); NOVA Consortium (partner in the "SU. PR.EME" and "P.I.U. SU.PR.EME" projects for actions against labour exploitation in the central-southern regions); of ANPAL Services Spa; of the National Institute for the Analysis of Public Policies (INAPP) in order to develop guidelines for the identification, protection and assistance to victims of labour exploitation in the agricultural sector;
- Considering the conclusions of the fact-finding investigation into the *"phenomenon of caporalato in agriculture"* adopted on 12 May 2021 by the Chamber of Deputies Joint Committees XI Labour and XIII Agriculture, which recommends the setting up of a victim support system, in order to direct them to protection and assistance paths corresponding to their needs (first reception services, health care, legal protection and social support) to be linked to work integration measures in connection with the Employment Services.

Having regard to:

- The European Convention on Human Rights, signed in Rome on 4 November 1950 and ratified by Italy by Act No. 848 of 4 August 1955;
- The Geneva Convention of 7 September 1956 on Slavery, ratified and made enforceable by Italy by Act No. 1304 of 1957;

- The International Labour Organisation Convention No. 29, adopted on 21 June 1930, on Forced and Compulsory Labour; The International Labour Organisation Convention No. 105, adopted on 25 June 1957, on the Abolition of Forced Labour, both ratified by Italy;
- UN Convention on the Rights of the Child, New York, 20 November 1989 (ratified by Italy with Law No. 176 of 27 May 1991);
- Optional Protocol concerning the Sale, Prostitution and Pornography representing persons under the Age of 18, New York, 25 May 2000, ratified by Law No. 46 of 11 March 2002);
- ILO Convention No. 182 on the worst forms of child labour, 1999. Ratified by Italy with law no. 148 of 25 May 2000;
- The Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 15 December 2000, ratified by Italy with Law No. 146 of 16 March 2006;
- The Council of Europe Convention No. 197 on Action against Trafficking in Human Beings of 16 May 2005, ratified by Italy with Law No. 108 of 2010;
- Directive 2004/81/EC, implemented in Italy by Law no. 29 of 25 January 2006, concerning the residence permit to be issued to third-country nationals who are victims of trafficking in human beings or who have been involved in an action to facilitate illegal immigration and who cooperate with the competent authorities;
- Directive 2009/52/EC, implemented in Italy by Legislative Decree No. 109 of 16 July 2012, introducing minimum standards on sanctions and measures against employers who employ illegally staying third-country nationals;
- Directive 2011/36/EU, implemented in Italy by Legislative Decree n.24 of 4 March 2014, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;
- Directive 2012/29/EU, implemented in Italy by Legislative Decree No. 212 of 15 December 2015, establishing minimum standards on the rights, support and protection of victims of crime and replacing Framework Decision 2001/220/JHA; and
- Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC (see in particular article 57 paragraph 1, letter f): "Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established through a verification pursuant to articles 59, 60 and 61 or are otherwise aware that such economic operator has been convicted by a final judgment for one of the following reasons (...) f. Child labour and other forms of trafficking in human beings as defined in article 2 of Directive 2011/36/EU of the European Parliament and of the Council.")
- Directive 2014/36/EU on the conditions of entry and residence of third-country nationals for the purposes of employment as seasonal workers
- Law No. 228 of 11 August 2003 on "Measures against trafficking in persons";
- The ILO Convention No. 190 on the Elimination of Violence and Harassment in the World of Work of 2019, ratified by Act No. 4 of 15 January 2021;
- The Legislative Decree No. 286 of 25 July 1998 on the "Consolidated act of provisions concerning regulations on immigration and rules about the conditions of aliens", and in particular article 18, which regulates social protection, and article 22, paragraph 12-quater, which regulates the issuance of a residence permit in cases of particular labour exploitation;
- The decree of the President of the Republic of 31 August 1999, n° 394, having as its object "Regulations containing norms for the implementation of consolidated act of provisions concerning regulations on immigration and rules about the conditions of aliens, in accordance with article 1, paragraph 6, of the legislative decree of 25 July 1998, n° 286", and in particular article 27 on the issue of the residence permit for reasons of social protection;
- Decree-Law No. 416 of 30 December 1989, as converted, with amendments, by Law No. 39 of 28 February 1990, as last amended by Decree-Law No. 130 of 21 October 2020, as converted, with

amendments, by Law No. 173 of 18 December 2020, and in particular article 1 sexies on the reception and integration system;

- Legislative Decree No 149 of 14 September 2015, laying down provisions for the rationalisation and simplification of inspection activities in the field of labour and social legislation, in implementation of Law No 183 of 10 December 2014;
- HAVING REGARD TO the note with which the Ministry of Labour and Social Policies, for the purposes of finalisation of the Agreement by the Unified Conference, transmitted the "National guidelines on the identification, protection and assistance to victims of labour exploitation in the agricultural sector", together with the draft agreement;

#### ESTABLISHES THE AGREEMENT

pursuant to article 9 paragraph 2, letter c) of the Legislative Decree 28 August 1997, no. 281, on the document entitled: "National guidelines on the identification, protection and assistance to victims of labour exploitation in agriculture" which, attached to this act, is an integral part thereof.

Rome,

The President

The Secretary

#### NATIONAL GUIDELINES

**on the identification, protection and assistance to victims of labour exploitation in agriculture**

*pursuant to Article 9, paragraph 1 of Law No. 199 of 29 October 2016*

#### Foreword

1. The National Institute of Statistics (ISTAT) estimates that the rate of undeclared work among agricultural workers is the highest of all economic sectors. Labour exploitation affects many workers in the agricultural sector, particularly the most vulnerable, such as women, minors and foreigners, including those without residence permits, victims of trafficking, asylum seekers or those with international or humanitarian protection. There are cases of violation of labour rights and, in many cases, workers report serious abuses, inadequate and inhuman working and living conditions, intimidation, degrading treatment (even forms of modern slavery) imposed by the intermediary or the employer himself. The great vulnerability of some groups, as in the case of undocumented foreigners, leads to the fall into the vicious and criminal circle of *caporalato*. Although being a victim of labour exploitation does not depend on the nationality of those involved, migrants are more exposed to this risk due to their increased vulnerability resulting from a combination of factors (e.g., precarious legal and social position, lack of a support network, isolation and lack of information on labour rights).
2. These Guidelines find full coherence and integration with the national strategy outlined by the **"Three-year plan (2020-2022) to combat the phenomenon of labour exploitation in agriculture and *caporalato*"**, adopted in February 2020 by the Coordination Table, established

by article 25 quater of Law 136/2018. The Table is chaired by the Minister of Labour and Social Policies with the secretariat of the Directorate General for Immigration and Integration Policies, and is based on the collaboration of the different institutional actors involved at central and decentralised levels, representatives of workers, employers in the agricultural sector and Third Sector associations.

3. The Guidelines are based on the legality and dignity of work, the promotion and protection of human rights to be implemented through assistance and protection of victims, and the consolidation of cooperation between all public actors and civil society involved in the fight against the phenomenon of *caporalato* and labour exploitation in agriculture. The way to achieve lasting results is to systemise the various public policies capable of having a positive impact - directly or indirectly - on the prevention, support, integration and accompaniment of quality work for EU citizens (including Italian citizens) and third-country nationals who are victims or potential victims of labour exploitation throughout the country.
4. The Guidelines ensure that all identification, protection and assistance measures apply the principle of risk assessment related to gender, age and particular vulnerabilities that may affect victims. The condition of vulnerability is defined on the basis of interactions between different structural factors (legal, cultural, social and economic) that produce situations in which (with reference to the definition of "position of vulnerability" contained in Directive 2011/36/EU) a person has no real and acceptable alternative but to submit to exploitation and other forms of abuse. In the case of women workers, this situation can be further aggravated by the intersection of particular gender dynamics and power relations.
5. This approach has already been put into practice in various territorial contexts by means of instruments of a treaty nature that have been concluded between State, regional and local authorities, social partners and civil society bodies, also using the possibilities opened up by provisions of State and regional legislation devoted to specific aspects of intervention in this sector.
6. The Three-year Plan and these Guidelines are based on this 'heritage' of competences, defining for the first time an organic framework of subjects, tools and principles, through which the different levels of government are called to cooperate in order to achieve the integration of policies, measures and services aimed at raising the level of protection of the victims of labour exploitation in agriculture.
7. These Guidelines are addressed to all those who, in various capacities and according to their respective competences, are involved in the protection and assistance to victims of labour exploitation in agriculture or potential victims.

## SUMMARY

### OBJECTIVE

### SYSTEM OF GOVERNANCE AND COORDINATION

### DEFINITION OF VICTIMS OF LABOUR EXPLOITATION IN AGRICULTURE

### NATIONAL REFERRAL MECHANISM (MNR) AND COMMON PRINCIPLES

### IDENTIFICATION

### REFERRAL AND ACCESS TO SERVICES

### ACCESS TO REMEDIES

### PROTECTION AND ASSISTANCE OF VICTIMS OF LABOUR EXPLOITATION

### INFORMATION AND AWARENESS-RAISING

### TRAINING AND CAPACITY BUILDING OF SERVICES AND ACTORS INVOLVED

## OBJECTIVE

The present Guidelines define the minimum common standards and general principles for the implementation of a public-powered National Referral Mechanism on identification, protection and assistance to victims of labour exploitation in agriculture. The aim is to create a model of intervention that increases the victims' trust in institutions and breaks the chains of exploitation.

## SYSTEM OF GOVERNANCE AND COORDINATION

It is necessary to ensure national and regional governance through coordination between all the actors with competences in the different sectors involved (identification, taking charge, social protection, assistance, including legal assistance, reception, socio-occupational integration, etc.).

The coordination of this National Referral Mechanism (NRM) is ensured at the national level by the Table established pursuant to article 25 of Law No. 136/2018, which is responsible for the shared management of the priority actions of the Three-Year Plan, as well as for the elaboration of regulatory proposals concerning labour exploitation, illicit intermediation and forced labour and the sharing of good practices. In particular, **priority action no. 9** of the Three-Year Plan assigns the Ministry of Labour and Social Policies, in agreement with the Department for Equal Opportunities of the Presidency of the Council of Ministers and the other competent institutions, the task of coordinating the implementation of interventions on the identification, protection and assistance of victims of labour exploitation, in agreement with the Conference of Regions and ANCI.

Similarly, the Unified Conference has the role of linking the programmatic guidelines outlined in the Three-Year Plan with regional programming. The Regions and the Autonomous Provinces adopt the Table's guidelines and the initiatives of the three-year Plan, and specifically undertake to implement at a territorial level the standards of intervention laid down in these Guidelines.



The local authorities and their forms of association, in line with the guidelines given by the Regions, have the faculty to prepare multi-sector and multi-agency intervention plans for the implementation of the Three-Year Plan and, in particular, of the minimum standards of service provided in these Guidelines.

In the implementation of the present Guidelines, the State, the Regions, the Autonomous Provinces and the local authorities, in the exercise of their competences and in the organisation of the relevant services, undertake to implement the provisions of the Guidelines within six months from the approval of the present Agreement. In addition, the State, the Regions, the Autonomous Provinces and the local authorities have the right to conclude specific agreements on the identification, protection and assistance of the victims of labour exploitation, also aimed at regulating the interventions in support of the training and professional updating of the operators of the services involved.

A system for monitoring and periodically exchanging information on the implementation of the National Referral Mechanism (NRM) on the identification, protection and assistance of victims of labour exploitation in agriculture should be envisaged. This system will have to be integrated with the monitoring and evaluation tools provided for in the Three-Year Plan.

#### **DEFINITION OF A VICTIM OF LABOUR EXPLOITATION IN AGRICULTURE**

According to the current legal framework, and in particular pursuant to article 603-*bis* of the Penal code, as reformulated by Law no. 199/2016, a victim of labour exploitation is a person whose state of vulnerability is such as to severely compromise his/her freedom of choice, inducing him/her to accept unfair working conditions as a result of the exploitation of his/her state of need by intermediaries and users.

Having said that, the potential beneficiaries of this protection and assistance system are all male and female workers, regardless of their nationality and regularity of stay, employed in conditions of labour exploitation as referred to in articles 600, 601 and 603-*bis* of the Penal code as well as article 22, paragraph 12, and 12-*bis* of the Unified Text on Immigration (acronym in Italian, TUI). Therefore, it includes EU citizens (including Italian citizens) and third-country nationals, regardless of their legal status, for whom at least one of the indicators of exploitation provided for by the Penal code is present.

In particular, labour exploitation in agriculture involves illegal forms of intermediation, recruitment and organisation of labour outside legal employment channels.

Law No. 199 of 2016 introduced into the penal code the offence of unlawful intermediation and labour exploitation (article 603-*bis* of the penal code). The text of the law provides for four indices of labour exploitation, namely:

- i - the repeated payment of wages in a manner clearly different from the national or territorial collective agreements entered into by the most representative trade unions at national level, or in any case disproportionate to the quantity and quality of work performed;
- ii - the repeated violation of the regulations on working hours, rest periods, weekly rest, compulsory leave, holidays;
- iii - the existence of violations of the rules on safety and hygiene in the workplace;

iv - the subjection of the worker to degrading working conditions, surveillance methods or housing situations.

The crime of labour exploitation occurs when at least one of the above violations occurs, together with the exploitation of the worker's state of need.

On the basis of the above indices, the National Labour Inspectorate has issued operational guidelines for inspection activities.

In case of coercion (violence, threats, seizure of documents, restriction of personal freedom), labour exploitation becomes forced labour (articles 600, 601, 603 II of the penal code).

In the case of child victims of labour exploitation, all the measures taken must have as their primary objective the best interests of the child, resulting from a careful and thorough assessment carried out by trained and qualified professionals. Any decision must be made taking into account the opinion of the child, the guardian, the special curator or the person exercising parental functions, who should be proactively solicited at all the different stages, both by the professionals and the decision-makers involved with the relevant expertise required. In the case of unaccompanied foreign minors, it is necessary that all the measures adopted are specifically reshaped and readapted to the vulnerability of unaccompanied foreign minors. Specifically, the services of the local authorities in charge of taking charge are called to protect the minor, also considering a placement outside the territory where the exploitation network is present.

#### **NATIONAL REFERRAL MECHANISM (NRM) AND COMMON PRINCIPLES**

The National Referral Mechanism for Victims of Labour Exploitation in Agriculture (i) establishes the roles and responsibilities of the actors involved in the system; (ii) defines common procedures for the identification of victims and the referral process; and (iii) identifies the protection and assistance services for victims and the minimum quality standards for their delivery.

The National Referral Mechanism is addressed to the Regions, the Autonomous Provinces and the local authorities to foster a uniform management of the principles of identification, protection and assistance to victims of labour exploitation, in connection with the Labour inspection services, the Law Enforcement, the Social Partners and the Third Sector, in order to guarantee equality and equal treatment of citizens on the territory, ensuring the good performance of the public administration and uniformity in the interventions to fight and contrast the phenomenon of labour exploitation in agriculture.

##### Principles:

- a. it is the responsibility of the State to enforce fundamental labour rights, as human rights, and labour legislation and the role of protection and assistance in case of violation;
- b. to ensure that the person is aware of what kind of assistance he/she can receive and from which entity, as well as on the modalities, conditions and procedures to obtain protection; in particular, victims of trafficking for the purpose of labour exploitation and victims of serious labour exploitation who are in a situation of real danger to their safety must be informed of the possibility to access the protection mechanism provided for in article 18, TUI;
- c. ensure personalised forms of protection and assistance appropriate to the gender, age, needs, mental and physical recovery and vulnerabilities of the victims;

- d. in compliance with the institutional roles played by each actor, the Regions, the Autonomous Provinces and the local authorities are the pivot of the identification, protection and assistance system in connection with the Labour Inspection Services, the Law enforcement, the Social Partners, the Third Sector and the International Organisations competent in the matter, with a multi-agency approach, in order to guarantee a coordinated, immediate and effective response to potential situations of labour exploitation in agriculture, avoiding overlapping and/or delays in the interventions;
- e. to distinguish between a preliminary identification phase, aimed at the initial screening of potential victims, and a formal phase aimed at protecting the victim identified as such, so as to build a system that allows for the rapid passage from one phase to the other, through the use of existing structures and mechanisms or through the creation of new ones, which respond to homogeneous management methods consistent with the principles of the three-year plan;
- f. to guarantee the coordination of protection and assistance interventions with the integrated system of interventions and social services pursuant to Law 328/2000, the Single Programme for the emergence, assistance and social integration, pursuant to article 18, paragraph 3-*bis* of Legislative Decree no. 286 of 25 July 1998, the National Plan and the Regional Plans aimed at combating and preventing violence against women.
- g. promote mechanisms for multidisciplinary assistance through personalised victim support, carried out by suitably trained experts, in the context of cooperation between the various levels of government and civil society organisations;
- h. ensure that access to protection and assistance measures for victims is not necessarily linked to the judicial path and, therefore, to reporting, also guaranteeing an adequate period of reflection and recovery.
- i. to ensure the protection of privacy and identity in the processes of identification and removal from the situation of labour exploitation, illegal intermediation and forced labour;
- j. maximise the use of available financial resources (EU, national and regional) to improve the management of interventions in an integrated manner.

These Guidelines represent minimum standards of reference. The measures indicated do not always follow a chronological order; in some circumstances they must be applied simultaneously, while in other cases they must follow a different order of implementation.

## IDENTIFICATION

The identification of victims of labour exploitation is a process aimed at understanding, through the analysis of the situation and, in general, of the elements (indicators of labour exploitation) that emerge from interviews with the person or from additional circumstances, whether a person is a victim of labour exploitation, illegal intermediation (*caporalato*) or forced labour.

Identification aims to identify the most effective measures to ensure adequate protection, support, initial assistance and protection for the victim, as well as long-term accompaniment and social integration and is the first step in enabling victims of labour exploitation to emerge from situations of subjection and receive appropriate and timely protection.

The identification process is composed of a preliminary and a formal phase, consisting of multiple actions implemented by different actors, and is aimed at the gradual emergence of relevant elements in order to ensure immediate support measures that meet the needs of exploited workers in agriculture.

Identification officers must be trained and have the appropriate skills and tools to help victims or potential victims to overcome any resistance they may have - due to fear, modesty, lack of trust in the authorities - to tell all or part of the facts and events they have suffered. The identification of victims of labour exploitation is an obligation of public authorities under supranational and national provisions (Convention No. 29 of 1930 on forced labour; Convention No. 105 of 1957 on the elimination of forced labour; art. 4, European Convention on Human Rights; Protocol to Convention No. 29 - 2014; ILO Recommendation No. 203 on forced labour; Council of Europe Convention No. 197 on Combating Trafficking in Human Beings; Directive 2004/81/EC; Directive 2011/36/EU; Directive 2009/52/EC; Directive 2012/29/EU; Law No. 288/2003; Law No. 199/2016; Legislative Decree No. 286/1998). It is therefore necessary that all actors, institutional and non-institutional, involved in different capacities, contribute, in a multi-actor perspective and with an integrated approach, to the protection of victims of labour exploitation by favouring identification, as a first step towards taking charge and activating measures of personal protection and assistance.

In specific circumstances, as part of the identification process, National Authorities can make use of the specialised contribution of International Organisations that, due to their mandate, support Member States' institutions in uncovering the phenomenon and protecting the victims of labour exploitation.

#### **a) Preliminary identification**

Preliminary identification is aimed at an initial analysis of the circumstances that may reasonably suggest that the person concerned is a victim of labour exploitation or is at risk of becoming one.

Preliminary identification is carried out when a person is first approached and when, following an initial assessment, the first indicators of typical elements of labour exploitation in agriculture emerge.

It is functional to the referral procedure, since, once all the elements to believe that the person is a potential victim of labour exploitation have emerged, information on the services available must be provided and a referral to the person in charge of the protection of victims must be made.

Preliminary identification can be carried out by anyone who has reasonable doubt that they are confronted with a potential victim of labour exploitation, including:

- staff of all supervisory and inspection bodies (labour inspectors, INPS inspectors, ASL inspectors and other supervisory bodies)
- Officials or magistrates belonging to the investigating magistracy (public prosecutors, in order to detect also the related crimes from which the condition of victims derives for the subjects involved in this identification phase)
- Law enforcement, including municipal and border police
- Immigration offices of the Police Headquarters and Prefectures, including those present in the Return Centres (CPR)
- operators of local social and health services
- staff of non-governmental organisations
- trade unions
- staff of the structures of the Reception and Integration System (SAI), referred to in article 1-sexies of the Decree-Law no. 416 of 30 December 1989, converted, with amendments, by Law no. 39 of 28 February 1990

- staff in procedures for the recognition of international protection
- staff in anti-trafficking and human trafficking operations
- anti-violence centres
- Equality Advisor
- Network of Guarantors for Childhood and Adolescence
- voluntary guardians of unaccompanied foreign minors (ufm)
- in general, all those who have contact with potential victims (direct reports or those of other workers).

There is also a need to provide multi-channel access services for potential victims of labour exploitation through help desk systems (e.g., dedicated telephone lines, multilingual websites, mobile applications and the use of social media).

If the preliminary identification is carried out by INL inspection staff, such analysis may be carried out: on the occasion of the acceptance of reports (the so-called 'requests for intervention'), during an inspection visit, as well as during investigations carried out on the initiative of the Territorial Labour Inspectorates or agreed with the competent Public Prosecutor's Office.

Inspectors investigate administrative and criminal offences, protect the persons concerned from a labour, social security, insurance and health and safety point of view (limited to the activities listed in article 13 paragraph 2 of Legislative Decree no. 81/2008) and ensure that the workers concerned are properly informed of their rights.

In particular, with reference to third-country nationals, who are potential victims, the preliminary identification and subsequent reporting to the bodies responsible for taking charge and providing initial assistance are carried out according to the criteria indicated in the INL Guidelines concerning operational procedures for the protection of migrants who are victims of labour exploitation.

Consequently, the role of the labour inspector, at the moment of the preliminary identification, is limited to the reporting of the situation to the competent bodies, in order to complete the further steps listed in points 1 to 5, which are the responsibility of the other subjects involved.

If, during the investigation of an application for international protection, indicators of trafficking for the purpose of labour exploitation, including serious exploitation, or violation of labour rights regulations emerge, the Territorial Commissions apply the referral procedures contained in the "Guidelines for Territorial Commissions for the Recognition of International Protection" adopted by the National Commission for the Right to Asylum and the United Nations High Commissioner for Refugees - UNHCR.

Following the preliminary identification, in line with the regional reference model, the potential victim is referred to the body in charge of first aid and care services for potential victims of labour exploitation, which carries out an assessment of the person's needs and provides protection and support services, as well as to the authority in charge of formal identification.

In particular, in the case of a foreign person, who is a potential victim of trafficking and/or serious labour exploitation, and where there are concrete dangers to his or her safety as a result of attempts to escape from the influence of an association dedicated to one of the crimes provided for in article 18, paragraph 1-*bis* of the TUI, she/he should be referred to the

territorial social services of a local authority or a private entity participating in the Single Programme for the emergence, assistance and social integration of victims of trafficking and exploitation, as provided for by article 18, paragraph 3-*bis* of Legislative Decree no. 286 of 25 July 1998.

In case of a woman who is a potential victim of labour exploitation and violence, the person can be put in protection through one of the regionally accredited anti-violence centres.

In the case of a lone minor who is a potential victim of labour exploitation, the first assistance is provided by the social services of the local authority where the minor is traced. In the case of an unaccompanied foreign minor, he/she may be referred by the local authorities to the dedicated facilities and services of the Reception and Integration System (SAI) pursuant to Art.19 and 19-*bis* of Legislative Decree No. 142 of 18 August 2015, if available.

If a potential victim is reticent about his or her experience of labour exploitation, after the first contact, appropriate forms of support, guidance to territorial services and follow-up should be provided to enable these persons to be taken into care and protected at any time. An initial refusal of assistance cannot lead to irrevocable exclusion from access to services.

#### **b) Formal identification**

Formal identification is a usually subsequent step in the identification process necessary to establish whether the person is or has been a victim of labour exploitation and therefore qualifies for measures aimed at protection, safety, specific and legal assistance, according to the applicable legislation. Formal identification gives the person the status of a victim, as determined by the authorities and/or legally authorised personnel, and allows access to specific protection mechanisms.

According to current legislation, formal identification is carried out by:

- officials or magistrates belonging to the investigating magistracy, within the framework of investigation activities or following a complaint by the victim of labour exploitation;
- staff of local authorities or private entities authorised to implement Programmes for the emergence, assistance and social integration aimed at third-country nationals who are victims of trafficking and serious exploitation, pursuant to article 18, paragraph 3-*bis* of Legislative Decree no. 286 of 25 July 1998, without any obligation to report to the investigating magistracy.

The INL inspectors, being qualified and competent to acquire the informative and probative elements of the existence of the illicit case under examination, intervene also in the phase of the formal identification of the victims, in order to provide useful elements for the most effective management of the measures of protection, assistance and social integration of the victims (or for their activation if not previously occurred), as well as to carry out the prescribed information to the competent Public Prosecutor's Office and to cooperate in the phase of the investigations which should be started.

In the case of third-country nationals, who are victims of trafficking for the purpose of labour exploitation (article 601 of the penal code) or of serious exploitation in the labour context, according to the unlawful cases provided for by article 18 of the Legislative Decree no. 286 of 25 July 1998, the formal identification is carried out by the prosecuting authority within the

framework of criminal proceedings initiated following a complaint by the victim (the so-called judicial path– article 18, paragraph 1 of the Legislative Decree no. 286/1998); or, if the person does not denounce and adheres to a programme of assistance and social integration, the formal identification is carried out by the body in charge of assisting the victims of serious exploitation, which may be a local authority or an association or private body provided that it is registered in the second section of the register referred to in Art. 52 of Presidential Decree 394/1999 (so-called social path – Art. 18, paras. 1 and 3-bis of Legislative Decree 286/1998).

Formal identification takes place by means of an interview, after informing the person of the guarantees of these procedures.

Where the potential victim of labour exploitation is a child, interviews should preferably be conducted using appropriate techniques by specially trained personnel, in accordance with the legislation in force.

In the case of third-country nationals who are victims of trafficking for the purpose of labour or serious exploitation, including labour exploitation, the interview is carried out according to the procedures of the National Referral Mechanism (NRM), provided for by the National Action Plan against Trafficking and Serious Exploitation 2016-2018 and future updates.

The interview and the formal identification interview should be carried out on the basis of the indicators foreseen by articles 601 and 603-*bis* of the Penal Code, as well as 22, paragraph 12-*bis*, lett. c) TUI. A list of indicators can be used to develop the questions and assess whether the interviewee is a victim of labour exploitation or has been in the process of becoming one. In any case, the interviewer should take specific precautions so as to interact with the potential victim in a respectful, sensitive, professional and non-discriminatory manner (see article 1, Directive 2012/29/EU). In particular, it is good practice to minimise the number of unnecessary contacts, taking care not to cause unnecessary distress. Even the mere repetition of one's story in several interviews and with several professionals can be a source of stress for the victim as well as causing secondary victimisation.

Once the identification process has been completed, the person must be informed of the outcome of the interview and provided with detailed information on possible protection and assistance measures. The State, the Regions, the Autonomous Provinces and the local authorities regulate interventions to support protection and assistance for victims of labour exploitation.

## REFERRALS AND ACCESS TO SERVICES

This phase consists of taking charge of the victim of labour exploitation and providing protection and assistance services, including the following benefits:

- a. **preliminary needs analysis and referral:** orientation of a potential victim for the purposes of regional arrangements and guidelines;
- b. **prior risk assessment:** analysis of possible risks and ensuring immediate safety for the presumed victim of labour exploitation; an approach to risk assessment should take into account gender and other individual characteristics of victims of exploitation (e.g., migration status, age, educational levels, etc.);
- c. **access to services and information:** identification of services to be provided to the victim, provision of essential information on the person's rights and investigation of their urgent needs and emergency situations. Services may include: (i) food and accommodation; (ii) primary and specialised healthcare; (iii) free legal aid; (iv) translation and interpretation

- services; (v) financial support for initial individual needs; (vi) assistance in obtaining a temporary residence permit (for victims of foreign nationality); and (vii) repatriation support for foreign victims who decide to return to their country of origin);
- d. **cultural mediation:** ensuring communication, dialogue and immediate safety in a way that the potential victim of labour exploitation can understand;
  - e. **period of recovery and reflection:** this is the period of time necessary for the potential victim to make an informed decision about the choices to be made for his/her future, to emerge from the state of subjugation and blatant restriction of his/her personal freedoms, or from the violation of his/her rights in the labour dimension. Under the current legislation, the recovery and reflection period are provided exclusively as a dedicated measure in the Single Emergence Programme of the anti-trafficking system. According to the National Referral Mechanism for Trafficked Persons in Italy (annexed to the National Action Plan against Trafficking and Serious Exploitation 2016 - 2018), the elements of a recovery and reflection period are: safe accommodation; first assistance and protection; information on available options for long-term assistance, legal opportunities, assisted voluntary return, etc.; adequate time to recover and assess the proposed alternatives, including the possibility to cooperate with the competent authorities; temporary authorisation to stay in the national territory and non-execution of any deportation order (if any). Private entities participating in the Single Programme for the emergence, assistance and social integration of victims of trafficking and exploitation, as referred to in article 18, paragraph 3-bis of the Legislative Decree no. 286 of 25 July 1998, are entitled to activate this measure, if they employ within the projects victim of trafficking for labour exploitation or victims of serious labour exploitation who are in a situation of imminent danger. Local authorities are entitled to promote specific initiatives or programmes, also by setting up *ad hoc* structures, aimed at facilitating the access of potential victims of labour exploitation to a period of recovery and reflection.
  - f. **Specific measures in favour of third-country nationals who are victims of labour exploitation without a residence permit:** In the case of third-country nationals, without a residence permit and victims of trafficking for the purpose of labour exploitation or serious labour exploitation, the issuance of a residence permit can be envisaged following a complaint (so-called judicial path), or following inclusion in the Single Programme for the emergence, assistance and social integration of victims of trafficking and exploitation, as referred to in article 18, paragraph 3-bis of the Legislative Decree no. 286 of 25 July 1998 (so-called social path). In this regard, see also the paragraph dedicated to formal identification.  
In the case of third-country nationals, without a residence permit, who are victims of labour exploitation, as referred to in article 22, paragraph 12-bis of the Legislative Decree 286/1998, the Questore, upon proposal or with the favourable opinion of the Public Prosecutor, issues a residence permit to the foreigner who has filed a complaint and cooperates in the criminal proceedings against the employer (article 22, paragraph 12-quater of the Legislative Decree 286/1998). Where the requirements are met, putting the foreigner into protection will be preferred.  
In all cases, the rapidity of the procedures for formal identification and issuance of the residence permit allows the rapid activation of the mechanisms for protecting and placing the victims in protection as well as for their socio-occupational reintegration.

## ACCESS TO REMEDIES

Under current legislation, victims of labour exploitation can obtain compensation through: (i) criminal proceedings, following conviction of the perpetrators; (ii) civil proceedings for physical and moral damages; or (iii) labour court proceedings for payment of outstanding remuneration. In cases where



it is not possible to obtain compensation from the perpetrator or if the perpetrator is unknown, victims of severe labour exploitation can claim compensation under Legislative Decree No. 24 of 2014, which transposed the European Union Anti-Trafficking Directive. Moreover, victims of exploitation can access the resources of the fund dedicated to victims of violent intentional crimes (Law No. 122 of 7 July 2016 as amended).

## PROTECTION AND ASSISTANCE OF VICTIMS OF LABOUR EXPLOITATION

The victim of labour exploitation, in particular if in a situation of poverty, should be informed and directed towards local and regional social services in order to obtain support in relation to housing, economic, psychological, health and legal conditions (in particular, to support the victim in accessing justice), also adhering to long-term assistance and socio-occupational reintegration programmes. The development of personalised individual assistance programmes (PAI) defined according to the needs of the recipients is recommended.

The local authorities belonging to the Reception and Integration System (SAI), as referred to in article 1-sexies of the Decree-Law no. 416 of 30 December 1989, converted, with amendments, by the Law no. 39 of 28 February 1990, receive within the same services, within the limits of the available places and, if they do not have access to specifically dedicated protection systems, third-country nationals holding a residence permit for:

- social protection, referred to in article 18 of Legislative Decree no. 286 of 1998 (lett. b);
- particular labour exploitation, as referred to in article 22, paragraph 12-quater of the legislative decree no. 286

as well as applicants and holders of international protection, unaccompanied foreign minors, migrants with special protection, residence permits for medical treatment, for disasters, for acts of special civil value, or as referred to in article 18-*bis* of Legislative Decree no. 286 of 1998.

Access to the SAI network is by notification in accordance with the procedures established by the Central Service, which coordinates the network.

Reports can be sent from:

- local entities belonging to the SAI network;
- territorial project management entities of the SAI;
- local entities not belonging to the SAI network;
- associations and protection bodies;
- Prefectures - Territorial Government Offices;
- reception centres activated on an extraordinary basis at the request of the Ministry of Interior to the Prefectures;
- Police Headquarters;
- hospitals and local health facilities;
- reception communities for unaccompanied foreign minors;
- all the entities which, due to their office or in a different capacity involved, can report the need for integrated reception of victims of trafficking and/or labour exploitation pursuant to articles 18 and 22, paragraph 12-*bis* of the Unified Text on Immigration).

Victims of trafficking for the purpose of labour exploitation as well as victims of serious labour exploitation who are in a situation of imminent danger for their own safety can join the Single Programme of Emergence, Assistance and Social Integration, referred to in article 18, paragraph 3-*bis* of Legislative Decree no. 286 of 25 July 1998.

The territorial social services, within their competences and autonomy, activate the services for the protection of women victims of labour exploitation and violence. If they are present on the territory, they can access the protection and assistance measures provided for by the National Plan and by the Regional Plans aimed at combating and preventing violence against women.

Minors, victims of labour exploitation, including unaccompanied foreigners, are subject to national, regional and local regulations on supervision, protection and guardianship, as well as assistance, support and help in parenting families. In particular, pursuant to Legislative Decree No. 142/2015, unaccompanied foreign minors (ufm) can be welcomed and receive the protection and assistance services offered by the first-level and second-level governmental structures of the Reception and Integration System (SAI). Even in the absence of adherence to the SAI system, Local Authorities remain obliged to provide reception and assistance.

Within the framework of individualised personalised assistance programmes (PAI), public and private services belonging to the active labour policy network, starting with Job Centres, are competent for specialised interventions on labour insertion. The improvement of the effectiveness, transparency and range of services for matching labour demand and supply to foster the social and labour inclusion of victims of labour exploitation in the medium and long term is envisaged in the priority actions of the three-year plan (action 4, action 9 and action 10).

The personalization of interventions on the target of victims of labour exploitation, within the active labour policy measures, includes the strengthening of professional skills and job accompaniment, through two fundamental levers: the basic knowledge of the subject by the intermediaries involved, particularly in the territories most exposed to exploitation phenomena; the possession of adequate specialised skills, in particular networking and co-planning of interventions. The implementation of the Essential Levels of Performance (LEP) for the integrated care of persons in a vulnerable condition, and the definition of the relevant service standards, in agreement with the Regions and Autonomous Provinces, is functional to the implementation of integrated personalised programmes, also in support of victims of labour exploitation.

For victims of labour exploitation, in a particularly vulnerable and fragile condition, also in terms of distance from the labour market, within the framework of the regional transpositions of the "Guidelines on training and guidance traineeships of 25 May 2017", derogations on the duration and numerical limits to the activation of extracurricular traineeships are provided for. The provision of recruitment incentives and other initiatives aimed at socio-occupational reintegration linked to national, regional or local projects are additional tools to reduce the conditions of disadvantage of victims of labour exploitation.

## INFORMATION AND AWARENESS-RAISING

At each stage of identification, protection and assistance, the victim or potential victim of labour exploitation should be adequately informed about their rights, available options, procedures and possible outcomes. The information should be provided in a language they understand, if possible, in their language of origin, including through the use of translated materials, interpretation and intercultural mediation. If the victim or potential victim is an unaccompanied minor, the information is provided in a manner appropriate to his or her condition and also involving the guardian.

The institutional and social communication campaigns envisaged at national and local level by the three-year plan to combat labour exploitation in agriculture and *caporalato* 2020 - 2022 (priority action 7) are also dedicated to the referral system for the protection and first assistance of victims of labour exploitation. In particular, the campaigns and materials produced at local level describe the

structure and functioning of the system in the territories of reference and provide useful information for accessing it.

All actors involved in the identification, assistance and protection of victims of labour exploitation shall endeavour to ensure the dissemination and knowledge of these guidelines among their operators. They also promote adequate knowledge of the referral system among the target public, by promoting information and awareness-raising activities both independently and in a coordinated manner, using the methods and tools they deem most appropriate.

Information and awareness-raising activities aimed at foreign communities also involve organisations and associations working in favour of immigrants, registered in the register referred to in article 42 of Legislative Decree No. 286/1998, migrants' associations and community leaders. Former victims of exploitation who have had access to the protection and assistance system and to subsequent socio-occupational reintegration programmes may be involved in the definition of activities and, also as testimonials, in the activities themselves.

### **TRAINING AND CAPACITY BUILDING OF THE SERVICES AND ACTORS INVOLVED**

The protection of victims of labour exploitation is a difficult and complex task, which requires multidisciplinary preparation, specific expertise and multicultural sensitivity as well as the ability to work in a network. The training and qualification of the operators involved in each phase of identification, protection and assistance is functional, together with the implementation of the interventions, to increase the number of workers, victims of labour exploitation, taken care of by the system.

The development of a continuous training pathway, common to all operators, with specific modules concerning the sequence and integration of these services, as well as the coordination and partnerships between the different actors responsible for the protection and first assistance of victims of labour exploitation is a specific measure of the three-year plan (strategic axis 6.2 and 6.3, priority actions no. 8 and no. 10).