





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT FOR CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**WOMEN'S RIGHTS & GENDER EQUALITY**

**The vulnerability to exploitation of  
women migrant workers in agriculture in  
the EU:  
the need for a Human Rights and Gender  
based approach**

**STUDY**

**Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Women's Rights and Gender Equality, explores the working conditions of migrant women in agriculture in the EU, focusing on some case studies in Italy and Spain. In particular, it aims to examine the factors that render women vulnerable to exploitation, paying attention to gendered dynamics and power relations. The study contends that to prevent and combat exploitation in agriculture it is necessary to implement concerted actions aimed at tackling, from a human rights and gender perspective, the structural factors of a socio-economic system which fosters and relies on workers' vulnerability.

## **ABOUT THE PUBLICATION**

This research paper was requested by the European Parliament's Committee on Women's Rights and Gender Equality and commissioned, overseen and published by the Policy Department for Citizen's Rights and Constitutional Affairs.

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Original: EN

Manuscript completed in May 2018  
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## LIST OF ABBREVIATIONS

<b>AGTER</b>	Association pour contribuer à l'Amélioration de la Gouvernance de la Terre, de l'Eau et des Ressources naturelles
<b>ASGI</b>	Associazione Studi Giuridici Immigrazione (Association on Legal Studies on Immigration)
<b>CAP</b>	Common Agricultural Policy
<b>CARA</b>	Centri Accoglienza Richiedenti Asilo (Hosting centers Asylum Seekers)
<b>CEAS</b>	Common European Asylum System
<b>CEDAW</b>	Convention on the Elimination of All forms of Discrimination against Women
<b>GGIL</b>	Confederazione Generale Italiana del Lavoro (Italian General Work Confederation)
<b>CoE</b>	Council of Europe
<b>EBAT</b>	Ente Bilaterale Agricolo Territoriale
<b>EGTC</b>	European Grouping of Territorial Cooperation
<b>EC</b>	European Commission
<b>ECHR</b>	European Convention of Human Rights
<b>ECHtR</b>	European Court of Human Rights
<b>ECRE</b>	European Council on Refugees and Exiles
<b>EU</b>	European Union
<b>FLAI</b>	Federazione Lavoratori AgroIndustria (Federation of Agri-Industrial Labourers)
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>FLEX</b>	Focus on Labour Exploitation

<b>FRA</b>	European Union Agency for Fundamental Rights
<b>GLAA</b>	Gangmasters and Labour Abuse Authority
<b>GRETA</b>	Group of Experts on Action against Trafficking in Human Beings
<b>ICAT</b>	Inter-Agency Coordination Group Against Trafficking in Persons
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>MEDU</b>	Medici per i Diritti Umani
<b>NGO</b>	Non-Governmental Organisation
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>THB</b>	Trafficking in Human Beings
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UILA</b>	Unione Italiana Lavoratori Agroalimetari (Italina Union Agri-food Laboures)
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nation High Commissioner for Refugees
<b>UNODC</b>	United Nations Office on Drugs and Crime

## EXECUTIVE SUMMARY

### Background

Over recent years, the main protagonists of current migration movements towards and within the EU have been **asylum seekers, refugees, and above all Eastern EU nationals**, especially from Romania. This has entailed the creation of **new forms of vulnerability** which tend to be used and exploited, each in its particular way, by contemporary labour market sectors in EU countries. Indeed, far from being limited solely to inherent personal characteristics, the condition of vulnerability, in which most migrants find themselves, relies on the **interactions between diverse structural factors** (legal, cultural, social and economic) that produce situations in which (making reference to the definition of “position of vulnerability” contained in Directive 2011/36/EU) a person does not have **any alternative but to submit to exploitation** and other forms of abuse. In the case of women, this situation is further compounded by particular **gendered dynamics and power relations**.

These forms of vulnerability may be easily exploited in **the agricultural sector**, as they meet the requirements of **a model of production** that tends, at different levels, to cut overall production costs and increase profit margins. This results in a general compression of the rights of the workers, which in the worst cases can include **severe exploitation and trafficking**. While most of the migrant workers experiencing situations of exploitation and abuse in the agricultural sector are men, **women are also involved**. However, there remains **a lack of solid and consistent data about migrant women workers in rural areas and farms in the EU**.

### Aim

This study aims to explore, through a qualitative approach, the conditions characterising migrant women’s employment in EU rural areas and on farms, focusing on the analysis of some case studies in Italy and Spain. In doing so, the study aims to illustrate the structural and situational factors that make women vulnerable to exploitation, paying particular attention to the gendered dynamics and power relations. By considering **exploitation as a continuum** ranging from relatively less severe forms of exploitation up to slavery or trafficking, this report takes into account a wide spectrum of forms of exploitation, within which cases of severe abuse and trafficking can take place.

**Italy and Spain** have been selected as case studies as they are the two EU countries with the greatest number of migrant workers in the agricultural sector, with a significant presence of migrant women. Moreover, it has been claimed that **race- and gender-based labour market segmentation** is especially prevalent in Southern European countries, and that Italy and Spain present specific similarities and differences with respect to the forms of exploitation experienced by migrant women agricultural production.

With regard to Italy, the study specifically focuses on the working conditions of Romanian women workers employed in **greenhouses in the area of Ragusa (Sicily)**, where labour exploitation has been claimed to be accompanied by sexual blackmail and abuse by their employers. It also pays attention to the suspected cases of exploitation of migrant women who work as prostitutes in the informal camps where agricultural migrant workers live in other rural areas of Italy, such as in **Rosarno (Calabria)** and **Campobello (Sicily)**.

As for Spain, the report examines two case studies, both in the region of Andalusia. The first regards the working conditions of migrant women in the agricultural sector in **Huelva**, where migrant women, from Romania and Morocco, have been employed in the seasonal

strawberry harvest, in particular over the period 2008–2013, through a specific recruitment mechanism which seems to have increased their vulnerability. The second case study focuses on the working conditions of Romanian and Moroccan women employed in the greenhouses of **Almeria**. Due to the continuous-cycle production in greenhouses, this case presents significant similarities with the case of Ragusa.

The study relies on examination of existing data, literature and publications and also on empirical research conducted in Italy.

## Findings

- Consistent data on the conditions of migrant women workers in rural areas and farms in EU countries are lacking. There is **a need for the development of gendered and more analytic instruments** aimed at examining the conditions of female workers in specific sectors, such as agriculture, paying special attention to both victims and potential victims of severe abuses.
- The case studies in both in Italy and Spain show that having EU citizenship does not prevent people from being involved in forms of exploitation and trafficking. Romanian female workers can easily become victims of severe abuse. Moreover, as is concluded by the case-study on the condition of Romanian migrant women employed in greenhouses in Ragusa, labour exploitation can often be accompanied by sexual blackmail and abuse towards women workers by their employers. Women with family responsibilities seem to be the most exposed to abuse, and there are cases in which children are used by employers as a means of blackmailing mothers.
- As the case study in Spain highlights, systems of admission of migrant workers based on a **seasonal, temporary and circular migration model may produce forms of dependency on employers**, which presents the risk of leading migrant workers to “accept” exploitative and abusive practice as they are afraid of losing their employment and, accordingly, their residence permit. Moreover, by fostering labour market segmentation, this system tends to confine the migrant labour force to specific sectors and, at the same time, to facilitate their **continuous replacement and substitution** by taking advantage of specific situations of vulnerability. Accordingly, in this system, as the case study on Spain concludes, there is a preference for hiring **migrant women with family responsibilities** in their countries of origin as a guarantee that they will return home when their contract expires.
- Migrant workers recruited through **labour providers and temporary work agencies**, as the case of Spain seems to indicate, are vulnerable to exploitation and abuse.
- The suspected cases of sexual exploitation of migrant women in the rural zones of both Italy and Spain can be linked to the problem of **ghettoisation and inadequate housing conditions** for migrant workers in rural areas.
- While **Directive 2011/36/EU on trafficking in human beings and protecting its victims**, has marked an important change in EU policies on trafficking in human beings (THB), in favour of human rights and a more gender sensitive perspective, this approach seems not to have been fully embraced by EU policies. For instance, in both the **European Agenda on migration** and the **European Agenda on Security**, the notion of vulnerability tends to be associated with the inherent characteristics of specific individuals or groups, such as children, and **inadequate attention is paid to the structural factors creating situations of**

**vulnerability.** Furthermore, trafficking tends to be considered as an illegal border crossing and transnational organised crime issue, with no attention to human rights concerns. Even the **EU Strategy on Trafficking** seems to neglect the structural legal, social and economic factors producing conditions of vulnerability. Moreover, while the Strategy adopts an integrated approach on trafficking, it does not contain significant provisions concerning the protection of the rights of victims, such as the **principles of unconditional assistance and of non-prosecution of victims of trafficking.**

## Concluding Remarks

The only way to prevent and combat exploitation in the agricultural sector is to implement **a variety of concerted actions aimed, from a gender and human rights perspective,** at tackling the structural factors of a socio-economic system which relies on the poverty and precariousness of workers and their vulnerability to being blackmailed and abused. In particular, the most pressing issues to address are: the lack of data on the exploitation of migrant women in sectors such as agriculture; the lack of safe and legal migrant channels to the EU not directly linked to quotas regarding specific labour market sectors; the ghettoisation, isolation and inadequate housing conditions of migrant workers in rural areas; the slowness of asylum procedures and inadequacies of accommodation centres hosting asylum seekers; the lack of real access to rights and justice for all migrants; the scarce implementation of effective transparency mechanisms in the supply chains; the lack of effective labour inspections and enforcement mechanisms.

Visit the European Parliament's homepage on [migration in Europe](#).

## INTRODUCTION

### Migration and agriculture as two interrelated issues within the EU:

### Need for a gendered approach and the lack of quantitative data

#### KEY FINDINGS

- The specific aspects which characterise respectively contemporary migration movements into and within the European Union, and the agriculture sector, seem to interact with each other. This creates the **conditions for a massive employment of migrants in EU rural areas and on farms in sub-standard and exploitative working situations**. While most of the migrants involved are men, women are also involved.
- While until a few years ago severely exploited migrant workers in EU countries were mainly irregular migrant workers, today many of those experiencing exploitation and abuse in sectors such as agriculture are **migrants with a residence permit, refugees, asylum seekers and poor intra-EU-migrants, in particular Romanians**.
- The different situations of migrants with respect to their nationality, gender and legal status seem to be translated in the variety of possibilities for their exploitation in the agricultural sector.
- **The interplay of different structural and situational factors** makes migrant workers particularly vulnerable to exploitation. In the case of women, these factors are compounded by gendered dynamics and power relations.
- **There is a lack of consistent data on migrant women workers in rural areas and farms in the EU**. The development of gendered and more analytic instruments aimed at addressing the specific conditions facing women workers in specific sectors such as agriculture is therefore needed.

In the EU, and in particular in the Western EU countries, agricultural production and migration are two structurally connected issues. Indeed, the specific features of contemporary migration movements into and within the European Union (EU) and characteristics of the current agricultural sector seem to interact with each other, creating fertile ground for a massive employment of migrants in rural areas and on farms in sub-standard and exploitative working conditions. While this process primarily concerns migrant men, this study aims to show that it also involves significant numbers of migrant women.

**The composition of migratory movements has changed profoundly** in recent years, due to some specific economic and geopolitical factors. Since 2008 the economic and financial crisis has affected, and continues to affect, many of the so-called EU countries of arrival by making these countries less attractive to migrants, and this has led to a reduction

in the number of third-country nationals entering the EU<sup>1</sup>. This process has also been caused by the almost complete closure of all legal entry channels for poor third-country nationals. On the other hand, the spread of asymmetric conflicts and new forms of war has led to an increase in so-called “forced-migrants” that only in the last two years have been largely prevented from reaching Europe<sup>2</sup>, by agreements – which highly risk resulting in human rights violations – with transit countries such as Turkey and Libya. As a consequence of these factors, the main protagonists of current migratory movement towards and within the EU, through dangerous routes such as the Mediterranean Sea, are **vulnerable refugees and asylum seekers**. Moreover, these unsafe entry paths increasingly involve **women and children**, raising their risk of becoming victims of trafficking in human beings (THB) and abused during and after the journey.

The other category of migrants who are mainly represented within the EU is composed by **EU nationals from Eastern Member States** (primarily Romania), who can easily cross the borders, and who are “forced” to leave their country because of the gap between the increasing cost of living and average salaries.

These changes in the composition of migrations, fostering new forms and situations of vulnerability for migrants, have also highly affected the dynamics of labour exploitation in European countries.

According to the International Labour Organization (ILO), all EU and non-EU migrant workers “tend to be concentrated in low-paid, low-skilled and often undervalued jobs”, independently from “levels of education and training, as the evidence points to high levels of overqualification among migrant workers”<sup>3</sup>. Even though different sources tend to underline the particular vulnerability to labour exploitation of migrants in an irregular situation<sup>4</sup>, empirical evidence and data from separate EU Member States also increasingly demonstrate how migrants possessing a regular permit to stay, and EU migrants, are not exempted at all from being exposed to sub-standard and exploitative working conditions<sup>5</sup>. It is significant that, among the reported victims in the period 2013–2014, 70% of these were EU citizens<sup>6</sup>. Internal EU trafficking is widely represented, and EU citizenship does not appear to protect migrants from being involved in forms of severe exploitation.

In the case of Eastern EU migrants, and especially Romanians<sup>7</sup>, the growth in the number of workers arriving from this area has led to an increase in the presence of women workers, due to a complex overlapping of specific gender and familial dynamics and labour market forces and processes. Indeed, Since the 1990s, following the collapse of the socialist system, many Romanian women migrated to increase the wealth of their family, thus becoming the principal breadwinners and in this way challenging traditional gender roles<sup>8</sup>.

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<sup>1</sup> OECD, 2014, *Is Migration Really Increasing?* Migration Policy Debates. Available at <http://www.oecd.org/berlin/Is-migration-really-increasing.pdf>.

<sup>2</sup> As highlighted in the Eurostat Asylum Quarterly Report of March 2018, “The number of first time asylum applicants in the EU-28 decreased by -26 % in the fourth quarter of 2017 compared with the same quarter of 2016 and by -9 % compared with the third quarter of 2017. Overall, the number of persons seeking asylum from non-EU countries in the EU-28 during the fourth quarter of 2017 was 154 000, a number around the levels recorded in 2014, before the peaks of 2015 and 2016”, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_quarterly\\_report](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report)

<sup>3</sup> ILO, 2014, *Fair Migration. Setting an Ilo Agenda*, ILO, Geneva, p. 19.

<sup>4</sup> Europol, 2013, *SOCTA 2013: EU Serious and Organised Crime Threat Assessment*. Available at <https://www.europol.europa.eu/activities-services/main-reports/eu-serious-and-organised-crime-threat-assessment-socta-2013>.

<sup>5</sup> See, for instance, FRA, 2015a, *Severe Labour Exploitation: Workers Moving within or into the European Union. State’s Obligations and Victims’ Rights*, Publication Office of the European Union, Luxembourg.

<sup>6</sup> Europol, 2016, *Situation Report. Trafficking in Human Being in the EU*, February, Europol Public Information, Document Ref. No 765175.

<sup>7</sup> Romanian, Polish, Italian, Portuguese and German citizens were the five biggest groups of EU-citizens living in other EU Member States in 2017. Cfr. Eurostat, *Migration and Migrant Population Statistics*, March 2018, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration\\_and\\_migrant\\_population\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics).

<sup>8</sup> Bezzi, C. 2014, ‘Romanian women having to look for work abroad are often accused in their country of abandoning their children. The picture, however, is more complex’, *Osservatorio Balcani e Caucaso. Transeuropa*,

When these women move to Southern European countries, they find themselves in a context marked by race- and gender-based labour market segmentation which highly limits their job opportunities and tends to undervalue their skills and competences<sup>9</sup>. This can easily lead them towards involvement in dynamics of exploitation.

In the case of refugees, a specific form of human rights violation takes shape, which comprises the progressive weakening of asylum rights and interaction with new possibilities of labour exploitation. The situation of legal and social insecurity and vulnerability in which most refugees and asylum seekers find themselves produces a condition of "hyper precarity" in the work context, leading to forced labour experiences<sup>10</sup>.

In this scenario, it is not surprising that in many countries of destination **refugees and western EU migrants are currently the target most exposed to exploitation and trafficking** in diverse sectors of the labour market, starting with agriculture<sup>11</sup>.

All studies agree on considering agriculture as being one of the economic sectors which are most affected by serious labour exploitation and trafficking in human beings. In the Report on Severe Labour exploitation in the EU by the European Union Agency for Fundamental Rights (FRA)<sup>12</sup>, agriculture is the top economic sector in which workers are at risk of labour exploitation for half of the Member States considered (specifically: Spain, Italy, Greece, Belgium, Cyprus, Czech Republic, Netherlands, Poland, Portugal, United Kingdom).

In general, **the agricultural sector** is characterised by "difficult working conditions, low prestige and low pay", and it requires mainly seasonal workers and a "supply-and-demand mechanism that is ultra-flexible"<sup>13</sup>. This is related to **"a mode of production"** which involves different actors throughout the entire supply-chain – such as multinationals, corporations, large-scale distribution companies, temporary agencies, transport firms, and wholesalers – that tend, at different levels, to **curtail the costs of production to increase profit margins, leading to a compression of the rights of workers up to cases of severe exploitation and trafficking**<sup>14</sup>.

In this context, as reported by some reports and studies, "the Common Agricultural Policy's (CAP) main priority was directed towards competitiveness, growth, productivity and profit", by supporting an agro-industrial model<sup>15</sup>, encouraging agricultural specialisation, and eroding subsidies linked to production which have been replaced by subsidies depending on the quantity of hectares cultivated<sup>16</sup>. Moreover, compliance with social rights standards and collective labour agreements regarding agricultural workers has not really been incorporated into the CAP support mechanisms<sup>17</sup>.

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18 February. Available at: <https://www.balcanicaucaso.org/eng/Areas/Romania/Romania-the-stigma-on-migrant-mothers-147542>.

<sup>9</sup> Anthias, F. & Lazardis, G. (Eds.) 2000, *Gender and Migration in Southern Europe, Women on the Move*, Berg, Oxford-New York.

<sup>10</sup> Lewis, H. & Waite, L. 2015, 'Asylum, Immigration Restrictions and Exploitation: Hyper-precarity as a lens for understanding and tackling forced labour', *Anti-Trafficking Review*, Vol. 5, pp. 49–67.

<sup>11</sup> See, for instance, Amnesty International, 2012, *Exploited Labour. Migrant Workers in Italy's Agricultural Sector*, Amnesty International Ltd, London.

<sup>12</sup> FRA 2015a, p. 48.

<sup>13</sup> International Organisation for Migration (IOM) 2017, *La tratta di esseri umani attraverso la rotta del Mediterraneo centrale : dati, storia e informazioni raccolte dall'organizzazione internazionale per le migrazioni*, p. 5. Available at

[http://www.italy.iom.int/sites/default/files/newsdocuments/RAPPORTO\\_OIM\\_Vittime\\_di\\_tratta\\_0.pdf](http://www.italy.iom.int/sites/default/files/newsdocuments/RAPPORTO_OIM_Vittime_di_tratta_0.pdf)

<sup>14</sup> See, for instance, Mangano, A. 2014, *Ghetto Economy. Dai festini agricoli alle baraccopoli di Stato, l'orrore dietro l'etichetta del supermercato*, terrelibere.org, praça da alegria; Perrotta, D. 2014. 'Ben oltre lo sfruttamento. Lavorare da migranti in agricoltura', *Il Mulino*, Vol. 1, pp. 29–37.

<sup>15</sup> Mori, S. 2016, 'Migration and Agricultural Labour Force in Italy and Europe. The agricultural migrant labourer caught between exploitation and irregularity: stories from Southern Europe', *Crocevia*, p. 3. Available at <http://www.croceviaterra.it/lotte-contadine/migration-and-agricultural-labour-force-in-italy-and-europe/>.

<sup>16</sup> Corrado, A. 2015, 'Lavoro straniero e riorganizzazione dell'agricoltura familiare in Italia', *Agriregioneuropa Year*, Vol. 11, No. 43, December.

<sup>17</sup> Zawojjska, A. 2016, 'Exploitation of migrant labour force in the EU agriculture', *Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego. Ekonomika i Organizacja Gospodarki Żywnościowej*, Vol. 116, p. 37. See also

Until recent years, **family-run small-scale enterprises** comprised the wide majority in this sector, representing a total of more than 12 million farms in the EU<sup>18</sup>. This fragmentation makes it very difficult to carry out effective control activities. The average is that two people are regularly employed on each farm, with a huge disproportion between enregistered workers and agricultural work units: the total of 25 million people employed in agricultural production in the EU corresponds to less than 10 million agricultural work units. This can be mainly explained by the use of seasonal work<sup>19</sup>.

Indeed, the **processes of modernisation** “have contributed to the transformation of the agricultural model based on the family farm” with a new demand for “a continuous substitution of labourers (...) in order to gain a competitive advantage in a context of growing international competition and of cost-cutting pressures within even more vertically-integrated chains”<sup>20</sup>.

Within this framework, the legal and social precariousness affecting all migrants makes them the flexible and low-cost work force required by “the system”, independently from their EU or third-country origins, “since the natives are less likely than incomers (or not likely at all) to accept low wages and bad working conditions and [do] not always meet the employers’ demands in terms of work motivation and mobility”<sup>21</sup>. The employment of migrants also allows employers to evade administrative and social security obligations more easily. This is also exacerbated by isolation, invisibility, fragmentation, scarce presence of trade unions and weak solidarity among migrant workers due to their geographical dispersion as distinguishing elements of the agricultural sector.

All the significant **risk factors for labour exploitation** – relating to the workers’ personal situations; workplaces; the legal and institutional framework; employers’ attitudes<sup>22</sup> – seem to be over-represented in the agricultural sector in EU countries, especially with respect to migrant workers. Migrants’ legally and socially precarious conditions create specific forms of vulnerability which are used and exploited, each one in a particular way, within the agricultural production system. Indeed, the **condition of vulnerability** is not only linked to inherent personal characteristics, but is also “context-specific” and, accordingly, caused by diverse situational, and often temporary, elements<sup>23</sup> which produce situations in which – making reference to the definition of “position of vulnerability” contained in **Directive 2011/36/EU** of the European Parliament and of the Council *on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA*<sup>24</sup> (Directive 2011/36/EU) – a person does not have any alternative but to submit to exploitation and other forms of abuse. It is in this sense that scholars Mackenzie, Rogers and Dodds, by proposing a taxonomy of different sources of vulnerability, talk about “**situational vulnerability**”, highlighting how vulnerability can be caused and/or fostered by personal, social, political, economic or environmental situations of persons or social groups, including also abusive interpersonal and social relationships, and sociopolitical oppression or injustice. The category of

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Hunt, J. 2015, ‘Making the CAP Fit: Responding to the Exploitation of Migrant Agricultural Workers in the EU’, *The International Journal of Comparative Labour Law and Industrial Relations*, Vol. 30, No. 2, pp. 131–152.

<sup>18</sup> Eurispes & Uila, 2014, *#sottoterra - indagine sul lavoro sommerso in agricoltura*, p. 9. Available at <http://www.eurispes.eu/content/eurispes-sottoterra-indagine-lavoro-sommerso-agricoltura-eurispes-uila>

<sup>19</sup> *Idem* p. 10.

<sup>20</sup> Corrado, A. 2017, *Migrant crop pickers in Italy and Spain*, E-PAPER, Heinrich Böll Foundation, June, p. 3.

<sup>21</sup> Siudek, T. & Zawajska, A. 2016, *Foreign labourer in the agricultural sector of some EU countries*, Paper prepared for presentation at the 160th EAAE Seminar ‘Rural Jobs and the CAP’, Warsaw, Poland, 1.2 December. p. 16.

<sup>22</sup> FRA 2015a, p. 25.

<sup>23</sup> Atak, I., Nakache, D., Guild, E. and Crépeau, F. 2018, *Migrants in Vulnerable Situations' and the Global Compact for Safe Orderly and Regular Migration*, Queen Mary School of Law Legal Studies Research Paper No. 273/2018.

<sup>24</sup> OJ L 101, 1 15.4.2011.

“situational vulnerability” stresses “the ways that inequality of power, dependency, capacity, or need render some agents vulnerable to harm or exploitation by others”<sup>25</sup>.

Different elements related to the diverse situations of migrants with respect to their nationality or legal status seem to translate into a variety of possibilities for their exploitation in the agricultural production system. **EU migrant workers**, who are the more consistent migratory group in Europe (more than 50% in all Western countries), mainly due to internal EU wage disparities, are mainly employed in permanent and intensive cultivation, such as in greenhouses. As we will conclude in the case study on Ragusa (Sicily), their EU citizenship doesn't prevent, and on the contrary usually increases, the possibility of their labour (and sexual) exploitation. They are more frequently utilised as a low-cost labour force precisely because their employers cannot be charged with the offence of facilitation of irregular migrants<sup>26</sup>. Moreover, the possibility of easily crossing EU internal borders produces a “circular migration”<sup>27</sup> that facilitates their exploitation, especially in low-regulated sectors such as agriculture.

**Refugees and asylum seekers** originating from third countries are instead mostly utilised in seasonal production, and move from one harvesting zone to another. Asylum seekers, in particular, live in an emergency-based and precarious system of reception<sup>28</sup> while waiting for the definition of their legal status. This situation of “limbo” makes them particularly vulnerable.

**Seasonal workers** are at high risk of exploitation due to the fact that in seasonal employment “the worker is tied to – and in practice often at the mercy of – one employer or one temporary agency, and (...) seasonal workers are barred from any recourse to the social assistance system”<sup>29</sup>. Indeed, as François Crépeau, the Special Rapporteur on the human rights of migrants, has explained, despite the fact that temporary migration is frequently discussed as something uniquely positive, temporary migration programmes can have “negative consequence in terms of human rights, including access to economic and social rights, the right to family and protection from exploitation”, as “they are inflexible to the needs of migrant workers, and give unequal power to employers”<sup>30</sup>.

Paradoxically, the **circular and temporary migration** of regular migrants, despite being encouraged by organisations such as the ILO and International Organisation for Migration (IOM), is “far from being more protective (...) [and] actually grants less mobility and freedom to workers than informal migration”<sup>31</sup>. Indeed, within these legal circuits, migrants are inserted into the labour market within a planned segmentation scheme, which ties them to that specific employment in that specific sector without any possibility to improve their position or to look for better opportunities.

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<sup>25</sup> Mackenzie, C., Rogers, W. and Dodds, S. 2014, 'Introduction: What Is Vulnerability and Why Does It Matter for Moral Theory?', in C. Mackenzie, W. Rogers, and S. Dodds (Eds.), *Vulnerability. New Essays in Ethics and Feminist Philosophy*, Oxford University Press, Oxford, p. 6; see also in this regard Atak et al., 2018.

<sup>26</sup> Palumbo, L. & Sciarba, A. 2015, 'Vulnerability to Forced Labour and Trafficking. The case of Romanian women in the agricultural sector in Sicily', *Antitrafficking Revue*, No. 5, September, pp. 89-108.

<sup>27</sup> Triandafyllidou, A. (Ed.), 2013, *Irregular Migrant Domestic Workers in Europe. Who Cares?*. Ashgate, Farnham; Castles, S. and Ozkul, D., 2014, 'Circular migration: Triple win, or a new label for temporary migration?', in G. Battistella (Ed.), *Global and Asian Perspectives on International Migration*, New York: Springer, pp. 27-36; Marcu, S. 2015, 'Between (Re)Bordering and Networked Border: Cross-Border Mobility Practices of Eastern European Immigrants in Spain', *Boletín de la Asociación de Geógrafos Españoles*, 69, 211-232.

<sup>28</sup> Brekke, J. P. & Brochmann G. 2014, 'Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation', *Journal of Refugee Studies*, Vol. 28, No. 2, pp. 145-162.

<sup>29</sup> FRA 2015a, p. 30.

<sup>30</sup> Crepeau, F. 2014, *Report of the Special Rapporteur on the human rights of migrants. Labour exploitation of migrants*, United Nations General Assembly, Human Rights Council, 3 April, A/HRC/26/35, p. 11.

<sup>31</sup> Hellio, E. 2016, 'They Know that you'll leave, like a dog moving onto the next bin. Undocumented male and seasonal contracted female workers in the agricultural labour market of Huelva, Spain', in A. Corrado, C., De Castro, C. and D., Perrotta (Eds.), *Migration and Agriculture. Mobility and change in the Mediterranean area*, Routledge, London, p. 203.

In this context, **migrant women** occupy a specific position related to multiple forms of intersectional discrimination<sup>32</sup>, meaning the interrelation of gender with other reasons for social exclusion, such as class, education, health, familial responsibility, and migration status. Indeed, as François Crépeau has reported, “migrant women risk being the victims of multiple discrimination, both as women and as migrants” and they are usually employed “in the shadow economy and in less skilled work than men”. Moreover, “they are generally more dependent on their employers, which puts them at greater risk of abuse and exploitation”<sup>33</sup>.

The growing **feminisation of migration**, especially in Europe, the Americas and Oceania<sup>34</sup>, is a global phenomenon strictly connected to global economic dynamics, such as the growth of unemployment and the weight of debt in the so-called developing countries. In these countries, feminisation of survival, especially through women’s emigration, has thus become an “alternative global circuit”<sup>35</sup>, with a certain degree of institutionalisation. After 2009 women’s migration to the Organisation for Economic Co-operation and Development (OECD) countries declined slightly, but “the gender composition of migrant stocks has been affected only very marginally”<sup>36</sup>. According to Nicola Piper, at the origin of the increase in the feminisation of migration four specific elements are traceable: a greater statistic visibility; a larger participation of women in all types of migratory phenomena; an increasing inability of men to find full-time employment in countries of origin; and an increasing demand for feminised jobs in the countries of destination<sup>37</sup>. Indeed, “demand for women migrant workers in destination countries is defined by labour market segmentation”, which means that “job opportunities for women migrants are predominantly in unregulated sectors: agriculture, domestic work, service, and the sex industry”, in which “labour standards are usually weak or non-existent”, and “the risk of discrimination, exploitation and abuse are compounded by absence of social security access, health coverage and other social protection provisions such as maternity protection”<sup>38</sup>.

The high-risk factors for labour exploitation which are particularly represented in the agricultural sector, in the case of migrant women working in farms, are thus aggravated by **gendered dynamics and power relations**. Moreover, migrant women agricultural workers are usually less skilled and often younger than those who are inserted in other sectors such as domestic or care labour. Indeed, they have fewer personal resources to address working and living in exploitative conditions. Most migrant agricultural workers live segregated within farms, often in derelict shelters without any facilities, despite the fact that farmers deduct the cost of this housing from wages<sup>39</sup>. Alternatively, they live in nearby encampments, especially in the case of seasonal employment, in a situation of physical ghettoisation. When this happens to women, as we will demonstrate in the cases of Italy and Spain, this kind of isolation often leads to specific physical and psychological gendered abuses. Moreover, migrant women’s family responsibility, especially for those with dependent children, can lead them to “**accept**” **exploitative conditions** and abuses, making it more difficult, in the absence of viable working alternatives, to decide to report

<sup>32</sup> Crenshaw, K. 1991, ‘Mapping the Margins: Intersectionality, identity politics, and violence against women of color’, *Stanford Law Review*, Vol. 43, pp. 1241–1299; Nash, J. 2008, ‘Re-thinking intersectionality’, *Feminist Review*, Vol. 89, pp. 1–15.

<sup>33</sup> Crépeau, 2014, p. 13.

<sup>34</sup> ILO, 2014, p. 15.

<sup>35</sup> Sassen, S. 2003, ‘The Feminization of Survival: Alternative global circuits’, in M. Morokvasic, U. Erel and K., Shinozaki (Eds.), *Crossing Borders and Shifting Boundaries. Gender on the move*, VS Verlag für Sozialwissenschaften, Wiesbaden, I, pp. 59–77.

<sup>36</sup> OECD, 2017, *The Pursuit of Gender Equality: An Uphill Battle*. OECD Publishing, Paris, p. 248. Available at <http://dx.doi.org/10.1787/9789264281318-en>.

<sup>37</sup> Piper, N. 2007, ‘International Migration and Gendered Axes of Stratification: Introduction’, in Piper, N. (Ed.), *New Perspectives on Gender and Migration: Livelihood, Rights and Entitlements*, Routledge, New York-London, pp. 1-18.

<sup>38</sup> Taran, P. 2016, *Migrant Women, Women Migrant Workers. Crucial Challenges for Right-based Action and Advocacy*, Presentation at the OHCHR-UNWOMEN side event to 64<sup>th</sup> Session of the UN committee on the Elimination of Discrimination Against Women (CEDAW), 21 July, Geneva, p. 1.

<sup>39</sup> Martin, P. L. 2016, *Migrant Workers in Commercial Agriculture*, ILO, Sectoral Policies Department, Conditions of Work and Equality Department, ILO, Geneva.

these. This happens in the case of children left behind in the country of origin and, above all, when migrant women bring their children onto farms with them. Indeed, whereas care and domestic work entails a condition of solitude due to the requirement of cohabiting with those in need of care and, consequently, 24-hour employment, migrant women are often allowed to bring their children onto farms. As we will show in the case of the Province of Ragusa (Sicily), these children, can often be used as an instrument of explicit blackmail by employers. Finally, specific gendered health problems, due to exposure to various substances commonly present around agricultural environments, such as pesticides, in a situation of excessive labour overtime, particularly affect migrant women working in the agricultural sector<sup>40</sup>. Despite the seriousness of the described situation, **solid and consistent data about migrant women workers in rural areas and farms in the EU are still lacking.**

According to the ILO, in general, "access to essential age and sex-disaggregated data, data on labour market needs, occupations and skills, working conditions and wages, and the social protection of migrants remain very fragmented and unreliable at national, regional and international levels"<sup>41</sup>. Statistics on migrant workers separated for economic sector generally refer to global data<sup>42</sup>, by putting light on disaggregated data on regions and gender only with regard to economic sectors which are widely recognised as feminised, like domestic work<sup>43</sup>, or just mention gendered data with regard to sexual exploitation<sup>44</sup>. In the European Commission *Study on the gender dimension of trafficking in human beings*, for instance, we can read that, in 2012, in total 96% of people trafficked for sexual exploitation were women, and that women represented 26% of victims of labour exploitation<sup>45</sup>. In a similar way, Eurostat, in its second statistical working paper on trafficking in human beings (period 2010–2012), referring to data on registered victims disaggregated by different forms of exploitation, denotes how 69% of registered victims were trafficked for sexual exploitation, and, among them, 95% were female, while, among the 19% of victims of trafficking for labour exploitation, 71% were male<sup>46</sup>. Indeed, Eurostat, along with almost all institutional reports and scholarly studies, clearly divides the category "sexual exploitation" from the category "labour exploitation"<sup>47</sup>.

We may discuss this clear-cut distinction between sexual exploitation and labour exploitation, which seems to suppose a neat criterion to distinguish between prostitution and sexual exploitation and, more generally, seems to rely on the assumption that working as a prostitute cannot be equated with doing a job<sup>48</sup>. On the other hand, this sharp distinction makes it difficult to address complex situations in which sexual exploitation is "included" as a "collateral effect" in the exploitation of migrant women within economic sectors such as domestic or agricultural work.

In addition to this, as the Group of Experts on Action against Trafficking in Human Beings (GRETA) has recently remarked, "many countries point to the fact that labour trafficking is harder to detect than trafficking for the purpose of sexual exploitation, which leads to fewer

<sup>40</sup> Habib, R. R. & Fathallah, F. A. 2012, 'Migrant women farmworkers in the occupational health literature', *Work*, Vol. 41, pp. 4356–4362.

<sup>41</sup> ILO, *Labour Migration Statistics*, <http://www.ilo.org/global/topics/labour-migration/policy-areas/statistics/lang-en/index.htm>

<sup>42</sup> IOM, 2017.

<sup>43</sup> ILO, 2015, *Global Estimates on Migrant Workers. Results and Methodology. Special Focus on Migrant Domestic Workers*, ILO, Geneva.

<sup>44</sup> Europol, 2016.

<sup>45</sup> European Commission, 2016, *Study on the gender dimension of trafficking in human beings*, Publications Office of the European Union, Luxembourg, p. 14.

<sup>46</sup> Eurostat, 2015, *Trafficking in human beings. Statistical working Paper*, Publications Office of the European Union, Luxembourg, p. 11.

<sup>47</sup> *Idem* p. 29.

<sup>48</sup> With regard to the national legal approaches on prostitution see Garofalo Geymonat, G. 2015, *Vendere e Comprare Sesso. Tra piacere, lavoro e prevaricazione*, Il Mulino, Bologna, and Schulze, E., Novo Canto, S. I., Mason, P., Skalin, M. 2014, *Sexual exploitation and prostitution and its impact on gender equality*", European Union, Brussels, European Parliament manuscript. Available at

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM\\_ET\(2014\)493040\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf)

reported cases". Indeed, "the identification of victims of trafficking for the purpose of labour exploitation remains challenging and statistics available on identified victims do not reflect the actual scale of the phenomenon". In this regard, GRETA stresses "the need for developing and maintaining comprehensive and coherent statistics regarding victims, which should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination"<sup>49</sup>.

Moreover, as is made clear by an overview of all the above-quoted data sources, the quite complete lack of data regarding migrant labour exploitation (but also labour exploitation in general) is due to the fact that existing data are mainly based on victims' reports, and complaining victims are a lean minority.

In sum, labour exploitation includes many different sectors which should deserve specific investigation and data collection. While existing data, especially at the EU level, are aggregated for the general category of "labour exploitation"; disaggregated data on migrant women mainly regard a specific type of well-identified sexual exploitation; existing data mainly rely on a very low number of victim reports.

All these elements make it particularly difficult to collect data on migrant women employed in the agricultural context, as invisibility is added to invisibility due to the already marked characteristic of agricultural production and the particular vulnerability of migrant women to exploitation.

This is the reason why we are not able in this study to report general quantitative data on the situation of migrant woman in rural areas and farms within the EU. Yet, we think that the fact that these data are lacking must be considered significant data in itself, and something which deserves greater attention.

On the basis of the above considerations and premises, this study aims to examine, through a qualitative approach, the conditions that characterise migrant women's employment in EU rural areas and farms, focusing on the analysis of some case studies in Italy and Spain. In doing so, the study aims to illustrate **the structural and situational factors that make women vulnerable to exploitation**, paying particular attention to the gendered dynamics and power relations. By seeing exploitation as a continuum encompassing relatively less severe forms of exploitation up to slavery or trafficking<sup>50</sup>, we consider a wide range of forms of exploitation, along which cases of severe abuse and trafficking can take place. The study relies on examination of existing data, literature and publications and also on empirical research conducted in Italy.

The **first Chapter** of this study will be dedicated to the examination of the **case studies**. The choice of Italy and Spain as countries to be examined is mainly due to the economic and social characteristics of these two countries, in which agriculture is still a leading labour market sector, and to the high and well-documented presence of migrant women farm workers. Moreover, comparison between contiguous but different situations in Italy and Spain allow us to address the way in which particular elements marking the Southern EU labour market, and in particular the agricultural sector, can produce specific forms of vulnerability to exploitation for migrant women.

In the case of Italy, our analysis relies on the empirical research we have conducted in the field since 2012, by interweaving information gathered from dozens of migrant women, socio-legal operators and institutions. With regard to Spain, we build on relevant literature, studies and reports. In both countries, the possible cases of migrant women's sexual

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<sup>49</sup> GRETA, 2018, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017*, p. 19. Available at <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>

<sup>50</sup> Skrivankova, K. 2010, *Between decent work and forced labour: examining the continuum of Exploitation*. JRF programme paper: Forced Labour, Joseph Rowntree Foundation, York.

abuses and blackmail in rural areas will also be measured both as a direct consequence of agricultural labour exploitation and of ghettoisation related to agricultural work.

Taking into account the factors emerging from these case studies that make migrant women's serious exploitation and trafficking a structural component of contemporary agricultural production, the **second Chapter** of this study examines **EU legal instruments** concerning severe exploitation and trafficking in human Beings. These instruments will be evaluated with regard to their real implementation and effectiveness.

The **third Chapter** of the study illustrates **EU policies on THB and their relations with EU policies on security and migration**, by assessing if the two systems work in a coordinated and balanced way with the aim of contrasting migrants' serious exploitation and trafficking with respect also to the gender dimension of migratory movement.

The **fourth Chapter** examines some **national polices** enacted by EU Member States to protect victims and prevent severe exploitation and trafficking, considering some good practices. This Chapter also illustrates **good practices conducted 'from below'**, as new viable paths will be defined with the aim of addressing all the structural factors which produce migrants' position of vulnerability to exploitation. The premise is that, in order to effectively counter these phenomena, human rights protection measures and interventions against exploitation and trafficking have to be combined based on a comprehensive approach aimed not only at prosecuting employers and assisting victims, but also tackling the structural factors that lead to the abuses and, in particular, those factors that generate migrant women's vulnerability.

The last Chapter provides concluding remarks and some **policy recommendations** for EU institutions and Member States (Chapter 6).

## 1. WORKING CONDITIONS OF MIGRANT WOMEN IN AGRICULTURE: CASE STUDIES IN ITALY AND SPAIN

### KEY FINDINGS

- **In both Italy and Spain**, which are the EU countries characterised by the greatest number of migrant workers employed in the agricultural sector, **migrant women farm workers face sub-standard and exploitative working conditions**. This is also due to the fact that the system of production relies on an increasingly flexible labour force.
- **Being an EU citizen does not ensure protection from cases of severe exploitation**. Indeed, Romanian women workers can easily become victims of severe abuse and exploitation.
- As emerged in our fieldwork in Sicily, in the case of Romanian migrant women in Ragusa, **labour exploitation seems to be often accompanied by sexual blackmail** and abuses towards women workers by their employers. Empirical studies have claimed that similar cases also occur in Huelva, Spain.<sup>51</sup>
- **Family responsibility**, particularly in the case of mothers with dependent children, may be an added factor of vulnerability.
- The case of Spain especially reveals how the system of workers' admission through **temporary contracts based on quotas mechanisms may foster the segmentation** of the labour market based on gender, nationality, socio-economic conditions and family responsibilities. This may create a concentration of particularly vulnerable migrants in specific sectors. Circular migration can lead to similar consequences, also with the involvement of temporary work agencies.
- Some studies have claimed, that in both Italy and Spain there are also cases of **sexual exploitation of migrant women who are not directly employed in agricultural work** but who live in rural areas and ghettos.
- There is a lack of consistent studies on the specific situation of migrant women in the greenhouses of Almeria.

**Race-and-gender-based labour market segmentation is especially prevalent in Southern European countries**<sup>52</sup>. This Chapter will focus on the working conditions of migrant women workers in the agricultural sector in Italy and Spain, as these two Southern EU countries present specific similarities and differences with respect to the forms of exploitation experienced by migrant women in this sector. They are the two EU countries with the greatest number of migrant workers employed in the agricultural sector, "due to

<sup>51</sup> Barnes, I. & Cherino, C. 2011, The Role of Circular Migration and Mobility Partnerships – Integrating Legal Migration Opportunities into the Union's External Policies, Conference Paper at the UACES 41st Annual Conference. Exchanging Ideas on Europe 2011, Robinson College, University of Cambridge, Cambridge, United Kingdom, 5-7 September 2011, p. 11. See also Djemila 2017, p. 69; Gálvez et al. 2012; Prandi, S. 2017, Oro rosso. fragole, pomodori, molestie e sfruttamento nel Mediterraneo, Settenove Edizioni, Cagli (PU), and the documentary film La rançon de la fraise, by Béatrice Limare, France 2009, <http://television.telarama.fr/tele/programmes-tv/la-rancon-de-la-fraise,12768134.php>.

<sup>52</sup> Anthias & Lazardis, 2000.

specific characteristics of the sector and the restructuring processes it has experienced since the mid-1980s. Meanwhile, the two countries have become a new destination for even more consistent migration, especially from Africa and also from Eastern Europe<sup>53</sup>. In both countries, exploitative conditions of migrant women in rural contexts have been explored by scholars and Non-Governmental Organisations (NGOs), which have underlined that small-scale producers, above all, are being pushed to lower their costs in order to face competition from industrial products. Thus, they turn to a low-cost labour force as a strategy to recuperate the added value lost due to their subordinate position in the supply chain. Moreover, **in Italy, as well as in Spain, there is a significant presence of migrant women in some types of agricultural production.**

With regard to Italy, this section specifically focuses on the working conditions of Romanian women workers employed in greenhouses in the area of Ragusa (Sicily). It also looks into the suspected sexual exploitation of migrant women in the informal camps where agricultural migrant workers live in other rural areas of Italy, such as in Rosarno (in Calabria) and Campobello (in Sicily).

In regard to Spain, the study focuses on two case studies, both in the region of Andalusia. The first regards the working conditions of migrant women in the agricultural sector in Huelva, where thousands of Romanian and Moroccan women have been employed in the seasonal strawberry harvest, especially over the period 2008–2013. The second case study concerns the rural area in Almeria. Here, the same continuous-cycle production in greenhouses as in the area of Ragusa occurs, with a significant employment of women migrant workers coming from Romania and Morocco.

## 1.1 Italy

In recent decades, Italian agricultural production has mostly been reliant on the recruitment of a migrant workforce<sup>54</sup>. Since 2008, the economic crisis has downsized migrants' "threshold of unavailability" to exploitation<sup>55</sup>, as they have progressively been expelled "from manufacturing activities and the service economies of urban areas (...) forcing either a demotion to agriculture, relocations elsewhere or a return to their countries of origin"<sup>56</sup>.

It is worth mentioning that the Italian system of admission of non-EU migrant workers relies on a system of nominal hiring from abroad, according to which non-EU workers are admitted into the Italian territory only after a request from a resident employer. The number of workers to be admitted is defined in a yearly governmental decree, the so-called *Decreto Flussi*, determining quotas for diverse types of workers. Yet, this system has proven inadequate and difficult to apply<sup>57</sup>). Indeed, procedure for the implementation of this system is excessively long and complicated and, above all, most of the employers do not want to hire a person they have not met before. This has led many employers to turn to irregular migrants who are already in Italy, seeking to regularise their status through the government regularisation programs (so called *sanatorie*) or through an incorrect use of the annual quota system as an "ex post regularisation tool"<sup>58</sup>. However, since 2012, this

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<sup>53</sup> Corrado, 2017, p. 3.

<sup>54</sup> Osservatorio Placido-Rizzotto-FLAI-CGIL, 2016, *Terzo Rapporto Agromafie e Caporalato*, Ediesse, Rome.

<sup>55</sup> Dalla Costa, M. 1981, 'Emigrazione, immigrazione e composizione di classe in Italia negli anni '70', *Economia e Lavoro*, Vol.4, p. 126.

<sup>56</sup> Caruso, F. & Corrado, A. 2015, 'Migrazioni e lavoro agricolo: un confronto tra Italia e Spagna in tempi di crisi', in Colucci, M. and Gallo, S. (Eds.), *L'arte di spostarsi. Rapporto 2015 sulle migrazioni interne in Italia*, Donzelli, Rome, p. 5.

<sup>57</sup> Santoro, E. 2010, 'La regolamentazione dell'immigrazione come questione sociale: dalla cittadinanza inclusiva al neoschiavismo', in E. Santoro (Ed.), *Diritto come questione sociale*, Giappichelli, Torino, pp. 129-180; Salis, E. 2012, *Labour migration governance in contemporary Europe. The case of Italy*, FIERI, Turin; Castagnone, E., Salis, E. and Premazzi, V. 2013, *Promoting integration for migrant domestic workers in Italy*, FIERI, Turin; Amnesty International, 2012.

<sup>58</sup> Castagnone et al., 2013.

latter mechanism has been difficult to apply as there have been few quotas for new inflows. More specifically, there have been no real quotas for non-seasonal dependent employment while for seasonal work there have been quotas only in the sectors of agriculture and tourism.

Therefore, **the absence of an efficacious system of admission for third-country migrant workers has the effect of pushing them towards irregular channels**, to the point of making the condition of 'irregularity' an inevitable phase towards the status of regularity<sup>59</sup>. At the same time, the fact that the issuance of the residence permit for work reasons is dependent on the existence of a contract of employment puts migrant workers in a condition of extreme blackmail and vulnerability, exposing them to dynamics of exploitation<sup>60</sup>.

With regard to EU internal migration towards Italy, with the EU enlargement, Eastern EU nationals, above all from Romania, have slowly joined the ranks of the exploitable labour force in sectors such as agriculture. Despite their possibility to freely move across Europe, they are also highly prone to abuse and exploitation, as the case studies outlined below will show. **Notably, the irregular employment of EU citizens is less dangerous for employers since they do not risk of being accused of the offence of facilitation of illegal migration.** This has made EU migrant workers more likely to be involved in undeclared and informal employment contexts. Finally, as already mentioned, migration from Eastern Europe is one of the most "femininised" and is composed mainly of women "migrating alone"<sup>61</sup>.

This availability of exploitable migrants with specific distinguishing characteristics has fostered several forms of **labour market segmentation based on national origins, social and legal conditions, and gender**. With regard to housing insertion in rural areas for instance, Romanian agricultural workers often live in houses within or near the farms, with a direct consequence in terms of isolation and, often, segregation. African migrants, on their side, especially those from sub-Saharan countries who are mainly concentrated in seasonal production, live in temporary encampments in the rural zones, as occurs in the areas of Rosarno (in Calabria) and Campobello (in Sicily). This is mainly due to the lack of reception-policies for seasonal migrant workers along with the ineffectiveness of the institutional recruitment system. In these areas, such as in Rosarno, the exploitation of migrant workers employed in agriculture is mainly mediated by the activity of unlawful gangmasters, who manage their recruitment and transportation<sup>62</sup>.

Over recent years, there has been an increase in the number of asylum seekers and refugees employed in the agricultural sectors in exploitative conditions<sup>63</sup>. This situation is also fostered by the interplay of the slowness of asylum procedures in the country and the lack of adequate hosting and protection mechanisms for asylum seekers, which leads many migrants to accept any job opportunity they can find. This is also facilitated by the fact that accommodation centres hosting asylum seekers (such as CARA) are located in rural and isolated areas, becoming a nest for the recruitment of an exploitable migrant labour force.

The most well-known exploitative agriculture contexts in Italy are the Sibari Plain, Rosarno, and the Province of Ragusa and Trapani in Sicily. Yet, the system also involves producers of high-value products in Northern Italy<sup>64</sup>. This system appears to be fostered by forms of

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<sup>59</sup> Caputo, A. 2010, 'Immigrazione e politiche del diritto in Italia', in I. Peretti (Ed.), *Schengenland. Immigrazione: politiche e culture in Europa*, Ediesse, Rome, pp. 225-241.

<sup>60</sup> Amnesty International, 2012.

<sup>61</sup> Vianello, F. 2009, *Migrando sole. Legami transnazionali tra Ucraina e Italia*, Franco Angeli, Milan.

<sup>62</sup> Perrotta, 2014; MEDU 2015, *Terraingiusta-Rapporto sulle condizioni di vita e di lavoro dei braccianti stranieri in agricoltura*. Available at <http://www.mediciperidirittiumani.org/pdf/Terraingiusta.pdf>

<sup>63</sup> Dines, N. & Rigo, E. 2015, 'Postcolonial citizenship between representation, borders and the 'refugeeization' of workforce: Critical reflections on migrant agricultural labour in the Italian Mezzogiorno', in S. Ponzanesi & G. Colpani (Eds.), *Postcolonial Transition in Europe: Contexts, Practices and Politics*, Rowman and Littlefield, London.

<sup>64</sup> Mangano, 2014.

circular migration depending on temporary agencies in the case of EU citizens, and on the closure of entry legal channels and regularisation forms in the case of nationals from third-countries.

### 1.1.1 Ragusa

According to official data, around 12,000 migrant workers are currently employed in the agricultural sector in the so-called 'transformed area' of Ragusa<sup>65</sup>, a territory around of the towns of Vittoria, Santa Croce di Camerina, Comiso, and Acate that has been transformed by the building of thousands of greenhouses, leading to the conversion of seasonal farming patterns to permanent farming. This transformation has required the increased presence of a low-paid and more available migrant workforce.

However, existing data on migrant workers in the zone are inevitably incomplete, as they do not reflect widespread undeclared work in a context of thousands of small- and medium-sized farms that are difficult to monitor.

Here, migrants work in dangerous and exploitative working conditions<sup>66</sup>. In particular, they often have either no contracts at all, or contracts in which the number of working hours is lower than effectively performed. In actuality, they work 10–12 hours a day, in unsafe conditions among pesticides and in extremely hot or cold temperatures depending on the season, for a daily pay of EUR 15–25. Moreover, they usually live on the farms, in a context of complete isolation, in crumbling shelters, isolated deep within the countryside.

Until the early 2000s, agricultural migrant workers in the province of Ragusa were mainly Tunisian men. Through a gradual and important process of unionisation as well as through the development of familial and social relationships in Italy, these Tunisian labourers have obtained pay and working conditions similar to those of Italian workers. This avoided the risk of any social dumping between local workers and Tunisian workers<sup>67</sup>.

However, since 2007, when Romania joined the EU, there has been a significant increase in the number of Romanian workers in agriculture in Ragusa: in 2016, the number of regularly employed Romanian workers was 4,754<sup>68</sup>. In some areas, their numbers have exceeded those of Tunisian migrants. For instance, in 2016 official data revealed that in the area of Vittoria there were 1,936 Romanian workers while the number of Tunisians was 1,729. This has been due to many factors<sup>69</sup>. First, Romanian workers are paid lower wages than Tunisian workers who are more skilled in the sector, more unionised and have been in the area longer, creating solid relationships with local people. In addition, Romanians often consider Italy as a temporary place in which to stay and work in order to collect and remit money to back home. Accordingly, many are willing to tolerate substandard and even abusive working conditions, as this is viewed as a temporary experience. Lastly, as stated above, the irregular recruitment of EU migrant workers is less perilous for employers as they do not risk being charged with the offence of facilitation of irregular migration.

Given the above-mentioned specific feminisation process in migration from Romania, caused by the above-illustrated gender and familial dynamics affecting Eastern European female migrants, the growth in the number of Romanian workers has led to the presence of female workers in the greenhouses in Ragusa. This comprises a new element for the sector. Indeed, while historically women workers have been present in some segments of the supply chain, including cultivation of vegetables or of plants and flowers in nurseries, with

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<sup>65</sup> FLAI-CGIL & Idos, 2014.

<sup>66</sup> See, for instance, [http://corrieredelmezzogiorno.corriere.it/catania/cronaca/17\\_luglio\\_05/ragusa-migranti-sfruttati-serre-lavoro-13-ore-soli-25-euro-90e272a2-6169-11e7-b303-1de9e9c9b10f.shtml](http://corrieredelmezzogiorno.corriere.it/catania/cronaca/17_luglio_05/ragusa-migranti-sfruttati-serre-lavoro-13-ore-soli-25-euro-90e272a2-6169-11e7-b303-1de9e9c9b10f.shtml)

<sup>67</sup> Palumbo, L. 2016, 'Trafficking and Labour Exploitation in Domestic Work and the Agricultural Sector in Italy', Research project report, European University Institute, Florence, p. 19.

<sup>68</sup> EBAT-Ragusa 2016, *Rapporto Iscritti Elenchi Anagrafici anno 2016*.

<sup>69</sup> *Ibidem*.

the arrival of Romanian workers, women have started working as labourers in the greenhouses “performing a job which has always been attributed to men” and under the same exploitive and hard conditions experienced by Romanian male workers<sup>70</sup>. Most of these women come from rural areas in Romania, and in particular from the area of Botoshani. According to EBAT Ragusa, in 2016 the number of migrant women workers regularly employed in agriculture in the area of Ragusa was 3,389<sup>71</sup>. While this datum is not disaggregated for nationality, as the Secretary of CGIL in Ragusa informed us during our last fieldwork, “it is plausible to assume that at least 80% of employed women are from Romania and work in the greenhouses”<sup>72</sup>. Moreover, this number would significantly increase if we were also to take into account the undeclared work which is highly widespread in this sector.

**These women work in a context marked by isolation, segregation and dependency on the employer in which anything can remain hidden.** As stated, the rural area around Ragusa is composed of thousands of small farms, mostly situated at a great distance from any inhabited centre. The workers usually sleep on the farms. This, as emerged by our fieldwork, seems to have produced a perfect setting for labour exploitation easily accompanied by sexual blackmail and abuse towards women workers by their employers<sup>73</sup>.

Although similar circumstances can also be found among domestic workers’ experiences<sup>74</sup>, in the agricultural sector of the province of Ragusa, it has been claimed that the entire system seems to create the conditions for the “acceptance” of being sexually abused by employers simply to be allowed to work<sup>75</sup>.

An interesting set of data to consider in order to understand the problematic conditions faced by women workers on the farms of Ragusa is the rise of the number of abortions in this area. Nurses at the Hospital Vittoria stated, during an interview carried out by the authors of this report in 2014, that every week about eight women had abortions and usually about five or six were Romanians<sup>76</sup>. Furthermore, a study of official data reveals that in 2014, 20.7% of the total abortions in the province of Ragusa were carried out on Romanian women, 2.87% on Tunisian and Albanian women, respectively, 2% on Polish women, and 1% on Moroccan women<sup>77</sup>. While certainly not all cases of abortion can be connected to cases of sexual abuse, the high number of abortions among Romanian women is a significant datum that needs to be taken into account. In this regard, it is also important to mention that in the hospital of Vittoria most of the doctors are “conscientious objectors” (*obiettori di coscienza*) and this presents a significant risk of undermining women’s right to access safe abortion services.

It seems that sexual exploitation is mainly enacted through blackmail and psychological pressure. Abusive employers have no need to exercise any physical force; **sexual exploitation is a possible effect of a labour exploitation system that may generate**

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<sup>70</sup> Palumbo, 2016, p. 19.

<sup>71</sup> EBAT-Ragusa, 2016.

<sup>72</sup> Interview collected in April 2018.

<sup>73</sup> It is worth highlighting the particularly heinous case reported in 2015, which led to the arrest of an agricultural employer: <https://www.ragusaneews.com/2015/06/10/economia/il-corriere-della-sera-fa-un-reportage-sulle-schiave-delle-serre/54252>.

<sup>74</sup> Palumbo, L. 2017, ‘Exploiting for Care: Trafficking and Abuse in domestic work in Italy’, *Journal of Immigrant & Refugee Studies*, Vol. 15, No. 2, pp. 171-186.

<sup>75</sup> Sciarba, A. 2013, ‘Effetto serra. Le donne rumene nelle campagne del ragusano’, *L’altro diritto. Centro di documentazione su carcere, devianza e marginalità*. Available at <http://www.Altrodiritto.unifi.it/ricerche/migranti/ragusa.htm>; Palumbo & Sciarba, 2015.

<sup>76</sup> Palumbo & Sciarba, 2015, p. 96.

<sup>77</sup> Proxima Cooperativa Sociale 2016, *Romania andata e ritorno rapporto*, p. 27.

**forms of 'neo-slavery'**. Migrant male workers, both Romanians and Africans, usually play an ambiguous role or they are fully complicit in this system.

It is important to consider the way in which "consent" for exploitation takes shape in this particular position of vulnerability. Along with the absence of other less abusive kinds of employment, family responsibilities play a significant role. Some of the Romanian women have migrated alone and send money home to support their families in Romania. In many other cases women have instead migrated with their families, and the "choice" of working in greenhouses, rather than in sectors such as domestic work, is due to both the fact that many were also farmers in Romania, and that they are allowed to bring their children with them, to stay with them in the place where they work and live<sup>78</sup>.

Reflecting on the specific position of transnational mothers who leave their children behind to do domestic work in the country of arrival, the legal philosopher Eva Foeder Kittay evocatively described how they find themselves facing an extreme choice, "one in which either option means foregoing an important good; yet one must choose"<sup>79</sup>. In the context of an impossible balance of values, migrant women leaving children at home are forced to choose between incomparable goods: granting them, thanks to remittances, decent living conditions or granting them the right to family unity and to receive care from their mothers.

For migrant women inserted into the agricultural sector in the Province of Ragusa, the dynamic is in some ways contiguous but simultaneously in opposition to the situation of domestic workers. Indeed, violation of human dignity does not involve a violation of the right to family unity and children's care<sup>80</sup>. On the contrary, it is suggested that women "accept" the abuse to prevent these rights from being violated, but this entails the fact that children face extremely hard living and health conditions.

**According to our findings<sup>81</sup>, hundreds of children live in complete invisibility and segregation in the country-side around Ragusa:** poorly housed within farms or around them, often without water and electric light. They are completely invisible, as they are not registered by any institutions. In some specific areas, such as in Marina di Acate, a high number of unschooled Romanian children live segregated in rural areas. Even when their presence can emerge thanks to NGO's pilot projects, the fact that they have never been vaccinated, the high frequency of illnesses (also due to pesticides) such as bronchitis, skin diseases and alimentary poisoning, the lack of inadequate food and clothes, along with the lack of a free public service of transportation, make it quite impossible for them to be enrolled in the education system. Moreover, **children are often used by employers as a means of blackmailing their mothers.**

In our previous study, we argue that these cases of blackmail and sexual abuse are an intrinsic part of the system of exploitation in the greenhouses. In particular, we have taken into account the case of one of the women who used to work and live on a small farm in the area of Vittoria with her daughter and son. Since the school is found far from the farm, the employer drove her children to school by car. But, in exchange for this favour, he asked the woman to have sex with him. As Ausilia Cosentini from the Proxima Association assisting and protecting victims of exploitation attested, this woman accepted in order to protect her children and not lose her job and housing. She decided to leave only when she understood that her children's safety was threatened. As Cosentini said: "this woman had

<sup>78</sup> Palumbo & Sciarba, 2015.

<sup>79</sup> Kittay, E. F. 2008, 'The Global Heart Transplant and Caring across National Boundaries', *The Southern Journal of Philosophy*, Vol. XLVI, p. 58.

<sup>80</sup> Sciarba, A. 2015, *La cura servile, la Cura che serve*, Pacini Editore, Pisa.

<sup>81</sup> Sciarba, A. 2017c, 'Tutela delle donne migranti e delle loro famiglie nella zona agricola di Ragusa', *L'altro diritto. Centro di documentazione su carcere, devianza e marginalità*. Available at <http://www.altrodiritto.unifi.it/document/tutela-donne-migranti-ragusa.htm>

an enormous capacity to endure suffering. She told me, 'I am obliged because I have my children [...]'. When he started to refuse to take her children to school, she began to refuse to have sex with him, and so he stopped giving drinking water to her and her children"<sup>82</sup>.

Finally, our fieldwork in last two years in the rural areas of Ragusa has drawn our attention to a new element: the presence of many Roma families, always coming from Eastern Europe, employed within farms. Roma migrant women, differently from Romanian non-Roma workers, usually live in the context of an enlarged family-based community, in precarious housing in the proximity of the farms, but not inside them. Conditions for children, who are often numerous in these housing solutions, are even worse than for non-Roma children, especially in terms of segregation and hygiene. Moreover, the mobility of the families, within processes of circular migration, is very high. Therefore, the children also live in a geographical precariousness which renders it even more difficult to build any project of educational or social inclusion.

As stated, the presence of male co-nationals is not at all a guarantee of better treatment for Romanian women workers in greenhouses. Although we collected several witnesses of Romanian husbands who refused to be complicit in the sexual abuse of their wives, we can also assert that the presence of family men, in particular, reinforces hierarchical gendered relationships. Indeed, not only is the double role of women aggravated in these enlarged family situations – as they have to care for children as well as doing domestic work – but they are also exploited in agricultural work. Especially in the case of Roma families, it also happens that men often act as abusive gangmasters (so called *caporali*) who illegally recruit workers and insert them into exploitative working contexts. Indeed, in recent years, NGOs, Trade Unions and police investigations have found a change in the recruitment system in these zones, which had previously been characterised by a lack of significant activities of illegal gangmastering.

### 1.1.2. Sexual exploitation in the ghettos

In its 2017 report on trafficking in human beings through the Central Mediterranean route, the IOM refers to another aspect of migrant women's exploitation within the Italian agricultural system: within ghettos and informal encampments which host seasonal agricultural migrant workers in Apulia and Campania, some women, prevalently from Nigeria, had been victims of sexual exploitation. According to the report, in 2016, about 50 of them had asked for help from the IOM's operators working in these ghettos and encampments and were finally recognised as "victims of trafficking"<sup>83</sup>.

Migrant women's sexual exploitation in rural zones seems not to be limited to situations of blackmail directly linked to the possibility to work on the farms. Indeed, as Peano highlights, "different forms of sexual-labour extraction have developed in relation to contemporary agro-industrial production in the Italian context along ethnicised/racialised patterns of labour composition"<sup>84</sup>

If someone were to produce a cartography of the main ghettos in rural areas in Italy, it would always contain, along with unofficial restaurants and crumbling shops selling products of first necessity, precarious shelters in which male farmers and agricultural workers can have sex for money. Irene Peano and other scholars have described how these kinds of services operate within the shantytown occupied mainly by Sub-Saharan Africans in the district of Foggia. In this context, migrant women, especially from Nigeria, are not directly engaged in agricultural work and neither are they there because they followed their partners who were working in the farms. Yet, they are often "employed as sexual workers,

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<sup>82</sup> Palumbo & Sciarba, 2015, p. 97.

<sup>83</sup> IOM, 2017, p. 18.

<sup>84</sup> Peano, I. 2017, 'Global care-commodity chains: Labour re/production and agribusiness in the district of Foggia, South-Eastern Italy', *Sociologia del lavoro*, Vol. 146, p. 27.

waitresses, cooks – usually without any specialization of tasks”<sup>85</sup>. This is the same situation that we directly observed in Campobello di Mazara (Trapani, Sicily), in December 2017. Here, in a log cabin behind one of the “restaurants” within the encampment where hundreds of African male seasonal workers lived, young Nigerian girls were waiting for “clients”.

Already in 2015, Sagnet and Palmisano underlined how “the female workforce is a double reservoir of gratification for the ‘caporali’: monetary and sexual”, by noticing how, in ghettos, “the border between agricultural labour and prostitution is a very blurred line”. In the ghettos, “girls are sold to seasonal workers, but are available for free to caporali and land-owners”<sup>86</sup>.

## 1.2 Spain

In Spain, foreign-born workers dominate the seasonal work force<sup>87</sup>. In 2015, in total 1,096,498 contracts for foreign nationals in agriculture were registered by the Spanish Public Employment Service<sup>88</sup>, and migrant agricultural workers are mainly concentrated in the South, and in particular in Murcia, Alicante, Albacete Huelva and Almería, and in the Catalan provinces of Barcelona, Tarragona and Girona.

“Contracts in origin” (*contratación en origen*), within established annual quotas, is the main tool of the Spanish admission system to recruit a migrant seasonal labour force to be employed in the agricultural sector. This system has been integrated into the Law on the Rights and Freedoms of Foreigners (LO 4/2000). It provides that the migrant arrives in Spain having already signed a contract for specific employment with determined working and social conditions. Returning home at the end of the contract is a conditional criterion to apply again for other “contracts in origin” within the following quotas. The first experimentation was based on a bilateral agreement between Spain and Romania in January 2002, as Romanian nationals were the most represented migrant group in Spain, and it was evident that the country would soon be admitted into the EU<sup>89</sup>. The consolidation of the mechanism of contracts in origin as a model of recruitment determined a turning point in Spanish migration policies, becoming the base of each migration management agreement with third-countries, and the first (and almost unique) way for migrants to gain legal entry into the national territory.

This system has increased the power of Spanish “autonomous communities” with regard to migration policies. Spanish agricultural provinces have started hiring seasonal workers in their country of origin, with the involvement of several public and private actors and of employers, who play an important role in selecting the farms where migrant workers shall be allocated to work. In this context, the town of Caraya played a leading role by developing a specific project to manage migrant labour, in 2006, within the framework of the EU “European grouping of territorial cooperation” (EGTC) which has been funded by the EU Aeneas programme, aimed at favouring local protagonism in governing European borders. Caraya thus became the leading town in using contracts in origin<sup>90</sup>.

As the case studies outlined below conclude, this legal framework has not prevented, and seems instead to have fostered, specific forms of exploitation, mainly gendered. First of all, contracts in origin create a strong worker dependency on employers, as, for instance, the

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<sup>85</sup> *Idem*, p. 31.

<sup>86</sup> Sagnet, Y. & Palmisano, L. 2015, ‘Donne, caporalato e sfruttamento nei campi del ‘Ghetto Italia’, *Left*, 29 November. Available at <https://left.it/2015/11/29/donne-caporalato-e-sfruttamento-nei-campi-del-ghetto-italia/>

<sup>87</sup> Martin, 2016, p. 26.

<sup>88</sup> Corrado, 2017, p. 9.

<sup>89</sup> Gordo, M. 2008, ‘La contratación en origen de los rumanos para actividades agrícolas de temporada en España’, *Cuadernos de Geografía*, Vol. 84, p. 245.

<sup>90</sup> Djemila, Z. 2017, *Gender, Temporary Work and Migration Management. Global food and utilitarian migration in Huelva, Spain*, Cham, Palgrave MacMillan, Switzerland, p. 16 ss.

latter can decide to contract the worker “by name” for the next season, allowing him to enter Spain again without passing through a new selection process. This situation of dependency usually leads workers to be more “docile” and willing to accept abusive working conditions.

Indeed, in our view, in Spain, like in Italy, conditions of migrant agricultural workers are mainly exploitative.

The system of “contract in origin” has been accompanied by other legal mechanisms concerning recruitment, such as those managed by the *Empresa de Trabajo Temporal*. Scholars have highlighted that these agencies have often facilitated situations of exploitation – by paying workers much less than declared, or by creating fake contracts<sup>91</sup>. An important role is also played by the so-called *manijeros*, who are long-stay immigrants who act as gangmasters recruiting migrant workers and are in charge of their work activities. They are described by Gálvez, Rebelles, Marente as having a significant power in determining working conditions<sup>92</sup>.

With regard to Romanian workers, recruitment is also performed by Romanian agencies which usually recruit women with the only selective requirement being that they pay a commission, while deceiving them about the real working and living conditions they will face on their arrival. Moreover, these agencies tend to bring their nationals to work on the basis of the salary levels established in their country<sup>93</sup>.

In sum, with regard to the employment of migrant women, there have been two-levels of differentiated labour-force in the agricultural sector in Spain: seasonal women workers, mainly from Morocco, recruited through the system of “contract in origin” (around 2,000 in 2016) and Eastern European migrant women who, since 2007, are often recruited through temporary work agencies. These gendered groups are put into a continual situation of competition with one another, and also with undocumented migrants, above all African men, who are also well-represented<sup>94</sup>.

Within this system, based on greater seasonality and flexibility, we will consider two different case studies, both based in Andalusia. The first regards the agricultural sector in Huelva, where we can easily observe the functioning and consequences of the different recruitment mechanisms for Romanian and Moroccan women employed in the seasonal strawberry harvest.

The second case study concerns the working conditions of migrant women workers in the rural area of Almeria. Here, the same continuous-cycle production in greenhouses presents significant similarities with the case study of migrant women workers in Ragusa.

It is worth noticing that with respect to Huelva several reports and studies have already investigated the situation of migrant women working in harvesting activities. Conversely, the specific situation of migrant women in the greenhouses of Almeria deserves greater attention and some more research in the field would be valuable.

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<sup>91</sup> Corrado, 2017, p. 11.

<sup>92</sup> Gálvez, S. P., Rebelles, V. L., Marente, E. M. 2012, *Las mujeres migrantes, la trata de seres humanos con fines de explotación y los campos de fresa de Heulva*. Available at <http://www.nadiesinfuturo.org/IMG/pdf/DiagnosticoTrataHueva.pdf>

<sup>93</sup> Corrado, 2017, pp. 11-12.

<sup>94</sup> Hellio, 2016.

### 1.2.1. Huelva

In the Province of Huelva, 90% of the recruited workforce is focused on responding to the necessities of the most important strawberry production district in Europe<sup>95</sup>.

The first migrant workforce that was recruited, from the mid-90s, was mainly composed of African men, almost all of whom were undocumented. As happened in Ragusa, the change in this composition was mainly due to the empowerment process by which these workers began to unionise and to protest abusive living and working conditions<sup>96</sup>.

The solution to these arising conflicts was found in hiring Eastern European nationals (mainly Poles and Romanians) through "contracts in origin". From the beginning, selected workers were mainly women, as they were considered more 'docile' and more skilled in harvesting, while their ties to families left in their countries of origin made their return home after the expiration of the contract more certain.

After the 2007 EU enlargement, women from Eastern European countries – on the contrary to what happened in Ragusa – were replaced. In particular, there was an increase in the number of women from Morocco, who were recruited through the AENEAS EU funded programme on contracts in origin. In this case, the fact of having left minor-age children to be cared for in the country of origin became an explicit formal prerequisite to be selected, as it was a guarantee of the mothers' return to their countries of origin at the end of the harvest season as required by the "*contratación en origen*" programme.

Two elements should be noted. Firstly, the substitution of workers: Eastern European female migrants are preferred to African males in order to obtain a less empowered labour-force, while third-country women substitute Eastern European ones from the moment when the latter are in the position to obtain more social rights and perceived as less vulnerable due to their access to the EU. Secondly, care relations and family responsibilities, along with other specific characteristics, formally become an instrument for flexible and circular labour force insertion in agricultural production<sup>97</sup>.

According to a survey conducted by the Local Development Institute (*Instituto de Desarrollo Local*) in 2012, 100% of Moroccan agricultural workers in Huelva were middle-aged women; only 5.4% of them had a secondary-level school degree and only 3.8% were without dependent children; 50.8% were married or divorced, and 45% originated from a rural context in Morocco. Finally, more than 75% were not able to read or write<sup>98</sup>.

Another survey conducted in the same year, and mainly focused on qualitative interviews of Romanian women, shed light on how these women found themselves in a situation of precarity and vulnerability because, as well as the fact that they were women and foreign, they could not speak the local language, they came alone and through a temporary work agency without a contract in origin and without previously knowing their rights and terms of employment, and they had left their children at home, where they had no work and lived in a difficult socio-economic situation<sup>99</sup>.

These data, while referring to two different groups of migrant women with similar social and economic features, compose in both cases the perfect portrait of potential victims of exploitation and trafficking. Indeed, in our view, they enlighten all those elements which

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<sup>95</sup> Martín, E. & Castaño, A. 2004, 'El Encierro de Inmigrantes en la Universidad Pablo de Olavide Sevilla', in B. López García and M. Berriane (Eds.) *Atlas de la Inmigración Marroquí en España : Atlas 2004*, Ministerio de Trabajo y Asuntos Sociales, Madrid.

<sup>96</sup> *Ibidem*.

<sup>97</sup> LLaga, M., Márquez Domínguez, J.A., Almonte J.M. 2016, 'La contratación en origen de temporeros marroquíes para los campos españoles como experiencia de codesarrollo', *Cuadernos Geográficos*, Vol. 55, No. 2, p. 184.

<sup>98</sup> *Idem*, pp. 185–186.

<sup>99</sup> Gálvez *et al.* 2012, p. 85.

inform gendered vulnerability, and which seem to have been used by the Spanish system as a guarantee of the recruitment of a vulnerable, ultra-flexible and feminised labour force. While in Ragusa this selection happens as a consequence of the matching between the new composition of migratory movements and the requests of land-owners, in Huelva it seems to be facilitated by institutional policies.

In the case of women with a contract in origin, working and living conditions of Moroccan women in Huelva have been deeply affected by the complete dependency on their employer, as always happens with seasonal migrant workers, if they wish to have their contract renewed. The standard contract in itself can leave huge room for abuses, by allowing, for example, overtime by mutual agreement. This is a perfect example of a situation in which, as Max Weber also explained, contractual freedom in a liberal labour market and within unequal power relationships, tends to be abused as an instrument of power by the strongest actors, whereas the weakest actors are simply coerced to “consent” to imposed conditions, even when these dynamics appear to have been negotiated<sup>100</sup>.

In this context of dependency, migrant women working in Huelva under the “contract in origin” live under a situation of complete control over their bodies “in difficult conditions, suffering hardship and sometimes violence”<sup>101</sup>. Abusive conditions may range from arbitrary deduction of percentage from wages and excessive overtime, which could mean no single day off for the entire harvesting period, to sexual exploitation as a consequence of the position of subjection in which they found themselves<sup>102</sup>.

In recent years, a new substitution of Eastern European nationals for Moroccan ones has taken place, mainly due to the economic crisis which has led to a decrease in the quotas and contracts in origin. Indeed, in total 37% of the 57,694 contracts for the 2014 harvest went to Romanian labourers, who once again became the largest group, followed by Moroccan women as the second largest. Once again, recruited workers are almost all women. According to Corrado, the recruitment of women workers from Eastern Europe is also justified by the fact that there are few conflicts, and by the existence of a presumed cultural affinity<sup>103</sup>.

Nevertheless, all the abusive above-quoted living and working conditions have been quite unaltered by the new course of migrant women recruitment, which, according to Gálvez *et al*, is marked by situations of strong dependency on the employer which may result in exploitation, threats, and sexual abuse<sup>104</sup>. Moreover, as mentioned above, in the case of Eastern EU women, and Romanians in particular, recruitment often takes place through temporary work agencies in the countries of origin, which aim to gain the positive attention of Western EU enterprises by focusing on the economic advantages in employing posted workers, cutting labour costs due to the absence of labour and social security contribution, and lowering pay<sup>105</sup>. It has been claimed that women recruited by these agencies are often deceived about the real working and living conditions they will face.

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<sup>100</sup> Weber, M. [1922] 1978, *Economy and Society. An outline of Interpretative Sociology*. University of California Press, Berkeley and Los Angeles, p. 334.

<sup>101</sup> Djemila, 2017, p. 49.

<sup>102</sup> Employers’ sexual abuses and blackmails against migrant women workers in Huelva have been documented by several studies. See, for instance, Barnes, I. & Cherino, C. 2011, *The Role of Circular Migration and Mobility Partnerships – Integrating Legal Migration Opportunities into the Union’s External Policies*, Conference Paper at the UACES 41<sup>st</sup> Annual Conference. Exchanging Ideas on Europe 2011, Robinson College, University of Cambridge, Cambridge, United Kingdom, 5-7 September 2011, p. 11. See also Djemila 2017, p. 69; Gálvez *et al*. 2012; Prandi, S. 2017, *Oro rosso. fragole, pomodori, molestie e sfruttamento nel Mediterraneo*, Settenove Edizioni, Cagliari (PU), and the documentary film *La rançon de la fraise*, by Béatrice Limare, France 2009, <http://television.telerama.fr/tele/programmes-tv/la-rancon-de-la-fraise,12768134.php>.

<sup>103</sup> Corrado, 2017, p. 11.

<sup>104</sup> Gálvez *et al*. 2012, pp. 55.

<sup>105</sup> Archain, S. 2017, ‘The transnational Supply of Workforce within the European Union. Issues of Equal treatment for migrant workers’, *L’altro diritto. Centro di documentazione su carcere, devianza e marginalità*. Available at: <http://www.altrodiritto.unifi.it/rivista/2017/archain/>

Migrant women working in Huelva, independently of their national origin, thus risk facing oppressive dynamics of control, isolation, gendered subjection, and fragility also due to the lack of information and social networks. Abusive actors can be employers, temporary agencies, or *manijeros*. All these factors can denote specific situations of trafficking for labour and sexual exploitation.

Similar to what occurs in Ragusa, the condition of segregation and isolation in which migrant women find themselves, due to the housing arrangements on farms, increases the possibilities for cases of sexual abuse. According to scholars, even in this context, no physical coercion seems to be needed: in the study by Gálvez *et al.*, some women explain that female workers may not refuse to have sexual relations with "patrons", as they would risk losing their job, while migrant women are often also selected by employees based on their appearance<sup>106</sup>.

### 1.2.2. Almeria

In 2013, the United Nations (UN) Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, addressed the Spanish authorities on about the fact that "Respect for the dignity and human rights of the irregular migrants working in the agricultural area should be a high priority for Spain (...) while paying particular attention to the increased vulnerability of migrant women who work and live in greenhouses in Almería, and are exposed to violence, including sexual violence and de facto prostitution"<sup>107</sup>. It would be necessary to carry out a specific investigation to verify whether or not these recommendations have been effectively implemented by the Spanish authorities.

The rural area around Almeria is well-known for its large-scale agricultural production in greenhouses, which reversed the process from desertification to intensive agriculture in the 1970s. The environmental impact of this kind of production, similar to that adopted in the Province of Ragusa, is to the extent at which the zone (450 square meters) has been defined as "a plastic sea"<sup>108</sup>.

To maintain these levels of production, it has been reported that many workers are needed in a continuous-cycle activity, in a highly insalubrious working context among herbicides and pesticides, with temperatures which are often up to 50 Celsius degrees, while the contract wage is approximately 50 euros for 6 hours of working, which in reality, becomes around 30 euros for 8/9 hours working<sup>109</sup>. Moreover, as stated by Bernard Roux from AGTER, in Almeria "workers do not know if they will be working 8 days or 3 days, they can be dismissed from one day to the other"<sup>110</sup>.

Due to these extremely hard working conditions, along with the economic depression affecting the zone, which has led to a massive emigration since the beginning of the 20<sup>th</sup> century, employed workers are mainly migrants, even though Spanish internal immigrants are also present: in Almeria, as in Huelva, most of the farms producing labour-intensive commodities rely on a mix of legal and unauthorised migrants to perform labour-intensive tasks<sup>111</sup>. In this context, temporality, along with the idea of a desert of immigrants, both

<sup>106</sup> Gálvez *et al.* 2012, p. 60 and p. 76.

<sup>107</sup> UN, *Spain must make a priority the fight against racism, now more than ever*, <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12954&LangID=E>

<sup>108</sup> NEPIM, 2017, 'The Plastic sea in Almeria (Spain)', *NEPIM, s.p. Online*, 26 December. Available at [http://nepim.eu/cms/index.php?article\\_id=18&clang=3](http://nepim.eu/cms/index.php?article_id=18&clang=3); Horse, L. 2015, 'Spain's Sea of Plastic: A Migrants Nightmare (PHOTOS)', *Sick Chirpse*, 15 September. Available at <http://www.sickchirpse.com/spain-sea-of-plastic-migrant-nightmare-photos/2015agri-food-system>.

<sup>109</sup> Mori, 2016, p. 8.

<sup>110</sup> Sauzion, C. & Roux, B. 2017, 'The intensive production model of Almeria (Andalusia) - Interview with Bernard Roux', *Online Knowledge Base. Natural Resource Governance around the World*, [http://www.agter.org/bdf/en/corpus\\_chemin/fiche-chemin-679.html](http://www.agter.org/bdf/en/corpus_chemin/fiche-chemin-679.html)

<sup>111</sup> Martin, 2016, p. 26.

Spanish and foreigners, is another factor which, along with fear, makes it much more difficult to articulate fights for workers' rights<sup>112</sup>.

In Almeria, the presence of migrants has never stopped increasing: In 2011, the first two most significant nationalities were Moroccan (46,340) and Romanian (35,884) (Vigil, 2012, p. 111).

With regard to agricultural employment, in 2008, about 18,800 migrant workers were registered for a total of 68,200 contracts (representing 27.5%); in 2013, of about 80,000 workers enrolled, around 32,022 were foreign (40%), 26,220 of which were non-EU and, to a large extent, Moroccan<sup>113</sup>. The number in contract for migrant women has also increased in recent years: in March 2015, in total 47,768 contracts were issued (whereas in March 2007, the number was 21,657), and more than half were signed by women from Eastern Europe<sup>114</sup>.

The situation for women workers, as always, appears to be affected by specific gendered abuses and discriminations. These are also suffered by women employed in packaging activities<sup>115</sup>.

Moreover, it has been claimed that both the lack of policies on accommodation for these migrants and the lack of efficiency in controlling the irregularity of this kind of jobs force irregular migrants to stay near the greenhouses and face difficult living conditions, such as racial segregation and rising xenophobia; this also includes racially motivated attacks on migrants<sup>116</sup>. According to Roux, migrant workers in Almeria "live directly in the greenhouse areas, sometimes in old buildings, the 'cortijos', the stables, that remain from the past and can serve as makeshift housing, or sometimes they build shelters themselves with old plastic tarps"<sup>117</sup>.

This situation evidently has a specific impact on migrant women workers' conditions. A complete isolation within greenhouses can lead to different forms of gendered abuse. Yet, while the suspected exploitation of migrant workers in Almeria is gaining visibility<sup>118</sup>, further and more careful research activity is needed with regard to the migrant women's labour exploitation in greenhouses, paying particular attention to the specific conditions of EU and third-country migrant women.

Lastly, it is worth noting that in the rural areas in Spain, like in Italy, the suspected sexual exploitation of migrant women linked to the agricultural system does not affect only female farm workers. In the Province of Almeria, for instance, studies report how, around the area of the farms, several Moroccan and Nigerian women, in the absence of other working opportunities, work in prostitution, experiencing very bad living conditions which have a strong impact on their health<sup>119</sup>.

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<sup>112</sup> Villaverde, T. 2017, 'Las milagros' de la agroindustria almeriense', *Pikara online magazine*. 22 February. Available at <http://www.pikaramagazine.com/2017/02/envasadoras-agroindustria-almeria/>

<sup>113</sup> Caruso & Corrado, 2015, p. 66.

<sup>114</sup> Corrado, 2017, p. 9.

<sup>115</sup> Villaverde, 2017.

<sup>116</sup> Davidovic, S. 2009, Female Romanian Migratory Labor in Spain: The Characteristic of 'Otherness', *Intersections*, Vol.10, No. 1, p. 701.

<sup>117</sup> Sauzion & Roux 2017

<sup>118</sup> See, for instance, the documentary film by Jean-Marie Barrère, *Spain: Stranded in a Sea of Plastic*. ARTE Reportage, France, 2017, <https://www.arte.tv/en/videos/074078-000-A/spain-stranded-in-a-sea-of-plastic/>

<sup>119</sup> Rios-Marin, A. & Garcia-Cano Torrico, M. 2017, 'Sex Work and Social Inequalities in the Health of Foreign Migrant women in Almeria, Spain', *Rivista de cercetare si interventie sociala*, Vol. 58, pp. 54-67.

### 1.3. Preliminary conclusions from case studies

These case studies, both in Italy and Spain, have shown how in the field of intensive agriculture, the labour market and the substitution of labour force is structured through processes of internalisation, fragmentation, ethnicisation and feminisation<sup>120</sup>. In this context, all case studies have highlighted that being a documented migrant from third countries, an EU citizen, or in general a regularly employed worker, does not guarantee better labour conditions and does not automatically entail the avoidance of abuses.

The case studies in Spain also show how workers' selection through temporary contracts based on negotiated quotas with the countries of origin, or circular migrations managed by temporary work agencies, tend to have, as a consequence, a greater labour market segmentation based on gender, race, and ethnicity<sup>121</sup>. Migrants arriving through these channels tend to be low-educated women with family responsibilities who are living in extremely difficult socio-economic situations at home.

Moreover, this type of legal channel for the recruitment of seasonal migrants from third countries or temporary EU workers have played a significant role in the substitution of a migrant labour force in accordance with the agricultural system's needs in terms of workers' docility and flexibility.

Finally, the case studies suggest that, in both Italy and Spain, there are also situations of sexual exploitation of those migrant women who are not directly employed in agricultural work but who live in rural areas and ghettos around farms.

The general picture deriving from the considered case studies gives us a first orientation on the need to identify the structural factors which produce migrant women's vulnerability, within a comprehensive and gendered analysis of agricultural contexts and migrants' conditions. Vulnerability to exploitation, in its different forms, is thus our key-concept with regard to both regular and undocumented migrant women.

On this basis, the next Chapter evaluates the effective capacity of the current EU legal framework, by underlying how strategies focused on repressive measures cannot be sufficient, while an effective implementation of a holistic approach permits us to address a wide range of cases and allows the development of more effective strategies. Evidently, a revision of the contemporary mechanism characterising workforce recruitment is also required, along with a wider rethinking of the European agricultural sector's rules and way of functioning. The point is not only to prosecute employers and to assist victims, but also to tackle the systemic factors that generate migrant women workers' vulnerability, especially in rural areas and farms.

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<sup>120</sup> Reigada, A. 2017, 'Family farms, migrant labourers and regional imbalance in global agri-food system. On the social (un) sustainability of intensive strawberry production in Huelva (Spain)', in A. Corrado, C., De Castro, C. and D., Perrotta (Eds.), *Migration and Agriculture: Mobility and change in the Mediterranean area*, Routledge, London and New York, p. 101.

<sup>121</sup> Djemila, Z. 2011, 'Circular migration and misrecognition', *Justice Spatiale*, Vol.3, March, p. 2. Available at <http://www.jssj.org>

## 2. EU LEGAL INSTRUMENTS ON SEVERE EXPLOITATION AND TRAFFICKING IN HUMAN BEINGS

### KEY FINDINGS

- The interpretation of the definition of THB contained in the UN Palermo Protocol and in Directive 2011/36/EU, and related notions, such as slavery and forced labour, still remains contentious. There is ambiguity over how these notions should be applied in practice. There is a need for conceptual clarity about these connected but also in part separate and different issues.
- **Directive 2011/36/EU** has marked an important shift in EU legislation on trafficking by adopting an integrated and human rights-based approach. In the light of this innovative approach, revision is needed of the other EU legal instruments concerning trafficking and severe exploitation, such as Council Directive 2004/81/EC and Directive 2009/52/EC, which instead mainly focus on combatting illegal immigration and on states' obligations to put into place criminal provisions against perpetrators.
- **The principle of unconditional assistance** set out in Directive 2011/36/EU has not been consistently incorporated into EU legislation concerning trafficking and exploitation. For instance, there is a clear incongruity between Directive 2011/36/EU and Council Directive 2004/81/EC, which makes the residence permit to victims and related assistance necessarily conditional on their cooperation with competent authorities.
- **The principle of non-prosecution** of the victims of trafficking set out in Directive 2011/36/EU has not been consistently incorporated into EU legislation related to trafficking and exploitation.
- Building on the UN Palermo Protocol and the Council of Europe Convention on Trafficking, Directive 2011/36/EU identifies the "abuse of a position of vulnerability" as one of the means of committing THB and defines the **position of vulnerability** as "a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved". This definition – despite a vagueness which may lead to wrong and sometimes risky applications of the definition of trafficking – is however particularly important because it highlights the need to consider the circumstantial and structural factors which make a person vulnerable to exploitation and trafficking. In addition, **directive 2011/36/EU** has been inadequately implemented in many Member States.
- **Directive 2014/36/EU** on seasonal workers significantly provides the possibility for the worker to change their employer. Yet, the fact that this provision is not mandatory for Member States constitutes a significant limit in terms of reducing the condition of vulnerability of workers who, being unable to change employers, are willing to accept abusive practices and conditions since otherwise they risk losing their job and, accordingly, also their right to stay in the country. Furthermore, this Directive does not really address the role of temporary work agencies.
- EU legislation on posting workers does not adequately prevent situations of social dumping and the exploitation of posted workers.

The first part of this Chapter provides an overview of the international conceptual and legal framework on severe exploitation and trafficking which has guided policy at the EU level, with the aim of illustrating the main international legal instruments in the field and offering some conceptual clarity.

The second part is dedicated to an analysis of the main EU legal instruments related to trafficking and exploitation, examining their efficiency, innovative aspects and limits in preventing and sanctioning these phenomena and protecting the victims.

## 2.1 International Conceptual and Legal Framework

### 2.1.1 Trafficking in Human Beings

#### *The Palermo Protocol*

The 2000 UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*<sup>122</sup>, also known as the Palermo Protocol, has provided, for the first time, an internationally agreed-upon definition of the THB. Article 3 of the Protocol states that THB means:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

Marking an important change with respect to the notion of trafficking provided by earlier international agreements<sup>123</sup>, this definition identifies trafficking as a “phenomenon” involving “persons” and not just women and children, and encompassing diverse types of exploitation and not only sexual exploitation. The definition contains three structural components: the act (e.g. recruitment, transportation, transfer, harbouring or receipt of persons), the means (e.g. threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person) and the purpose, which is the exploitation. The presence of these three elements is necessary to constitute a situation of trafficking. The only exception is when victims are children: in this case the “means” requirement does not apply. The Protocol also provides that the consent of a victim of trafficking shall be irrelevant where any of the above-mentioned means have been used (Art. 3(b)) and, accordingly, it cannot be used as a defence<sup>124</sup>.

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<sup>122</sup> United Nations 2000, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Resolution A/RES/55/25, fifty-fifth session of the General Assembly of the United Nations.

<sup>123</sup> League of Nations 1904, *International Agreement for the Suppression of the White Slave Traffic*, Paris, in force 18 July 1910, 1 LNTS 83; League of Nations 1910, *International Convention for the Suppression of the White Slave Traffic*, Paris, in force 8 August 1912, 3 LNTS 278; amended by a Protocol approved by the General Assembly on December 3, 1948; League of Nations 1921, *International Convention for the Suppression of Traffic in Women and Children*, Geneva, in force 15 June 1922, as amended by the Protocol signed at Lake Success, New York, 12 November 1947, 53 UNTS 39; League of Nations 1933, *International Convention for the Suppression of the Traffic in Women of Full Age*, Geneva, in force 24 August 1934, 150 UNTS 431; United Nations 1949, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, New York, in force 25 July 1951, 96, UNTS 271.

<sup>124</sup> Gallagher, A. 2010, *The International Law of Human Trafficking*, Cambridge University Press, Cambridge and New York, p. 27.

The Protocol's definition of trafficking has been incorporated into European, EU and national legal frameworks in the field<sup>125</sup>.

Yet, despite the undoubted importance of the definition of trafficking provided by the Palermo Protocol, its interpretation still remains contentious, revealing that what constitutes trafficking "is not yet firmly established" at national level<sup>126</sup>, especially in the criminal justice practice: "in short, what is considered trafficking by police, prosecutors and courts in one country may not be characterised as such in another – even in situations where the laws of both countries stipulate an identical definition"<sup>127</sup>. This is mainly due to the fact that there are many key notions and aspects of the Protocol's definition of trafficking that are not clearly defined and therefore it remains ambiguous how they should be seen and applied in practice. These notions, as a recent study by the United Nations Office on Drugs and Crime (UNODC) has highlighted, include the concept of the "abuse of a position of vulnerability"; the irrelevance of consent – especially with respect to forms of abuse of a situation of vulnerability – and the notion of exploitation<sup>128</sup>.

In an attempt to bring clarification to the meaning and application of these critical notions of the trafficking definition, the study UNODC constitutes an important guidance for practitioners involved in the prevention, investigation and prosecution of trafficking cases<sup>129</sup>. Another important study to be mentioned in this regard is the list of "Operational Indicators of Trafficking in Human Beings" developed by the ILO in collaboration with the Commission<sup>130</sup>. This document provides a detailed list of indicators aimed at facilitating the identification of cases, relying on a system of degrees of severity of indicators: weak, medium, or strong.

It is worth noting that the Palermo Protocol, since it supplements the Organized Crime Convention, constitutes primarily a transnational criminal law treaty. It is therefore "very much an instrument of criminal law as opposed to human rights law"<sup>131</sup> and, accordingly, focuses chiefly on prosecution rather than the protection of the victims. While part II of the Protocol contains important provisions on victim protection and support, there are very few obligations. The discretionary nature of the provisions regarding protection and assistance of the victims has been the object of severe critiques<sup>132</sup>.

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<sup>125</sup> See, for instance, UNODC 2009, *Global Report on Trafficking in Persons*. Available at [https://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](https://www.unodc.org/documents/Global_Report_on_TIP.pdf)

<sup>126</sup> See also in this regard the European Parliament, *Resolution of 12 May 2016 on Implementation of the Directive 2011/36/EU of 5 April 2011 on Preventing and Combating Trafficking in Human Being and Protecting its Victims from a Gender Perspective* (2015/2118(INI)), Strasbourg, par. 85.

<sup>127</sup> Gallagher, A. 2017, 'The International Legal Definition of "Trafficking in Persons": Scope and Application', in P. Kotiswaran (Ed.), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge Studies in Law and Society, Cambridge, p. 84; pp. 85-86; see also Allain, J. 2014, 'No effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol', *Albany Government Law Review*, Vol. 7, No.1, pp. 111-142.

<sup>128</sup> UNODC 2012, *Issue Paper: Abuse of a Position of Vulnerability and Other "means" within the Definition of Trafficking in Persons*, Vienna: UNODC. Available at [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf); UNODC 2014, *Issue Paper: The Role of Consent in the Trafficking in Persons Protocol*, Vienna: UNODC. Available at <http://un-act.org/publication/view/the-role-of-consent-in-trafficking-in-persons-protocol/>; UNODC 2015, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol*, Vienna: UNODC. Available at [https://www.unodc.org/documents/congress/backgroundinformation/Human\\_Trafficking/UNODC\\_2015\\_Issue\\_Paper\\_Exploitation.pdf](https://www.unodc.org/documents/congress/backgroundinformation/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf); see also, Gallagher, 2017.

<sup>129</sup> UNODC, 2012; UNODC, 2014; UNODC, 2015.

<sup>130</sup> ILO & European Commission 2009, *Operational indicators of trafficking in human beings. Results from Delphi survey implemented by the ILO and the European Commission*. ILO/European Commission.

<sup>131</sup> Allain, J. 2013, *Slavery in International Law: Of Human Exploitation and Trafficking*, Martinus Nijhoff Publishers, Leiden- Boston, p. 361.

<sup>132</sup> See UNODC, 2006, p. 368.

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*Council of Europe Convention on Action against Trafficking*

In 2005, the Council of Europe adopted the *Convention on Action against Trafficking in Human Beings* (hereafter, Council of Europe Anti-Trafficking Convention)<sup>133</sup>, which constitutes a supplement to the Palermo Protocol, aiming to add value to the existing international legal framework in the field<sup>134</sup>. More specifically, as the Explanatory Report accompanying this treaty highlights, the aim of the Convention is to establish a “proper balance between matters concerning human rights and prosecution”<sup>135</sup>.

As affirmed in Article 1 of the treaty, the purposes of the Council of Europe Anti-Trafficking Convention are:

- a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;
- b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
- c) to promote international cooperation on action against trafficking in human beings.

The Convention dedicates special attention to the **assistance of victims and the protection of their human rights**, striving to set up a comprehensive legal framework with specific and binding measures to be adopted. Furthermore, by promoting the adoption of a gender perspective on trafficking issues, the Convention makes special reference to the importance of guaranteeing gender equality in the protection of victims as well as in preventing and combatting trafficking.

Given the focus of the Council of Europe Anti-Trafficking Convention on human rights and victim protection, it has been also referred to as a human rights treaty. As Gallagher points out<sup>136</sup>, the Convention’s status as a human rights instrument is further confirmed by the explicit recognition, in its preamble, that trafficking is “a violation of human rights and an offence to the dignity and the integrity of the human being”.

Article 2 states that the Convention applies to all forms of trafficking, on both the national and transnational level, and regardless of whether or not these are related to organised crime. Moreover, as the the Explanatory Report to the Council of Europe Anti-Trafficking Convention clarifies, the Convention applies both to victims who legally entered or are legally present in the territory of the receiving Party and those who entered or are present illegally<sup>137</sup>.

As mentioned above, the Convention has adopted the definition of THB set out in the Palermo Protocol. Consistent with its emphasis on victim protection, the Convention has included a definition of a victim of trafficking, described as “any natural person who is subject to trafficking in human beings” as it is defined in the Convention (Art. 4(e)). The insertion of this definition was considered essential by the drafters of this treaty to ensure the right application of the provisions concerning the protection of victims<sup>138</sup>.

The Explanatory Report to the Council of Europe Anti-Trafficking Convention provides some significant clarifications of key aspects and notions of the definition of trafficking, as set up

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<sup>133</sup> Council of Europe 2005, *Convention on Action against Trafficking in Human Beings*, Warsaw, Council of Europe Treaty Series- No. 197.

<sup>134</sup> Gallagher, 2010.

<sup>135</sup> Council of Europe 2005, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*, Warsaw, 16. V, par. 29 p. 17.

<sup>136</sup> Gallagher, 2010, p. 115

<sup>137</sup> Council of Europe, 2005, par. 62, p. 12

<sup>138</sup> *Idem*, par. 17, p. 4.

in the Protocol. For instance, the report embraces the definition of the **abuse of a position of vulnerability** set out in the interpretative notes in the *Travaux Préparatoires* to the Palermo Protocol<sup>139</sup>, stating that it “meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse”. In addition, the report specifies that:

The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce<sup>140</sup>.

This explanation of the meaning of vulnerability highlights how this notion, in addition to referring to a person’s inherent characteristics, also has a relational or social dimension. Thus, it points to the external and structural factors and circumstances producing a situation in which a person might be denied the ability to make a free choice. From this perspective, as stressed below with regard to Directive 2011/36/EU, the focus of anti-trafficking legal instruments on the situation of vulnerability – by identifying the abuse of a position of vulnerability as one of the means by which trafficking can occur – is particularly important, since today most cases of exploitation rely on the use of psychological manipulation, or more generally on the taking advantage of a person’s weakness and “precariousness” by employers and/or traffickers.

By intending to improve the protection afforded by the Palermo Protocol and develop the standards contained therein (see Preamble and Art. 39) the Council of Europe Anti-Trafficking Convention has added important provisions concerning the assistance and protection of the victims. For instance, the Convention dedicates special attention to the issue of identification, recognising how “failure to identify a trafficking victim correctly will probably mean that victim’s continuing to be denied his or her fundamental rights” and this also negatively affects the prosecution process<sup>141</sup>. From this perspective, the Convention requires, among the other things, that State Parties “provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims” and ensure the necessary legal framework is in place (Art. 10).

In addition, the Convention significantly requires that State Parties provide basic assistance to all victims of trafficking within their territory, in their physical, psychological and social recovery (Art. 12). Importantly, the Convention affirms the principle of **unconditional assistance** stating that while Parties may decide to grant residence permits only to victims who cooperate with the authorities (Art. 14), “each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness” (Art. 12(6)). The Convention also establishes that Parties shall provide victims with a “**recovery and reflection period**” of at least 30 days (Art. 13). Moreover, the Convention explicitly acknowledges the need to **avoid the criminalisation of victims of trafficking** providing that “each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so” (Art. 26). Therefore, according to this important provision, when victims of trafficking commit crime as a result of compulsion within a trafficking situation, they should not be punished.

Lastly, it is worth mentioning that the Council of Europe Anti-Trafficking Convention has established a special monitoring mechanism, the Group of Experts on Action against

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<sup>139</sup> UNODC, 2006, p. 347.

<sup>140</sup> Council of Europe, 2005, par. 17, p. 4.

<sup>141</sup> *Idem*, par. 127, p. 22.

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Trafficking in Human Beings (GRETA), aimed at ensuring State Parties' compliance with the Convention (Art. 36).

### 2.1.2. Slavery, Practices Similar to Slavery and Servitude

The international legal definition of slavery was provided in 1926 by the League of Nations *Convention to suppress the Slave Trade and Slavery*<sup>142</sup> (the Slavery Convention). Article 1 of this Convention states that slavery "is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" and that the slave trade consists of "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves"(Art. 1). Article 2 requires State Parties to prevent and suppress the slave trade and to bring about "the complete abolition of slavery in all its forms".

In 1956, the UN adopted the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*<sup>143</sup>, which aimed at targeting four institutions and practices similar to slavery: debt bondage, serfdom, servile forms of marriage, and child exploitation. According to the Convention, State Parties are required to abolish these practices "where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926" (Article 1). The persons who are victims of the aforementioned institutions and practices similar to slavery are referred to as "persons of servile status" (Art. 7). However, it is worth highlighting that international law does not provide a definition of servitude.

The prohibition on holding a person in slavery, servitude and forced labour is found in Human Rights Law, in particular in Article 4 of the 1948 Universal Declaration of Human Rights; Article 8 of the 1966 International Covenant on Civil and Political Rights (ICCPR); Art. 11 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). It is also contained in Article 4 of the European Convention on Human Rights (ECHR) and in Article 5 of the Charter of Fundamental Rights of the European Union.

The distinction and relationship between the notions of slavery and servitude is blurred and has been the object of diverse interpretations (see, for instance, Allain, 2013; Stoyanova, 2017a). The Explanatory Report on the European Trafficking Convention interestingly points out that: servitude is "to be regarded as a particular form of slavery, differing from it less in character than in degree. Although it constitutes a state or condition, and is a 'particularly serious form of denial of freedom' [...] it does not have the ownership features characteristic of slavery"<sup>144</sup>. By generally following this understanding, in 2005, the European Court of Human Rights (ECtHR), in its judgment in the case of *Siliadin v. France*<sup>145</sup> held that "servitude means an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of "slavery" (pars. 123-124).<sup>146</sup>

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<sup>142</sup> League of Nations 1926, *Convention to Suppress the Slave Trade and Slavery*, Geneva, in force March 9, 60 UNTS 253.

<sup>143</sup> United Nations 1957, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, Geneva, in force 30 April, 266 UNTS 3.

<sup>144</sup> Council of Europe, 2005, par. 95, p. 17

<sup>145</sup> ECtHR, *Siliadin v. France*, Application No. 73316/01, 26 July 2005.

<sup>146</sup> This case concerned a Togolese young woman who went to France at 15 years old to study but was made to work as a domestic servant with the promise of obtaining regular immigration status. She had to work in severe exploitative conditions – long hours without pay and without a day of rest – and her passport was confiscated. The ECtHR stated that woman had been subjected to forced labour and held in servitude within the meaning of Article 4 of the ECHR. Yet, the Court argued that it could not be claimed that the applicant had been held in slavery "in the proper sense".

In *Silidian*, the ECtHR affirmed that the definition of slavery contained in the 1926 Slavery Convention refers to the “classic meaning of slavery as it was practiced for centuries” and that the deprivation of personal autonomy is not itself sufficient to amount to slavery. In particular, the Court claimed that “although the applicant was, in the instant case, clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense, in other words that Mr. and Mrs. B. exercised a genuine right of legal ownership over her thus reducing her to the status of an object” (par. 33). This pronouncement of the ECtHR has been criticised for suggesting a very narrow understanding of the 1926 definition of slavery as requiring the existence of a legal right to ownership<sup>147</sup>.

In the case of *Rantsev v. Cyprus and Russia*<sup>148</sup> (2010), the ECtHR refers to the *Kunarac* case<sup>149</sup> in which the International Criminal Tribunal for the former Yugoslavia (ICTY) has “concluded that the **traditional concept of “slavery” has evolved to encompass various contemporary forms of slavery based on the exercise of any or all of the powers attaching to the right of ownership**” (par. 280). The ECtHR has affirmed that “trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership” (par. 281). The Court has therefore determined that THB falls within the scope of Article 4 of the ECHR, significantly widening the scope of this provision. Yet, the Court did not specify whether trafficking is slavery, leaving unclear the reasons why trafficking falls within the meaning of Article 4<sup>150</sup>.

### 2.1.3. Forced Labour

The *Convention Concerning Forced or Compulsory Labour* No. 29<sup>151</sup> adopted by the ILO in 1930 defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Art. 2.1).

This definition consists of three elements: “work or service”, “**menace of any penalty**” and “**involuntariness**”. By using the expression “work or service”, the Convention means that forced labour includes any work, service and employment, occurring in any activity, industry or sector and irrespective of the employment status of the worker: “this means that someone can be in forced labour as an own-account worker and without necessarily being in either a formal or informal employment relationship”<sup>152</sup>. The terms “menace of any penalty” indicate the wide range of penalties used to force someone to perform work or service. These include “penal sanctions and various forms of direct and indirect coercion, such as physical violence, psychological threats or the non-payment of wages”<sup>153</sup>. Lastly, the ILO definition of forced labour refers to situations in which persons have not offered themselves voluntarily, even if it explicitly identifies some exceptions (Art.2.2.). In particular, the expression “offered voluntarily” refers to the free and informed consent of a worker to enter into an employment relationship and his or her freedom to leave at any

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<sup>147</sup> Allain, J. 2009, The Definition of Slavery in International Law, *Howard Law Journal*, Vol. 52, pp. 239-275;

Piotrowicz, R. 2012, ‘States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations’, *International Journal of Refugee Law*, Vol. 24, pp. 181-201.

<sup>148</sup> ECtHR, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, 7 January 2010.

<sup>149</sup> ICTY, *Prosecutor v Kunarac, Kovac & Vukovic* (Appeals Chamber) Case IT-96-23 & IT-96-23/1-A Judgment 12 June 2002.

<sup>150</sup> See Gallagher, 2010. See also Stoyanova, V. 2017a, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States’ Positive Obligations in European Law*, Cambridge, Cambridge University Press.

<sup>151</sup> ILO 1930, *Convention (No. 29) Concerning Forced or Compulsory Labour*. Adopted by the General Conference of the ILO at its fourteenth session, Geneva, 28 June.

<sup>152</sup> ILO 2012a, *Hard to see, harder to count - Survey guidelines to estimate forced labour of adults and children* (Report), ILO, Geneva, p. 12.

<sup>153</sup> ILO 2016, *ILO Standards on Forced Labour. The New Protocol and Recommendation At a Glance*. ILO, Geneva, p. 5.

time<sup>154</sup>. This means that even if a worker has accepted a job, his/her consent becomes irrelevant if forms of deception or coercion have been used<sup>155</sup>.

In 1957, the ILO adopted the *Convention Concerning the Abolition of Forced Labour* (No. 105) supplementing the 1930 Forced Labour Convention<sup>156</sup>. The 1957 Convention calls for the immediate and complete abolition of forced or compulsory labour as a means of political coercion or education, as a means of punishment for holding or expressing political views, as a method of mobilising labour for economic development, as a means of labour discipline, as a punishment for having participated in strikes, as a means of racial, social, national or religious discrimination (Art. 1).

The ILO's action against forced labour has progressively focused on the full range of types of forced labour imposed by state authorities, by private enterprises or by individuals<sup>157</sup>. In this regard, it is worth noting that the relationship between the concepts of forced labour and THB remains controversial. While they are strongly linked, forced labour and THB are not identical phenomena: "not all forced labour involves trafficking and not all trafficking for labour exploitation amounts to forced labour"<sup>158</sup>. Yet, the distinction has become less clear as the concepts of forced labour and trafficking often overlap and tend increasingly to converge<sup>159</sup>. In 2012, the ILO affirmed in its Global Estimate of Forced Labour that "human trafficking can also be regarded as forced labour", and so the ILO estimate "captures the full realm of human trafficking for labour and sexual exploitation"<sup>160</sup>. The only exceptions to this are cases of trafficking for organ removal, forced marriage, or adoption, unless these practices lead to situation of forced labour.

In 2014, the ILO adopted two new instruments on forced labour: ***Protocol of 2014 to the 1930 Forced Labour Convention (No. 29)***<sup>161</sup> and ***Forced Labour (Supplementary Measures) Recommendation (No. 203)***<sup>162</sup>. By emphasising the need for integrated action against forced labour and adopting a **human rights approach**, both the 2014 Protocol and Recommendation (which builds on the provisions of the Protocol and thus should be read in conjunction with it) pay special attention to prevention, protection and remedies in giving effects to the 1930 Convention's obligation to combat forced labour<sup>163</sup>.

Article 1 of the Protocol also reaffirms the definition of forced or compulsory labour set out in the 1930 Forced Labour Convention and recognises that this definition encompasses

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<sup>154</sup> *Ibidem*.

<sup>155</sup> ILO, 2012b, *ILO Indicators of Forced Labour*. Available at [http://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_203832/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm)

<sup>156</sup> ILO 1957, *Convention (No. 105) Concerning the Abolition of Forced Labour*. Adopted by the General Conference of the ILO at its fortieth session, Geneva, 25 June.

<sup>157</sup> Dottridge, M. 2017, 'Trafficked and Exploited: The Urgent Need for Coherence in International Law', in P. Kotiswaran (Ed.). *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge Studies in Law and Society, Cambridge, pp. 59-82; Andrees, B. and Aikman, A. 2017, 'Raising the Barr: The Adoption of New ILO Standards Against Forced Labour', in P. Kotiswaran (Ed.). *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge Studies in Law and Society, Cambridge, pp. 359-394.

<sup>158</sup> ICAT 2014, *Preventing trafficking in persons by addressing demand — AP - Forced Labour Net*, ICAT, Wien, p. 2.

<sup>159</sup> See, for instance, Piper, N., et al. 2015, 'Editorial: Whats in a Name? Distinguishing forced labour, trafficking and slavery', *Anti-Trafficking Review*, No. 5, pp. 1-9; Chuang, J. A., 2017, 'Contemporary Debt Bondage, "Self-Exploitation," and The Limits of the Trafficking Definition', in P. Kotiswaran (Ed.), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge: Cambridge Studies in Law and Society, pp. 112-133.

<sup>160</sup> ILO 2012c, *ILO Global Estimate of Forced Labour. Results and Methodology. International Labour Office (ILO) / Special Action Programme to Combat Forced Labour (SAP-FL)*, ILO, Geneva, p. 23.

<sup>161</sup> ILO 2014, *Protocol of 2014 to the Forced Labour Convention, 1930*. Adopted by the General Conference of the ILO at its 103rd session, Geneva, 11 June.

<sup>162</sup> ILO 2014, *Forced Labour (Supplementary Measures) Recommendation (No. 203), Recommendation on supplementary measures for the effective suppression of forced labour*. Adopted by the General Conference of the ILO at its 103rd session, Geneva, 11 June.

<sup>163</sup> Andrees & Aikman, 2017; Swepton, L. 2017, 'Trafficking and Forced Labour: Filling in the Gaps with the Adoption of the Supplementary ILO Standards, 2014', in P. Kotiswaran (Ed.), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge: Cambridge Studies in Law and Society, pp. 395-421.

situations of trafficking in persons for the purposes of forced labour or compulsory labour (see also the Preamble).

Both the Protocol No. 29 and Recommendation No. 203 foresee, in line with the Council of Europe Anti-Trafficking Convention and Directive 2011/36/EU, a provision regarding the non-prosecution of victims of forced labour for their involvement in unlawful activities “which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour” (Protocol No. 29, Art. 4).

The new ILO instruments also significantly **stress the key role of labour inspectorates and administrations as well as of employers and business in actions against labour forced**. This is an aspect that has not been previously stressed in international law on slavery, trafficking and forced labour<sup>164</sup>.

With regard to human rights law, the prohibition of forced labour is also found in Article 4(2) of the ECHR, stating that “No one shall be required to perform forced or compulsory labour”. Over recent years, the ECtHR has developed a gradually growing body of case law concerning forced labour, taking the definition set out in the 1930 Forced Labour Convention as “a starting point for its interpretation of Article 4(2) of the Convention” (*Van der Musselle v. Belgium*, par. 32)<sup>165</sup>.

As for the element of “the menace of any penalty” contained in the definition of forced labour in the 1930 ILO Convention, the Court, in the case of *C.N. and V. v. France*<sup>166</sup>, adopted a broad approach to this requirement holding that: **“penalty’ may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal”** (par. 77).

In *Silidian v. France*, the ECtHR held that although the applicant, a minor, was not threatened by a “penalty”, she was in “an equivalent situation in terms of the perceived seriousness of the threat” since “she was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by police”. Her fear was fostered and “she was led to believe that her status would be regularized” (par. 118). In the case of *Tibet Mentes and Others v. Turkey*<sup>167</sup>, by contrast, the ECtHR adopted a narrow approach affirming that in the lack of any sort of physical or mental coercion, the mere possibility that the applicants could be dismissed in the event of refusal to work overtime did not correspond to the “menace of any penalty” for the purposes of Article 4 of the ECHR (par. 68).

With regard to the element of “involuntariness” in the definition of forced labour, it is worth highlighting that the ECtHR has not given decisive weight to the applicant’s prior consent to the work or service required to be performed (*Van der Musselle v. Belgium*, par. 36). Rather, **the ECtHR has considered it necessary to examine all the circumstances of the case when determining whether tasks required to be performed fall within the prohibition of “forced labour or compulsory labour” according to Article 4 of the ECHR**.

This approach, for instance, has been followed by the ECtHR in the recent case of *Chowdury and Others v. Greece*<sup>168</sup>, concerning Bangladeshi nationals who did not have work permits and were subjected to forced labour in the strawberry-picking industry in Greece. In this case, by paying attention to the factors denoting the condition of

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<sup>164</sup> Andrees & Aikman, 2017, p. 385.

<sup>165</sup> ECtHR, *Van der Musselle v. Belgium*, Application No. 8919/80, 23 November 1983.

<sup>166</sup> ECtHR, *C.N. and V. v. France*, Application No. 67724/09, 11 October 2012.

<sup>167</sup> ECtHR, *Tibet Mentes and Others v. Turkey*, Application No. 57818/10, 57822/10, 57825/10, 57827/10 and 57829/10, 24 October 2017.

<sup>168</sup> ECtHR, *Chowdury and Others v. Greece*, No. 21884/15, 30 March 2017.

vulnerability of the applicants (the undocumented status, the risk of being arrested and detained to be deported) (pars. 95-98), the Court held that their situation – irregular migrants working in extreme physical conditions, for long hours, subjected to constant humiliation and without wages, under the supervision of armed guards – constituted human trafficking and forced labour (par. 99). The Court specified that “exploitation of labor is one of the forms of exploitation in the definition of trafficking in human beings, which highlights the intrinsic relationship between forced and compulsory labour and trafficking in human beings” (par. 93). Furthermore, by stressing the difference between forced labour and servitude, the ECtHR noted that, in contrast to servitude, to qualify abuse as forced labour it is not necessary that the victim lives in a “state of exclusion from the outside world”, without any possibility of freely move and leave the employment (para 99). *Chowdury and Others v. Greece*, which is the first case in which the ECtHR decided that the exploitation of irregular migrant workers was forced labour<sup>169</sup>, constitutes a significant advancement in the case law under Article 4 of the ECHR. Yet, it has been criticised for lacking clarification about the intrinsic relationship between trafficking and forced labour<sup>170</sup>.

## 2.2 EU legal instruments concerning trafficking and severe exploitation

Human trafficking is explicitly prohibited under the EU 2000 Charter of Fundamental Rights (Article 5(3)) and defined by the 2007 Treaty on the Functioning of the European Union (TFEU) as a particularly serious form of organised crime (Art. 83) which also concerns immigration policy (Art. 79).

Since 2002, the EU has adopted several legal instruments aimed at addressing and combatting severe exploitation and trafficking. Prior to the adoption of the above-mentioned Directive 2011/36/EU, EU legislation in this field mainly focused on combatting illegal immigration and on states' obligations to put into place criminal provisions against perpetrators, rather on the need to assist and protect the victims.

In 2004, the Council of the European Union adopted **Council Directive 2004/81/EC** on *the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*<sup>171</sup>. As affirmed in the Explanatory Memorandum to the Proposal for the Short-Term Residence Permit, the legal basis of the 2004 Residence Permit Directive concerns measures on immigration policy within the areas of conditions of entry and residence and irregular immigration and residence. Accordingly, the purpose of this Directive is to introduce a “residence permit, with the aim of enhancing measures to combat illegal immigration”<sup>172</sup>, not to protect the victims. From this perspective, the 2004 Residence Permit Directive subordinates the issue of the residence permit, and related protection and assistance measures (Art. 7), to the required cooperation of the victims with competent authorities.

Combatting irregular immigration is also the primary aim of **Directive 2009/52/EC** *providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*<sup>173</sup>, adopted by the EU Parliament and the Council of the European Union in 2009. As affirmed in Article 1, this Directive “prohibits the employment

<sup>169</sup> Stoyanova, V. 2017b, ‘Chowdury and Others v. Greece: Further Integration of the Positive Obligations under Article 4 of the ECHR and the CoE Convention on Action against Human Trafficking’, *Strasbourg Observers*. 28 April. Available at <https://strasbourgobservers.com/2017/04/28/chowdury-and-others-v-greece-further-integration-of-the-positive-obligations-under-article-4-of-the-echr-and-the-coe-convention-on-action-against-human-trafficking/>

<sup>170</sup> *Ibidem*.

<sup>171</sup> OJ L 261, 6.8.2004.

<sup>172</sup> European Commission 2002, *Explanatory Memorandum to the Proposal for the short-term Residence Permit Directive*, COM (2002), 71 final, par. 7.

<sup>173</sup> OJ L 168, 30.6.2009.

of illegally staying third-country nationals in order to fight illegal immigration". To this end, it obliges Member States to adopt legislation establishing financial and criminal sanctions against employers who hire third country nationals who are illegally staying. Notably, with regard to the criminal offences, the Directive establishes that the infringement of this prohibition constitutes a criminal offence in the following cases: the infringement continues or is persistently repeated; the illegal employment of a significant number of third-country migrants; particularly exploitative working conditions; the employer knowing that the worker is a victim of THB; the illegal employment of a minor (Art. 9). "Particularly exploitative working conditions" is defined in the Directive as "working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity" (par. 22). This definition is particularly important for addressing for the definitional vagueness regarding the notion of exploitation.

Directive 2009/52/EC also contains a provision on liability in the framework of the subcontracting processes, foreseeing that the contractor of which the employer is a direct subcontractor may be held liable to payment of financial sanctions and back payments (Art. 8).

Directive 2009/52/EC also requires Member States to introduce important protective measures in favour of irregular migrant workers, such as implementing mechanisms to allow illegally employed third-country nationals to **make a claim against their employer for any outstanding remuneration**, including cases in which they have, or have been, returned (Art. 6(2)), and ensuring that they are systematically and objectively informed about their rights. Yet, as emerged in a report of the Commission on the application of Directive 2009/52<sup>174</sup>, few Member States have adequately transposed these provisions, revealing little interest in the measures aimed at supporting irregular migrant workers<sup>175</sup>

According to Directive 2009/52/EC, Member States shall define the conditions under which they may grant residence permits of limited duration to third-country nationals who have been subjected to "particularly exploitative working conditions" or who were illegally employed minors, and who cooperate in criminal proceedings against the employers. Therefore, like Directive 2004/81/EC, to which it explicitly refers, Directive 2009/52/EC provides that the issuance of the residence permit is dependent on the cooperation of the victim with competent authorities.

It needs to be stressed that while Directive 2009/52/EC amounts to some advancement in the protection of the rights of irregular migrant workers, it is however principally aimed at addressing irregular migration. This specific focus, in addition to tending to divert the attention away from the protection of the victims of exploitation, results in the Directive being particularly inadequate if one considers that today (as argued in the Introduction above) many of the exploited migrant workers are not irregular migrants<sup>176</sup>. In this regard, it is worth mentioning that the **European Parliament in its Resolution of 12 May 2016**, by highlighting that EU nationals are not included under Directive 2009/52/EU, has called on "the Member States to ensure that in their national legislation EU nationals who are victims of trafficking are protected from labour exploitation, and relevant sanctions are put in place"<sup>177</sup>.

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<sup>174</sup> European Commission 2014, Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, Brussels, COM (2014) 286 final.

<sup>175</sup> Guild, E. 2014, 'What are the Member States doing regarding sanctions on employers of irregularly staying third country nationals?', *EU Law Analysis*. Available at <http://eulawanalysis.blogspot.it/2014/06/what-are-member-states-doing-regarding.html>

<sup>176</sup> See also Palumbo & Sciarba, 2015; MEDU 2015.

<sup>177</sup> EU Parliament, *Resolution of 12 May 2016 on Implementation of the Directive 2011/36/EU of 5 April 2011 on Preventing and Combating Trafficking in Human Being and Protecting its Victims from a Gender Perspective* (2015/2118(INI)), par. 57.

In this scenario, the adoption, by the European Parliament and the Council of the European Union, of **Directive 2011/36/EU** has marked a significant change in the approach of EU law on trafficking towards acknowledging the equal **importance of assisting and protecting victims** with the implementation of criminal provisions and measures. Directive 2011/36/EU, which has replaced Framework Decision 2002/629/JHA on *combating trafficking in human beings*<sup>178</sup>, constitutes the first EU-level act to address trafficking in a comprehensive way, dedicating special attention to the protection of the human rights of victims. As explicitly declared in its recital, Directive 2011/36/EU adopts **an integrated, holistic and human-rights based approach** to the fight against THB. Such an approach relies on the idea that trafficking is a complex phenomenon which cannot be addressed only through the instruments of criminal law. It is necessary, instead, to implement diverse and concerted actions aimed also at preventing this phenomenon and at assisting and protecting the victims<sup>179</sup>. From this perspective, Directive 2011/36/EU also stresses the need to adopt a **gender-sensitive approach to trafficking**, acknowledging that experiences of women, men and transgender people in relation to vulnerabilities are different and that prevention, assistance, and support measures must take into account diverse gender-specific needs.

Directive 2011/36/EU adopts the definition of trafficking set out in the Palermo Protocol, making some important additions with respect to illicit purposes. Specifically, it explicitly includes, among the practices of exploitation, "begging" within forced labour or services and "exploitation of criminal activities", thus bringing attention to new forms of trafficking which increasingly involve minors<sup>180</sup>. In addition, the Directive incorporates in the text the definition of the **position of vulnerability** contained in the Interpretative Note in the *Travaux Préparatoires* to the UN Palermo Protocol<sup>181</sup>. In particular, the position of vulnerability is defined as **"a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved"**. Rather than limiting vulnerability to the person's inherent characteristics, this definition, despite its vagueness, stresses the need to take into account the **circumstantial and structural factors** which render a person vulnerable to exploitation and trafficking. As the stories of women migrant workers in the greenhouses of Ragusa (Sicily) reveal, the interaction of diverse factors producing their condition of vulnerability leads migrant workers to "accept" working under conditions of exploitation. In these cases, the state of submission of these persons, who are apparently able to make a free choice, relies on the use of forms of psychological manipulation and threats by the employers<sup>182</sup>.

In accordance with its human rights- and victim-centred approach, Directive 2011/36/EU provides for important provisions on assistance and protection of victims. For instance, in line with the provisions of the 2005 Council of Europe Anti-Trafficking Convention, it affirms the principle of **unconditional assistance**, requiring Member States to take the appropriate measures to guarantee assistance and support for victims independently of their "willingness to cooperate in the criminal investigation, prosecution or trial" (Art. 11). Directive 2011/36/EU also calls upon Member States to take necessary measures not to prosecute or impose penalties on victims for criminal activities they have been involved in as a direct consequence of being trafficked (Art. 8). Furthermore, the Directive requires States to ensure that: victims have access without delay to legal counselling and legal representation, including for the purpose of claiming compensation; "legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources"; victims receive appropriate protection "on the basis of an individual risk assessment *inter alia* [through] witness protection programs or similar measures"; victims receive "specific treatment aimed at preventing their secondary victimization" (Art. 12(1-4)).

<sup>178</sup> OJL 203, 01/08/2002.

<sup>179</sup> Giammarinaro, M.G. 2012, 'La direttiva 2011/36/UE sulla prevenzione e la repressione della tratta di esseri umani e la protezione delle vittime', *Diritto, immigrazione e cittadinanza*, Vol. XIV, No. 1, pp. 15-33.

<sup>180</sup> *Idem*, p. 21

<sup>181</sup> UNODC, 2006, p. 347.

<sup>182</sup> Giammarinaro, 2012.

It needs to be highlighted that Directive 2011/36/EU does not deal with the issue of the conditions for a residence permit for the victim. This issue is instead addressed by Directive 2004/81/EC, which, as illustrated above, makes the issue of the residence permit to victims necessarily conditional on their cooperation with competent authorities. As Maria Grazia Giammarinaro, UN Special Rapporteur on trafficking, has highlighted, there is a clear incongruity between these legal instruments: third-country-national victims should be unconditionally assisted in accordance with Directive 2011/36/EU, but, according to Directive 2004/81/EC, “they cannot obtain the residence permit – a pre-condition for assistance – if not conditionally in cooperation with the investigating authorities”<sup>183</sup>. According to Giammarinaro, the innovative approach of Directive 2011/36/EU, especially with regard to the assistance of victims, has prepared the way for the revision of related EU legislation. In 2016, the Commission expressed its intention to revise Council Directive 2004/81/EC on resident permits.

The progressive character of Directive 2011/36/EU has been, however, partly weakened at national level. In particular, as the report by the Commission assessing the transposition of Directive 2011/36/EU into national legislation reveals, **EU Directive 2011/36/EU provisions regarding the protection and assistance of victims have not been satisfactorily implemented by Member States**<sup>184</sup>. As a recent study commissioned by the European Parliament on the implementation of Directive 2011/36/EU from a gender perspective has highlighted<sup>185</sup>, there is an uneven implementation of the Directive’s requirements across Member States, in particular with regard to the adoption of gender-sensitive measures, the identification and protection of the victims, and prevention measures. In this regard, it is worth mentioning that the **European Parliament**, in the resolution of 5 July 2016 on implementation of Directive 2011/36/EU from a gender perspective<sup>186</sup>, has called on the Member States to **strengthen protection and assistance provisions for victims of THB, taking into account a gender-sensitive approach** and ensuring a satisfactory level of implementation of the Directive 2011/36/EU.

As for the rights of victims, it is also important to consider **Directive 2012/29/EU** of the European Parliament and the Council, establishing *minimum standards on the rights, support and protection of victims of crime* (the so-called Victims’ Directive)<sup>187</sup>, which has replaced Council Framework Decision 2001/220/JHA. The purpose of this Directive is to ensure that victims of crime receive adequate information, assistance, and protection and are able to participate in criminal proceedings. The Directive pays special attention to child victims and victims of gender-based violence. The Victims’ Directive addresses key rights of all crime victims, including: the right to understand and be understood (art. 3); the right to receive information (Articles 4 and 6); the right to interpretation and translation (Articles 5 and 7); the right to access victim support services (Art. 8); the right to be heard (Art. 10); rights in the event of a decision not to prosecute (Art. 11); the right to legal aid (Art. 13); the right to a decision on compensation in the course of criminal proceedings (Art. 16).

Reflecting on the last phase of implementation of the Victims’ Directive, a 2015 report by the FRA has stressed that the mechanisms to enable victims of severe labour exploitation

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<sup>183</sup> *Idem*, p. 18.

<sup>184</sup> European Commission, *Report from the Commission to the European Parliament and the Council assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23 (1)*, Brussels, 2.12.2016 COM (2016) 722 final. As for Italy see below, Chapter 5.

<sup>185</sup> Scherrer, A. & Werner, H. 2016, *Trafficking in Human Beings from a Gender Perspective Directive 2011/36/EU. European Implementation Assessment*, European Parliament’s Directorate-General for Parliamentary Research Services. Available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581412/EPRS\\_STU\(2016\)581412\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/581412/EPRS_STU(2016)581412_EN.pdf)

<sup>186</sup> European Parliament, *Resolution of 12 May 2016 on Implementation of the Directive 2011/36/EU of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims from a Gender Perspective* (2015/2118(INI)), Strasbourg.

<sup>187</sup> OJ L 315, 14.11.2012.

to access justice and remedies are either not implemented or not effective<sup>188</sup>. In this regard, it is relevant to note that the EU Parliament, in the above-mentioned resolution of 5 July 2016, has called on Member States to fully apply the provisions of Directive 2012/29/EU. **The EU Parliament** has also called on Member States to “**make legal aid available to victims of trafficking not only in criminal proceedings, but also in any civil, labour or immigration/asylum proceedings** in which they are involved” (par. 76).

In 2016, the European Parliament adopted another **Resolution on the fight against trafficking in human beings in the EU’s external relations**<sup>189</sup>. By recalling that victims of trafficking are often “invisible people” in the country where they are being exploited (par. 8), the Parliament has stressed that criminal justice action should guarantee “equal and effective access to justice for victims and information about their legal rights”. Therefore, it has called on the Member States “to comply with their international obligation to uphold the rights of victims in their jurisdiction, to ensure full support for victims, including by providing psychological support, irrespective of their willingness to cooperate in criminal proceedings” (par. 58).

Among the EU legal instruments concerning prevention of labour exploitation, there is also **Directive 2014/36/EU** of the European Parliament and the Council, on the *conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers* (the so-called “Seasonal Workers Directive”)<sup>190</sup>. This Directive “determines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and defines the rights of seasonal workers” (Art. 1). It only applies to third-country nationals who reside outside the territory of the Member States (Art.2(1)). Third-country based agencies or other third-country based service providers are not in the scope of the Directive. Yet, under Recital 12 of the Directive, “where a Member State’s national law allows admission of third-country nationals as seasonal workers through employment or temporary work agencies established on its territory and which have a direct contract with the seasonal worker, such agencies should not be excluded from the scope of this Directive” (Recital 12). Posting within the EU is explicitly excluded from the scope of the Directive (Art. 2(3)(a)).

The Seasonal Workers Directive also addresses circular migration, providing four measures that Member States may adopt to facilitate the re-entry of seasonal workers. Yet, as has been noted, “it is unclear what mechanisms Member States must put in place to facilitate circular migration since these measures are part of a non-exhaustive list [...] and they are not expressed as minimum requirements”<sup>191</sup>. As for the rights of third-country seasonal workers, Article 23 of the Directive, by expressly affirming the principle of equal treatment with nationals, provides that seasonal workers are to be treated equally with EU nationals with regard to core elements such as: terms of employment (including minimum working age) and working conditions (including pay and dismissal, working hours, leave, and holidays) and health and safety requirements in the workplace; the right to strike and freedom of association; back payments; some provisions of social security; equal treatment regarding education and vocational training; recognition of diplomas, certificates and other professional qualifications; tax benefits.

Importantly, the Seasonal Workers Directive provides that workers are **allowed to be employed by a different employer and to extend their stay more than once** (Art. 15). The provision on the possibility to change the employer, as explained in the recital,

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<sup>188</sup> FRA 2015b, *Victims of crime in the EU: the extent and nature of support for victims*, Publication Office of the European Union, Luxembourg.

<sup>189</sup> European Parliament, *Resolution of 5 July 2016 on the Fight Against Trafficking in Human Beings in the EU’s External Relations (2015/2340(INI))*, Strasbourg.

<sup>190</sup> OJ L 94, 28.3.2014.

<sup>191</sup> Fudge, J. & Herzfeld Olsson, P. 2014, ‘The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights’, *European Journal of Migration*, Vol. 16, p. 457.

aims to “reduce the risk of abuse that seasonal workers may face if tied to a single employer” (par. 52). Yet, this provision is not mandatory: Member States have the discretion whether to implement this provision or not. As has been argued, “this is definitely a missed opportunity to reduce vulnerability. If an employer is abusive, the worker will not only risk losing his or her job when he or she complains, but also his or her right to stay. From the perspective of combating exploitative practices, it is regrettable that the option to change employer has not been turned into a strict obligation on Member States”<sup>192</sup>. Article 20 of the Directive addresses the complex issue of accommodation, requiring Member States to provide evidence that seasonal workers benefit from accommodation that ensures adequate standards of living conditions according to national law. The Directive also focuses on monitoring and inspections, requiring Member States to implement “measures to prevent possible abuses and to sanction infringements of this Directive”. These shall include “monitoring, assessment, and, where appropriate, inspection in accordance with national law or administrative practice” (Art. 24). The Directive also significantly foresees provisions relating to the facilitation of complaints and also to compensation. In this regard, the Directive addresses the issue of liability in subcontracting chains, establishing that in cases where the contractor and intermediary subcontractors have not undertaken due diligence with respect to a subcontractor’s infringement of the Directive, they may be subject to sanctions and may be liable for compensation or back payments to the workers (Art. 17).

By adopting an integrated approach combining migration policy with safeguards on working conditions and employing administrative sanctions, the Seasonal Workers Directive constitutes an advancement in the protection of the rights of seasonal workers. Even so, there are some weaknesses which can limit its potential. For instance, as has been stressed, “the numerous loopholes created for Member States that do not intend to grant more elaborated rights or guarantees to [third-country migrant seasonal workers] is one of the weaknesses of the Directive”<sup>193</sup>. Furthermore, another significant limitation is the fact the Directive does not really address the role of temporary work agencies. In general, this Directive establishes the admissions procedures, contemplating an admission system which is “employer driven, subject to the Member State’s right to impose limits on the numbers of migrants admitted”<sup>194</sup>. As our Spanish case studies have shown, **this mechanism may produce significant forms of worker dependency on employers and may strongly reduce migrants’ freedom of choice and their possibility to improve labour conditions**. This system thus tends to foster the creation of a particularly flexible and vulnerable migrant labour force and, at the same time, to channel this into some specific sectors – such agriculture – by fostering labour market segmentation on the basis of national origins, as well as personal and social conditions such as family responsibility and gender.

Moreover, it is worth mentioning that over recent years, there has been an expanding use of atypical forms of employment, such as temporary agency work and posted work, and, as research has shown, workers involved in these types of employment are particularly exposed to forms of exploitation, including severe exploitation, which also rely on the loopholes in EU and national legal frameworks in this field – revealing a tension between economic competition rules and the protection of workers<sup>195</sup>.

With regard to temporary agency work, it is necessary to mention **Directive 2008/104/EC of** the European Parliament and of the Council on *Temporary Agency*

<sup>192</sup> Rijken, C. 2015, Legal Approaches to Combating the Exploitation of Third-Country National Seasonal Workers, *The International Journal of Comparative Labour Law and Industrial Relations*, Vol. 31, No. 4, p. 449.

<sup>193</sup> *Idem*, p. 450.

<sup>194</sup> Fudge & Herzfeld Olsson, 2014, p. 451.

<sup>195</sup> Maroukis, T. 2015, *Jobs to Rent, Final Report*. Available at <http://www.bath.ac.uk/casp/pdf/research-report.pdf>; Voss, E., Faioli, M., Lhernould, J.P., Iudicone, F. 2016, *Posting Workers Directive – Current Situation and Challenges*, European Parliament's Committee on Employment and Social Affairs. Available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579001/IPOL\\_STU%282016%29579001\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579001/IPOL_STU%282016%29579001_EN.pdf); Schiek, D. et al. 2015, *EU Social and Labour Rights and EU Internal Market Law*, Study for the EMPL Committee.

*Work*<sup>196</sup>, which aims to ensure the protection of temporary agency workers and contribute to the development of the temporary agency sector, considered as a flexible option for workers and employers. In particular, this Directive affirms the principle of equal treatment for temporary agency workers with respect to their basic working and employment conditions compared with directly employed workers.

As for posted workers, **Directive 96/71/EC** of the European Parliament and of the Council *concerning the posting of workers in the framework of the provision of services*<sup>197</sup>, which sets rules regarding the terms and conditions of employment to be applied to posted workers. According to this Directive, although workers posted to another Member State are employed by the sending company and accordingly subject to the law of those countries from which they have been sent, they must be guaranteed the minimum working and employment conditions in force in the host country. The Directive excludes any interference with the principles regulating employees' social security contributions, which are to be paid within the countries from which the workers originate. However, all this has led a number of companies to take advantage of labour cost difference between posted and local workers to increase their profits, with posted workers being remunerated less than local workers for the same job<sup>198</sup>, thus fostering "social dumping". At the same time, over recent years there has been an increase in businesses relying on illegal posting based on exploitation of workers<sup>199</sup>. This occurs in diverse sectors including agriculture<sup>200</sup>. As controversial European Court of Justice rulings related to the posting of workers, such as *Laval v. Svenska Byggnadsarbetareförbundet* (Case C-341/05)<sup>201</sup>, have highlighted, the Posting Directive suffers from important weaknesses as a tool for the protection of social and labour right<sup>202</sup>. In 2014, Directive 2014/67/EU on *the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System*<sup>203</sup>, was approved with the aim of enforcing the application of the rules on posting workers and addressing any abuse and fraud.

In 2016, the Commission proposed a revision of Directive 96/71/EC in order to find a better balance between economic freedoms and competition rules on the one hand, and social and labour rights on the other<sup>204</sup>. The aim of the proposal is to facilitate the exercise of the freedom to provide services across borders within a climate of fair competition and respect for the rights of posted workers. In particular, the proposal establishes that posted workers are subject to the same equal pay and working conditions as local workers. In addition, it ensures that national rules on temporary agency work apply when agencies established abroad post workers. Lastly, the proposal foresees that in cases of long-term posting over 24 months, the labour law conditions of the host Member States shall be applied, where this is favourable to the posted workers.

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<sup>196</sup> OJ L 327, 5.12.2008.

<sup>197</sup> OJ L 18, 21.1.1997.

<sup>198</sup> Maroukis, 2015; Archain, 2017.

<sup>199</sup> Archain, 2017.

<sup>200</sup> See, for instance, FRA, 2015a.

<sup>201</sup> Case C-341/05 *Laval* [2007] ECR I-11767.

<sup>202</sup> See Schiek *et al.*, 2015.

<sup>203</sup> OJ L 159, 28.5.2014.

<sup>204</sup> Please see Proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, COM(2016) 128 final, 2016/0070 (COD). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A128%3AFIN>

### 3. EU POLICIES CONCERNING THB AND MIGRATION

#### KEY FINDINGS

- Although the *EU Strategy Towards Eradication of Trafficking in Human Beings (2012-2016)* has adopted an integrated and comprehensive approach to address trafficking in human beings, it does not mention important provisions on the protection of victims, such as those regarding victims' unconditional assistance.
- In the European Agendas on Security and Migration of 2015, trafficking is treated exclusively as a form of organised crime strictly linked to smuggling. There is not consideration in the document on the effective protection of the human rights of potential victims as an instrument to promote security.
- The *European Agenda on Migration* addresses the "root causes of migration", mainly in terms of border management, effective returns, and actions against criminal networks of smugglers. Cooperation with third countries finds a place only within this framework. Moreover, despite the fact that it has now been demonstrated that the closure of borders fosters, rather than preventing, smuggling and trafficking in human beings, the Agenda does not provide any legal safe migration channels to Europe, with exception for high-skilled migrants.
- Relevant EU documents, such as the *EU Strategy Towards Eradication of THB*, the *European Agenda on migration* and the *EU Action Plan against migrant smuggling*, do not take into account cases in which suspected smugglers, such as those accused for having operated boats crossing the Mediterranean Sea, are victims of trafficking themselves. The documents do not mention the provision concerning the non-prosecution of victims of trafficking for their involvement in criminal activities.
- EU policy documents, such as the *EU Strategy Towards Eradication of THB*, the *European Agenda on migration* and the *EU Action Plan against migrant smuggling*, tend to view vulnerability only in terms of migrants' personal characteristics related to considered inherent conditions of particular groups, such as children and women. There is no attention to structural and situational factors, including legal, social, economic and political factors which may create a migrant's condition of vulnerability.
- Migrants who are prevented from accessing the asylum system due to the implementation of the "hotspot approach", provided by the *European Agenda on Migration*, and to the provision on third safe countries of transit and origin contained in Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast), risk becoming easy targets for traffickers and exploiters, especially in the agricultural sector.

This Chapter focuses on EU policy actions on THB, examining the *EU Strategy Towards Eradication of Trafficking in Human Beings 2012-2016*<sup>205</sup>. The Chapter also looks at both

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<sup>205</sup> European Commission 2012, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, Brussels, COM(2012) 286 final.

the *European Agenda on Security* of 2015<sup>206</sup>, and the *European Agenda on migration* of 2015<sup>207</sup>, since these documents address THB as an issue which is strictly interrelated with security and with migration and transnational mobility.

Special attention is also devoted to the *EU Action Plan Against Migrant Smuggling 2015-2020*<sup>208</sup>. Lastly, the Chapter looks at the recent sharp decrease in safe and legal ways to enter EU Member States, and at the implementation of the asylum procedures and hosting system within the Common European Asylum System (CEAS), by evaluating their impact on severe labour exploitation and THB.

### 3.1 EU Strategy towards eradication of Trafficking in Human Beings 2012–2016

In 2012, the Commission adopted the *EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)*, which proposed concrete and practical measures to be developed and implemented by 2016 in concert with other key actors, including Member States, the European External Action Service, EU institutions, EU agencies, international organisations, third countries, civil society and the private sector. This strategy was elaborated to “support the transposition and implementation of Directive 2011/36/EU, bring added value and complement the work done by governments, international organisations and civil society in the EU and third countries” (p. 5). Given the various EU legislative and policies measures concerning trafficking and, accordingly, the risk of overlapping and duplication of initiatives, the strategy was aimed at offering a “coherent framework for existing and planned initiatives, to set priorities, to fill gaps and therefore complement the recently adopted Directive” (p. 4).

By adopting **an integrated and comprehensive approach to address trafficking in human beings**, the Commission identified five priorities in the strategy:

- a) Identifying, protecting and assisting victims of trafficking;
- b) Stepping up the prevention of trafficking in human beings;
- c) Increased prosecution of traffickers;
- d) Enhanced coordination and cooperation among key actors and policy coherence;
- e) Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

For each of these priorities, the Commission has proposed various actions to support Member States in their responsibilities to address human trafficking. In particular, with regard to the protection of victims, the Commission refers to “five broad needs of victims” that it is necessary to attend to: respect and recognition, assistance, protection, access to justice and compensation. Attending to these needs, according to the Commission, also enables “police and prosecution authorities to better investigate and punish traffickers” (p. 6). The Commission provides that, in accordance with the 2011 Directive, assistance and support should rely on individual risks and needs assessments of the victim and should consist at least of “appropriate and safe accommodation, material assistance, medical treatment, psychological assistance, counselling and information, translation and interpretation services” (p. 6). Yet, **it does not mention that assistance shall be provided irrespective of whether a person cooperates with competent authorities**, as affirmed by the Council of Europe Anti-Trafficking Convention and Directive 2011/36/EU. This lack constitutes a weakness of the strategy since the principle of unconditional

<sup>206</sup> European Commission 2015, Communication from the Commission to the European Parliament, the Council and the Committee of the Regions, *The European Agenda on Security*, Brussels, COM(2015)185 final.

<sup>207</sup> European Commission 2015, Communication from the Commission to the European Parliament, the Council and the Committee of the Regions, *A European Agenda on Migration*, Brussels, COM(2015) 240 final.

<sup>208</sup> European Commission 2015, Communication from the Commission to the European Parliament, the Council and the Committee of the Regions, *EU Action Plan Against Migrant Smuggling 2015-2020*, Brussels, COM(2015) 285 final.

assistance relies on the assumption that most of the victims, as many studies have demonstrated, are not willing to report their exploiters to the police or to participate in criminal proceedings against them, mainly because they are afraid of the consequences of this and/or distrust the authorities<sup>209</sup>. **An approach that makes assistance dependent on the cooperation of victims with competent authorities thus risks preventing a large number of victims from being assisted and having access to justice.** On the other hand, an approach based on unconditional assistance, in addition to being beneficial for victims, can lead them to cooperate: as the practice has revealed, when victims feel appropriately protected and assisted they may be more inclined to collaborate with the competent authorities<sup>210</sup>.

In addition, **there is no reference in the strategy to the principle, contained in Directive EU/2011/36, of non-prosecution of and non-application of sanctions or penalties on victims of trafficking** for their involvement in criminal activities as a direct consequence of being trafficked.

With regard to prevention, the Commission recognises that prevention initiatives shall be aimed at addressing the root causes which make people vulnerable to trafficking. From this perspective, by focusing on understanding and reducing demand factors, **the Commission has significantly encouraged the exchange of good practices** “in the areas of public awareness campaigns targeting consumers and users of services, corporate social responsibility, codes of conduct, business and human rights initiatives aimed at eliminating human trafficking from the supply chains of business” (p. 8). The Commission has also affirmed its commitment in developing, evaluating and mapping awareness-raising campaigns.

The focus of the strategy on **addressing the demand for services provided by trafficked persons**, and in particular on awareness raising activities involving different stakeholders – such as the private sector and business organisations – constitutes an important advancement in the development of effective prevention measures. Yet, the document does not seem to consider broader structural causes creating people’s condition of vulnerability, including stringent immigration policies, labour market segmentation on the basis of gender, nationality and legal status, as well as high levels of economic deregulation characterising the EU’s internal market. This limit in the approach of the Strategy is also reflected in the fact that while it focuses on the gender dimension of trafficking and on vulnerable groups at greater risk of being involved in this phenomenon (including children, children left behind, unaccompanied children, and children with disabilities, as well as people in the Roma community), **considering vulnerability as an inherent characteristic of these categories, it does not pay attention to addressing the social, legal, economic and political factors that simultaneously interact to render people vulnerable to trafficking and exploitation.**

With regard to prosecution, the Commission suggests increasing cross-border cooperation and centralised knowledge on human beings through the establishment of national multidisciplinary law-enforcement units on human trafficking (p. 9). Also, **by recognising the importance of increasing the level of judicial cooperation** in the field, the Commission encourages national competent authorities and EU agencies to create “where relevant joint investigation teams and involve Europol and Eurojust in all cross-border trafficking cases” (p. 9). In addition, it supports strengthening cooperation beyond borders.

Lastly, with regard to enhanced coordination and cooperation among key actors, the Commission has pointed out that cooperation amongst different actors should be organised

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<sup>209</sup> IOM 2015, *Report on victims of trafficking in mixed migration flows arriving in Italy by sea April 2014 - October 2015*. Available at

[http://www.italy.iom.int/sites/default/files/documents/IOM\\_Report\\_on\\_victims\\_of\\_trafficking\\_2015\\_ENG.pdf](http://www.italy.iom.int/sites/default/files/documents/IOM_Report_on_victims_of_trafficking_2015_ENG.pdf);

Castelli, V. (Ed.) 2014. *Punto e a capo sulla tratta. Uno studio sulle forme di sfruttamento di esseri umani in Italia e sul sistema di interventi a tutela delle vittime*, FrancoAngeli, Milan.

<sup>210</sup> Giammarinaro, 2012; Castelli, 2014.

through formalised mechanisms clarifying the role and tasks of the actors involved. In this regard, most notably, the strategy provides for:

- strengthening the EU Network of National Rapporteurs or Equivalent Mechanisms;
- coordinating EU's external policy activities;
- promoting the establishment of a Civil Society Platform; and
- strengthening the fundamental rights in anti-trafficking policy and legislation necessary to ensure that anti-trafficking work is coherent.

It is worth noting that a post 2016 EU strategy on trafficking in human beings is currently being developed by the Commission.

### 3.2 EU migration policies related to trafficking

Trafficking in human beings is addressed in key EU policy documents including the 2015 *European Agenda on Security* and *European Agenda on Migration*. It is also indirectly treated in the *EU Action Plan Against Migrant Smuggling*, which "sets out the specific actions necessary to implement the two agendas" with respect to migrant smuggling, and "incorporate the key actions already identified in them" (p. 1).

The aim of **the European Agenda on Security of 2015** is to strengthen the tools provided by the EU to national law enforcement authorities to combat terrorism and cross-border crime. By prioritising terrorism, organised crime and cybercrime – seen as interlinked areas with a significant cross-border dimension – *The European Agenda on Security* also addresses trafficking in human beings, which is defined as an "extremely pernicious but highly lucrative form of crime" (p. 18), posing strong threats to the security of the EU and its Member States. Accordingly, trafficking is seen in the Agenda as a serious form of organised crime to address through improving and strengthening the cooperation between law enforcement authorities. **There is no consideration in the document on the effective protection of the human rights of potential victims as an instrument to promote security.**

With regard to the **European Agenda on migration of 2015**, it is worth highlighting that over the last decade, the Member States have enacted a progressive closure of all legal entry channels for migrants, supported by the EU policy and legal framework, with an exception made for high-skilled migrants and seasonal workers. Family reunification processes have also become difficult to be realised due to the need to meet diverse requirements regarding income and housing.

The *European Agenda on migration* can be considered as both the height of this long process, which started at the end of the 1990s, and the starting point for **a new restrictive turn in migration policies** which has been in effect for the last two years.

One of the main aims of the Agenda is to address the so-called "root causes of migration". Yet throughout the document this purpose is mainly addressed in terms of border management, effective returns and actions against criminal networks of smugglers as the principal incentive for irregular migrations. Cooperation and partnerships with third countries of origin and transit finds a place only within this framework. As has clearly emerged over the past decades, **it is not possible to fight smuggling and to reduce irregular migrations without opening legal entry channels.** This is also expressively affirmed in the European Parliament Resolution on the Fight Against THB in the EU's

External Relations<sup>211</sup>, stressing that “in order to prevent THB and people smuggling, it is important to create safe legal migration channels for women and children (such as humanitarian visas)” (par. 20).

Indeed, for each border which has been closed through militarisation, another route, usually more dangerous in terms of migrants’ security, has been opened, while restrictive policies on regularisation have just produced irregularity in all Member States. Despite all this, and even though migrants are mainly inserted within low-paid and low-prestige economic sectors, the Agenda only focuses on opening entry channels for researchers and students, highly qualified third-country nationals, or well-trained and highly-skilled foreign professionals who need to travel for short periods in order to provide services to business or governments. This list makes evident the limits of EU policies in grasping and dealing with the reality of contemporary migratory processes.

Even when the Agenda speaks about the “potential source of exploitation” which “comes from employers inside the EU” (p. 9), it mainly focuses on the repressive solution, without fully considering the complexity of the phenomenon, by referring to the necessity of fully implementing the so-called Sanction Directive of 2009 without mentioning workers’ rights.

Moreover, at a great distance from the vision offered by EU Directive 2011/36, the Agenda speaks about migrants’ vulnerability only with regard to the inherent personal characteristics of migrants, such as being a child (p. 12), or with respect to victims of criminal networks of smugglers and trafficking. **Trafficking in itself seems to be treated solely as a form of organised criminal activity intrinsically associated with smuggling**<sup>212</sup>.

Lastly, with regard to mechanisms promoting a “new model of legal migration”, the Agenda seems to focus only on the creation of an “EU-wide pool of qualified migrants”, to be selected through verifiable criteria “with employers invited to identify priority applicants from the pool of candidates, and migration taking place after the migrant is offered a job” (p. 18).

In sum, the positive provisions contained in **The Global Approach to Migration and Mobility**<sup>213</sup> published by the Commission in 2011– such as those concerning the migrant-centred approach “to respond to the aspirations and problems of the people concerned” (p. 6) – do not seem to find a place in the Agenda, along with concern for “the human rights of migrants” (p. 6), which also seems to have been neglected in the document. The focus seems to be mainly on the labour market needs of Member States (overlooking the complexity of labour market dynamics, especially in sectors like agriculture), and on migration border control.

As mentioned above, **the EU Action Plan against migrant smuggling (2015–2010)** aims to ensure a congruent implementation of the Agenda on Security and that on Migration with respect to the EU fight against migrant smuggling, which the Plan defines as a “highly profitable business” (p. 1). Even though this document explicitly undertakes only to deal with smuggling (p. 2) its provisions deserve a short consideration with respect to the scope of this study. As in the case of the Agenda on migration, the EU Action Plan against migrant smuggling **tends to address root causes of irregular migration in terms of a problem of border management only**, and to consider cooperation with countries of origin only in regard to that border control, readmission, police coordination

<sup>211</sup>European Parliament, *Resolution of 5 July 2016 on the Fight Against Trafficking in Human Beings in the EU’s External Relations*, (2015/2340(INI)), Strasbourg.

<sup>212</sup> The European Parliament has addressed “the critical distinction that needs to be made between the concepts of trafficking in human beings and migrant smuggling”, underlying that “the two concepts require different legal and practical responses and involve different state obligations”. *Idem*, par. 20.

<sup>213</sup> European Commission 2011, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The Global Approach to Migration and Mobility*, {SEC(2011) 1353 final}, Brussels, (COM)2011 743 final.

and sharing of information. Yet, besides these kinds of provisions, and those which focus on judicial responses, what is interesting is the admission that a “smuggling network can be weakened if fewer people seek their service” (p. 2). Therefore, along with effective return policy as a strong deterrent, “**it is important to open more safe, legal ways into the EU**” (p. 2). Even though this provision is only mentioned in passing and not further implemented in the rest of the Action Plan, this consideration could also be transposed into a trafficking issue, which, as all these documents underline, is a different but related crime. Moreover, the Action Plan significantly underlines the Commission’s intention **to revise Directive 2004/81/EC** on resident permits, with the aim of improving assistance measures for vulnerable migrants such as women and children.

Finally, despite the assumed connection between the smuggling and trafficking, it is worth noting that none of these documents take into account those cases in which **suspected smugglers**, identified as those who have operated boats crossing the Mediterranean Sea, may be victims of trafficking themselves, as they have been forced to drive the boat<sup>214</sup>. In such cases, the provision on the non-punishment of victims of trafficking for their involvement in criminal activities, as established by article 8 of Directive 2011/36/EU and by article 26 of the Council of Europe Anti-Trafficking Convention, should be applied. Hundreds of these cases are pending in Italy and some Tribunals have started to recognise that these persons have acted “under a condition of necessity” and that, for this reason, they cannot be prosecuted.

### 3.3 Right to asylum and migrants’ vulnerability to exploitation: the hotspot approach and Directive 2013/32/EU

The *European Agenda on migration* also promotes the so-called “**hotspot approach**”, by establishing that the EU “under the coordination of the Commission, European Asylum Support Office, Frontex and EUROPOL will work on the ground with frontline Member States to swiftly identify, register and fingerprint migrants arriving and coordinate returns” (par. 6). In particular, “[migrants] claiming asylum will be immediately channelled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible. For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants” (p. 6). Even though the hotspot approach has been presented as a “clear and workable system”, at a factual level – also by going far beyond the guidelines offered by the EU Agenda – the improper consequence of the separation of migrants “in clear need of protection” from all others has resulted in a rough and dualistic categorisation between people to relocate and irregular migrants. This, in turn, has resulted in the disappearance of the ordinary asylum seeker and in the creation of hundreds of “illegalised” migrants<sup>215</sup>.

Although, in accordance with international refugee law, the right to asylum is claimed to be a universal individual right, the possibility of preventing migrants from having effective access to this right on the basis of their nationality is an increasingly accepted principle. This appears to be enforced also within the Common European Asylum System (CEAS), and in particular by the **Directive 2013/32/EU** of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast)<sup>216</sup>, through the definition of “safe third countries” of origin and/or transit (Art. 38). Concretely, if an asylum seeker originates from, or has crossed, a safe country defined as such, Member States may decide to consider his/her application as manifestly unfounded or

<sup>214</sup> See, in this regard, *People-smuggling accused were forced to drive boat, says Italian judge*, The Guardian, 8 September 2016, <https://www.theguardian.com/world/2016/sep/08/people-smuggling-accused-were-forced-to-drive-boat-says-italian-judge>

<sup>215</sup> Sciarba, A. 2017a, ‘Misrecognizing Asylum. Causes, modalities and consequences of the crisis of a fundamental human right’, *Rivista di Filosofia del diritto*, Vol. 1, June, pp. 141-164; Sciarba, A. 2017b, ‘Categorizing migrants by disempowering the right to asylum. A focus on the Sicilian implementation of the “Hotspot approach”’, *Ethnography and Qualitative Research*, Vol.1, January-April, pp. 97-120.

<sup>216</sup> OJ L 180/60, 29.06.2013

inadmissible through an accelerated evaluation procedure. Scholars have pointed out that the existing problematic gap between the United Nation High Commissioner for Refugees (UNCHR) guidelines on 'accelerated procedures' and 'safe third countries' and the EU standards in the procedure directive" entails a high risk of refoulement<sup>217</sup>. Moreover, **the concept of safe countries of origin "risks violating the principle of non-discrimination** based on the country of origin of asylum seekers stated in the Refugee Convention" (Ecre, 2015, p. 2). Despite this, the recent proposals of the Commission in order to reform the CEAS<sup>218</sup> are leading precisely to a wider use of the concept of "safe country" to prevent migrants from fully accessing the right to asylum. In particular, the Proposal for a Regulation Establishing a Common Procedure for International Protection in the Union and Repealing Directive 2013/32/EU appears to be focussed on the preliminary definition of "those applicants manifestly not in need of protection, because they come from safe country of origin"<sup>219</sup>.

Given both the lack of channels for regularisation and the low instance of effective repatriation, the provisions contained in the Agenda, in the actual Asylum Procedure Directive and in its envisaged reform, run the risk of fostering **the creation of wide categories of migrants prevented from accessing the asylum system**, and left abandoned on the territories of EU countries. Therefore, along with the increasing number of denied asylum seekers, they may enlarge the group of undocumented migrants, becoming **an easy target for traffickers and exploiters, especially in the agricultural system**, but also within sexual commerce with regard to women, in particular from those from Nigeria.

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<sup>217</sup> Guild, 2013, pp. 4-5.

<sup>218</sup> European Commission 2016, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, Brussels, COM(2016) 197 final.

<sup>219</sup> European Commission 2016, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Common Procedure for International Protection in the Union and Repealing Directive 2013/32/EU*. Brussels, COM(2016) 467 final 2016/0224 (COD), p. 5.

## 4. NATIONAL POLICIES AND GOOD PRACTICES

### KEY FINDINGS

- The exploitation of migrant women in sectors such as agriculture can be addressed and eradicated only through the implementation **of various and concerted interventions** aimed at tackling the key critical factors of a labour market and socio-economic system, and also by protecting **the rights of victims and potential victims**.
- In recent years, national governments have implemented some particularly virtuous measures aimed at protecting the rights of the victims of exploitation and trafficking. For instance, by adopting an innovative victim-centred approach, Italian legislation, and in particular **Article 18 of Legislative Decree No. 286/1999**, provides victims of violence or severe exploitation with assistance and, in the case of non-EU migrants, with a residence permit for humanitarian reasons irrespective of their willingness to cooperate with competent authorities. Yet, Article 18 is often inadequately applied throughout the country.
- Some interesting national interventions are aimed at preventing labour exploitation through instruments such as licenses. For instance, the **UK Gangmasters and Labour Abuse Authority (GLAA)** regulates the activities of labour providers through a licensing system aimed at preventing labour exploitation and protecting vulnerable workers in various sectors. The GLAA can be considered in some ways a model in the European scenario. Its effectiveness, however, has been undermined by a lack of resources. Further, a limitation of the GLAA is that it is not applied in sectors such as construction and hospitality.
- Some national interventions are aimed at implementing a **joint liability system** in the supply chain. Belgium, for instance, has established that outsourcers, contractors, and subcontractors are all jointly and severally liable for the payment of compensation to workers. While this good practice is implemented only in some sectors, such as construction, it would be important to develop similar mechanisms in all high-risk sectors, starting from agriculture.
- Some Governments – such as the UK and Italy – have adopted provisions aimed at promoting **transparency in supply chains** to prevent and combat abusive labour practices. The lack of strong monitoring and enforcement systems however seems to significantly limit the effectivity of these provisions.
- In recent years, in the Italian context, several and different **“from-below” practices** and interventions on prevention and protection of victims of labour exploitation in agriculture have been implemented by local NGOs and associations. For instance, in Ragusa the Proxima association, with the support also of the trade union Flai CGIL, has implemented diverse and essential support services, including a transport service, for migrant workers, especially migrant women, employed in the greenhouses. The associations Terra! Onlus, da Sud and terrelibere.org have developed an important campaign, called #FilieraSporca (dirty supply-chain), to pressure corporations and companies to clean up their supply chains. Furthermore, groups of migrant workers and farmers together with scholars and activists have

implemented projects aimed at creating alternative and short supply chains built on fair working conditions, the quality of the product and respect for environmental standards.

In recent years, there has been increasing attention from national governments on the development of policies aimed at combatting and preventing severe exploitation and trafficking and protecting the victims in sectors such as agriculture. Today, many countries recognise, in addition to the criminal offence of trafficking in human beings, the specific criminal offence of severe labour exploitation or forced labour. For instance, in 2016 Italy adopted a new law (Act No. 199/2016<sup>220</sup>) which, by amending the provision of the Criminal Code on “unlawful gang-mastering and labour exploitation” (Article 603bis), clearly recognises the crime of labour exploitation. This new provision importantly includes in the definition of the crime some indicators to identify cases of labour exploitation.

In addition to instruments of criminal law, many governments have developed interventions aimed at protecting the rights of the victims and preventing labour exploitation, through the enforcement of the role of labour inspectorates and through fostering transparency in supply chains. This section illustrates some of these measures, highlighting their innovative and critical aspects.

By focusing on the Italian context, we also illustrate some of these “from-below” practices and interventions implemented by local NGOs and associations to protect victims and to address labour exploitation in agriculture, developing, for instance, campaigns to pressure corporations and companies to clean up their supply chains. Attention is also paid to those projects realised by local associations and NGOs to develop alternative and short supply chains built on fair working conditions, the quality of the product and respect for environmental standards.

Only a few of these interventions and practices specifically focus on the agricultural sector and women migrant workers, who are the target of our study. However, these have been selected because they address the key critical elements of a socio-economic system that needs to be tackled in its complexity to prevent cases of severe exploitation, which rely on the condition of vulnerability of migrant workers and in particular of migrant women.

## 4.1 National interventions

### 4.1.1. Unconditional Assistance and Protection: the Italian Article 18 of Legislative Decree No. 286/1999

Italian legislation regarding the assistance and protection of victims of severe exploitation and trafficking has been recognised as something of a milestone on both the European and international level, with reference in particular to **Article 18 of Legislative Decree No. 286/1999**<sup>221</sup>. This provision provides victims of violence or severe exploitation with a long-term programme of **assistance and social integration**, as well as with a **residence permit for humanitarian reasons**. It applies to EU and non-EU citizens in situations of violence or severe exploitation, or when their safety is considered endangered as a consequence of attempts to escape from a situation of exploitation, “or as a consequence of statements made during preliminary investigations or in the course of court proceedings” (Art. 18(1)). Article 18 foresees two paths through which the residence permit for

<sup>220</sup> Act 29 October 2016, No. 199, *Disposizioni in materia di contrasto ai fenomeni del lavoro nero, dello sfruttamento del lavoro in agricoltura e di riallineamento retributivo nel settore agricolo*, Gazzetta Ufficiale NO. 257, 3 November 2016.

<sup>221</sup> Legislative Decree 25 July 1998, No. 286, *Testo Unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero*, Gazzetta Ufficiale No. 191, 18 August 1998.

humanitarian reasons can be issued<sup>222</sup>: the so-called 'judicial path', which requires victims to cooperate with competent authorities and the so-called '**social path, which is not dependent on victims' reports or participation in the criminal proceedings.**<sup>223</sup> It should be highlighted that in both cases the issuance of a residence permit is conditional on the person's participation in the programme of assistance and social integration. However, it is not dependent on the existence or outcome of criminal proceedings<sup>224</sup>.

The assistance and social integration programmes established by Article 18 provide victims with support and services aimed at their social and labour inclusion. These consist of long-term accommodation, language classes, vocational and training courses, access to social services, legal advice, and psychological follow-up.

Article 18 thus introduced, at the very early stage of international actions against trafficking (for instance, before the adoption of the 2005 Council of Europe Anti-Trafficking Convention), **the principle of unconditional assistance and protection for the victims.** Distancing itself from an approach that sees protection of victims as an instrument of criminal law interventions, Article 18 considers the safeguarding of their rights as a priority which cannot be subordinated to criminal actions<sup>225</sup>. In this regard, it is also worth highlighting that the residence permit for humanitarian reasons under Article 18 has a six-month validity and can be renewed for one year or a longer period. Furthermore, it may be converted into a residence permit for work or study purposes, giving persons the opportunity to regularise their position in Italy.

Despite the innovative approach of Article 18, its implementation has often been inadequate and arbitrary throughout the country<sup>226</sup>. In particular, **the so-called social path is rarely applied**, especially in the case of labour exploitation. In fact, it is quite uncommon for victims to obtain a residence permit without cooperating with competent authorities. Furthermore, the issuance of the residence permits often takes a long time and there are problems with its renewal. This long waiting period risks becoming an "empty" and frustrating period for migrants, increasing their condition of vulnerability. Moreover, funding for the assistance and social integration programmes offered under Article 18 has been provided by the Government in a discontinuous way, jeopardising the activities of NGOs and associations supporting and assisting victims of severe exploitation and trafficking.

On the other hand, the effective implementation of measures of assistance and protection provided by Article 18 has also been undermined by **the inadequate transposition into national legislation of relevant international Convention and EU legal instruments**, such as Directive 2011/36, particularly with regard to the protection of the rights of the victims. Most notably, Legislative Decree 2014/24 implementing Directive 2011/36/EU presents several shortcomings. It has not really developed an integrated, comprehensive

<sup>222</sup> See Art. 27 of the Decree of the President of the Republic No. 349/99 regulating the implementation of Legislative Decree No. 286/1998.

<sup>223</sup> In this case, the request to the "Questore" (chief of police) for the issuing of a residence permit is made by NGOs, associations, or public social services.

<sup>224</sup> Gammarrino, M. G. 2014, 'Verso una nuova strategia contro la tratta e lo sfruttamento', in E. Nocifora (Ed.), *Quasi schiavi: paraschiavismo e super-sfruttamento nel mercato del lavoro del 21° secolo*, Maggioli, Santarcangelo di Romagna, pp. 123-132.

<sup>225</sup> Associazione On the Road 2002, *Article 18: Protection of Victims of Trafficking and Fight against Crime (Italy and the European scenarios)*, On the Road Edizioni, Martinsicuro (TE).

<sup>226</sup> GRETA 2014, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy*. Available At <https://rm.coe.int/1680631cc1>; OSCE 2014, *Report by Maria Grazia Giammarino, OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings, following her visit to Italy from 17-18 June and 15-19 July 2013*. Available at <http://www.osce.org/secretariat/121240?download=true>; Trucco, L. 2014, 'La tutela giuridica della vittima nelle situazioni di grave sfruttamento lavorativo', in Osservatorio Placido Rizzotto (Ed.), *Agromafie e Caporalato. Secondo Rapporto*, Ediesse, Rome, pp. 95-111; Palumbo, L. 2015 'Protection of Trafficked People in Italy: Policies, Limits and Challenges', *Journal of Money Laundering Control*, Vol. 18, No. 1, pp. 52 - 65; Palumbo, 2016; Nicodemi, F. 2015, 'La tutela delle vittime di tratta e del grave sfruttamento: il punto della situazione oggi in Italia', ASGI. Available at <http://www.asgi.it/notizia/look-out-report-sfruttamento-lavorativo-tratta-italia/>

approach to trafficking as foreseen in the Directive<sup>227</sup>. For instance, it overlooks the adoption of a gendered approach in addressing trafficking, and the sole reference to the issue of gender is a brief mention of gender violence in Article 1. Furthermore, the Decree has not incorporated the definition of a position of vulnerability contained in the Directive and has not implemented some key provisions, such as those regarding the irrelevance of the consent of the victims and non-prosecution of the victim. Moreover, the Decree has also inadequately transposed the provision regarding compensation to victims.

Lastly, it is worth noting that the effectiveness of the Article 18 system has also been highly affected by the **lack of concrete and fast working alternatives to provide to victims**, which often pushes people to go back to work in exploitative conditions. For instance, as emerged during our fieldwork in Ragusa, some women, who have been able to free themselves from exploitation, have decided to go back to work in the greenhouses, in conditions of exploitation, violence and isolation, because they needed to make money, especially if they had children, and they could not find an alternative steady job elsewhere<sup>228</sup>.

#### 4.1.2. Preventing Labour Exploitation through Licensing Mechanisms: the UK Gangmasters and Labour Abuse Authority

According to the abovementioned 2014 ILO Forced Labour (Supplementary Measures) Recommendation (No. 203)<sup>229</sup>, governments should promote “coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion” (para 4(i)). In this regard, the **UK Gangmasters and Labour Abuse Authority (GLAA)**<sup>230</sup> can be considered, as GRETA has highlighted in its 2012 report<sup>231</sup>, an example of good practice that other governments should adopt.

More specifically, the UK GLAA is a “non-departmental public body”, established in 2005, that regulates the activities of employment agencies, labour providers or gangmasters through the use of a licensing scheme. This **licensing scheme** is aimed at protecting vulnerable workers in agriculture, horticulture, shellfish gathering and any associated processing and packaging industries in the UK.

Labour providers are required to have a GLAA license to work in these sectors. According to the 2004 Gangmasters Licensing Act, it is a criminal offence to be or use unlicensed labour providers. In order to get the license, labour providers must meet the GLAA licensing standards covering health and safety, accommodation, pay, transport and training. In addition to issuing the licenses, the GLAA has the power to monitor compliance with the GLAA licensing standards and, in case of non-compliance, to revoke the license.

Interestingly, the GLAA has drafted the **2013 Supplier/Retailer Protocol**<sup>232</sup> aimed at ensuring the fulfillment of safety and welfare standards for workers and preventing exploitation. This Protocol, in addition to being a source of information, also acts as “a prevention/deterrence mechanism”<sup>233</sup>. Furthermore, the GLAA has developed a Good Practice Guide for Labour Users and Suppliers providing practical information and advice to avoid labour abuse and maltreatments in supply chains. The GLAA has also created a leaflet on workers’ rights, in diverse languages, providing information about the employment and

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<sup>227</sup> Nicodemi, 2015.

<sup>228</sup> Palumbo & Sciorba, 2015, p. 103.

<sup>229</sup> ILO, 2014b.

<sup>230</sup> The initial name was Gangmasters Licensing Authority (GLA).

<sup>231</sup> GRETA 2012, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, p. 30. Available at [https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/greta\\_report\\_united\\_kingdom\\_2012\\_en\\_0.pdf](https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/greta_report_united_kingdom_2012_en_0.pdf)

<sup>232</sup> Gangmasters Licensing Authority, *Supplier/Retailer Protocol*, October 2013,

<sup>233</sup> GRETA, 2012, p. 25.

working conditions they are entitled to and about employers' obligations. Moreover, the GLAA has implemented a confidential reporting hotline for cases of labour abuse and exploitation.

By combing enforcement and preventative instruments, the GLAA has successfully addressed cases of forced labour: for instance, during 2013–2014 it assisted in the rescue of over 100 potential victims of trafficking for labour exploitation<sup>234</sup>. Moreover, in the period between 2008 and 2015, it was able to achieve 98 convictions, 58 of which concerned gangmasters operating without a license while 24 were businesses entering into arrangements with an unlicensed gangmaster<sup>235</sup>.

As studies have revealed, the GLAA has had a significant impact in improving conditions for workers, in particular migrant workers<sup>236</sup>. The GLAA licensing system is beneficial for labour providers as it limits their risk of being undermined by abusive labour suppliers. It may also allow employers to be assured about having a legitimate provider and to raise awareness and understanding of their respective obligations. At the same time, it may allow consumers to have greater confidence in the products they buy due to the assurance of fairer employment and working conditions in the supply chain.

The GLAA model may constitute – especially in countries such as Italy where recruitment is inadequately addressed by existing institutions<sup>237</sup> – an important good practice for preventing migrant workers from turning to illegal and abusive gangmasters (such as so-called *caporali*) and labour providers, and therefore preventing workers from being exploited. One of the limits of the GLAA is the fact that it **is applied in only a few sectors**, not including for instance hospitality and construction. Moreover, the effectiveness of its activities is undermined by the limited available resources<sup>238</sup>.

#### 4.1.3. Joint liability system: Article 35.2 of the Belgian Act Concerning the Protection of Wages of Workers

Migrant workers who have experienced **underpayment or non-payment for work** performed often cannot make a claim against their employers since they are not directly in contact with them and/or are not able to identify them. In these contexts, "the principal contractors and clients benefit from the worker's labour and from the outsourcing of responsibility, and the worker suffers through the inability to obtain owed wages"<sup>239</sup>.

In order to address this issue, and in particular the weakness and stretching of **responsibilities along entire supply chains**, some countries, such as Belgium, have adopted measures aimed at creating a system of joint liability for the unpaid wages to workers. In particular, in 2012 Belgium introduced a provision, Article 35.2 of the 1965 Act Concerning the Protection of Wages of Workers, foreseeing that outsourcers, contractors and subcontractors are all jointly and severally liable for the payment of compensation to workers, which developed a chain of successive responsibility. Accordingly, head contractors may be responsible for the sub-standard payment or non-payment of wages to workers by subcontractors.

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<sup>234</sup> GLAA, 2014, p.8.

<sup>235</sup> See, for instance, <http://www.gla.gov.uk/our-impact/conviction-totals/>;  
<http://www.gla.gov.uk/media/2219/supplier-retailer-protocol-final-7-october-2013.pdf>

<sup>236</sup> Focus on Labour Exploitation (FLEX), 2017, *Risky Business: Tackling Exploitation in the UK Labour Market*. Available at

[http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business\\_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf](http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf); Department for Environment (UK) 2014, Food and Rural Affairs, *Report of the Triennial Review of the Gangmasters Licensing Authority*, p. 4. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/318841/Triennial\\_ReviewGangmastersLicensingAuthority.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318841/Triennial_ReviewGangmastersLicensingAuthority.pdf)

<sup>237</sup> See Perrotta, 2014.

<sup>238</sup> FLEX, 2017; GRETA, 2012; Maroukis, 2016.

<sup>239</sup> FLEX, 2017, p. 34.

This joint liability system, which in Belgium is applied in some specific sectors, in particular in construction, constitutes an important good practice that should be developed in all EU Member States, through similar mechanisms, in agriculture and other high-risk sectors.

#### 4.1.4. Legal Interventions Promoting Transparency in Supply Chains

Over the past few years, in the attempt to address and prevent exploitation in supply chains, many governments have implemented **transparency regulations** and/or promoted instruments, including certifications of quality, aimed at incentivising companies to stay within the bounds of the law while protecting the rights of workers.

For instance, the **2015 UK Modern Slavery Act** contains a provision (at Section 54) which, building on the Californian Transparency in Supply Chains Act of 2010, requires companies (with an annual global net turnover of at least £36m per year) to prepare a slavery and human trafficking statement for each financial year. In this statement, companies have to report the steps they have taken to ensure they prevent and combat forms of slavery and trafficking in human beings in any part of their supply chains. The statement has to be approved by the board of directors and published on the website of the company. Yet, according to this system, the Government is not required to assess companies' statements and there is not any penalty for companies which fail to produce a statement.

While the purpose of this provision is valuable, its effective impact seems to be limited by the **lack of strong monitoring and enforcement mechanisms**, including a penalty for non-compliance<sup>240</sup>. Indeed, "leading companies have been clear that they want and need strong regulatory enforcement – the task cannot be left to them alone. For companies that are less concerned with consumer reputation, and companies that otherwise flagrantly disregard labour standards, there must be some stick along with the carrot"<sup>241</sup>.

Similar shortcomings can be found in Italian legislation in the "Network of Quality Agricultural Work" (***Rete del Lavoro Agricolo di Qualità***) established in 2014 by Article 6 of the Legislative Decree No. 91/2014<sup>242</sup>. This network aims at creating a list of agricultural companies that respect fair working and employment conditions providing them with a certification of quality. The requirements that companies have to meet to be part of the network include: a lack of criminal convictions; the absence – in the three years since the companies applied – of administrative sanctions, even if not definitive, for violations with regard to labour law, social legislation and the obligations concerning the payment of taxes and fees; to be up to date with the payment of social security contributions and insurance premiums; to apply collective agreements.

It is worth noting that these requirements do not include respect for the rights of workers, through the upholding of collective agreements, along the entire supply chain. This constitutes a significant shortcoming with regard to guaranteeing the protection of the rights of workers.

In addition, according to Article 6 (par. 6) of Legislative Decree 91/2014, once companies are enrolled in the network they are subjected to fewer controls. This provision seems problematic, as imposing fewer controls may facilitate companies' ability to violate the law

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<sup>240</sup> *Ibidem*.

<sup>241</sup> Falconer, C. 2016, 'Carrots and sticks: increasing corporate accountability for "modern slavery"'. Available at <https://www.opendemocracy.net/beyondslavery/pt/claire-falconer/carrots-and-sticks-increasing-corporate-accountability-for-modern-slav>

<sup>242</sup> Legislative Decree 24 June 2014, No. 91, *Disposizioni urgenti per il settore agricolo, la tutela ambientale e l'efficientamento energetico dell'edilizia scolastica e universitaria, il rilancio e lo sviluppo delle imprese, il contenimento dei costi gravanti sulle tariffe elettriche, nonché per la definizione immediata di adempimenti derivanti dalla normativa europea*, Gazzetta Ufficiale No. 192, 20 August 2014.

and the rights of workers. Having a certification of quality does not necessarily prevent companies from subjecting workers to exploitative working conditions<sup>243</sup>.

Nevertheless, out of a total of 740,000 companies in the whole of Italy, only around 1,300 have applied for inclusion in the network. The main reason for this is probably that many companies do not want to be 'burdened' by additional bureaucracy. Others are also suspicious, as they consider this network to be a form of control and do not see the added value that the participation in the network may offer. All this is also fostered by the fact that labour inspections are not effectively implemented in this sector.

## 4.2 "From-below" Practices

### 4.2.1. Protection and Prevention: the Case of Ragusa

While the situation of exploitation experienced by migrant workers in the Province of Ragusa is quite well known, few institutions and organisations have decided to act against and tackle it. Two organisations that have, however, are the trade union **FLAI-CGIL and the Proxima Association**, whose extremely important and courageous work implements programmes of **assistance, protection, and integration for victims** of labour exploitation and/or trafficking under the above-mentioned Article 18 of Legislative Decree No. 286/98. Since 2012, FLAI -CGIL and the Proxima Association have developed a bus transport called Solidal Transfert to provide migrant workers employed in the greenhouses with **transport** from the countryside to the towns. The aim of this service is to prevent migrant workers from paying for transportation from local people who take advantage of them, asking exorbitant fees (around 20 euros for a few kilometres). At the same time, this service aims to develop and build relationships of trust with migrant workers, especially with women, and to help and support them in escaping abuse and exploitation. Through the realisation of the Solidal Transfert service, the Proxima Association has had the opportunity to identify, support and help many migrants, in particular women, working in the greenhouses in conditions of severe abuse and exploitation.

The Proxima Association has also developed a **school bus service** aimed at children living in the countryside. Indeed, the public-school bus service is often inadequate and disorganised and, as a consequence, many children, especially those living in isolated zones in the countryside, do not have the possibility to attend school regularly or even at all. Furthermore, as Ausilia Cosentini, coordinator of anti-trafficking interventions at Proxima, pointed out during an interview with the authors of this study, "there are no clear data on the number of minors living on the farms and it is plausible to suppose that there are many children who live in the countryside in a situation of isolation and do not have access to any services. Therefore, our aim is not only to provide identified children with an adequate service to get to school, but also to identify the children living in the countryside and provide them with the opportunity of going to school"<sup>244</sup>. Yet, the hard housing and living conditions, along with the geographical precariousness of the children due to their parents' mobility as a result of circular migration, have made it difficult to ensure the effective implementation of the Proxima bus service. Before children have started to attend school, Proxima's operators have also had to help them in getting vaccinations and medical care, as many of them had serious skin diseases<sup>245</sup>. Moreover, in a context of almost complete indifference from local institutions about this issue and, therefore, a profound lack of economic resources, this service has been able to ensure the possibility to attend school for only 15 children. After receiving funding for two years from the Waldenses Church as part

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<sup>243</sup> For instance, it is relevant to mention, in this regard, that in April 2016 an Italian [company based in Bari](http://bari.repubblica.it/cronaca/2016/04/12/news/brindisi-137422686/?ref=HREC1-12), which had a certification of quality, was found to be using Italian and migrant workers who had been recruited by [illegal gang-masters and worked under exploitative conditions in agriculture](http://bari.repubblica.it/cronaca/2016/04/12/news/brindisi-137422686/?ref=HREC1-12). See <http://bari.repubblica.it/cronaca/2016/04/12/news/brindisi-137422686/?ref=HREC1-12>

<sup>244</sup> Palumbo, 2016, p. 31.

<sup>245</sup> Sciarba, A. 2017c.

of a Project carried out by L'Altro Diritto ONLUS (University of Florence), Proxima is now looking for new economic resources to fund this service.

Lastly, with regard to the high number of abortions in the area of Ragusa, it is important to mention that in June 2015 the Proxima Association signed an **agreement with the local health unit** (*azienda sanitaria locale* (ASP)) providing for a social worker from Proxima to offer assistance and support to women in the hospitals of Vittoria and Acate for two days a week. This service is intended to help women who decide to terminate their pregnancy and at the same time to develop relationships of trust with these women with the purpose of also identifying cases of exploitation and abuse. This agreement has also provided the development of a campaign aimed at informing women, especially women workers in the greenhouses, about institutional services regarding gynaecological issues.

#### 4.2.2. Raising Awareness and Transparency: The Campaign #FileriaSporca

Among the actions developed in Italy against an agricultural production based on workers' exploitation, some consideration must be given to **the campaign #FileriaSporca** (dirty supply-chain), promoted by the associations Terra! Onlus, daSud and terrelibere.org.

This campaign has the main scope of assuring transparent information on agricultural production, by following the supply chain from the harvesting to sale in supermarkets by large retailers. In this way, the campaign aims to raise awareness among consumers and citizens of "the real cost" of what we eat every day on our table, also in terms of other human beings' exploitation. The campaign was launched through the publication of three reports and some books which explain in the detail how a class of brokers "accumulates wealth, organises harvests by using illegal gangmasters (*caporali*), determines the price, impoverishes small producers and purchases their lands, causing poverty amongst migrants and preventing a dignified hosting system"<sup>246</sup>.

The Campaign #FileriaSporca puts forward a simple proposal: the creation of a transparent guarantee of ethical practice in the agri-food supply chain, from large-scale distributors to multinationals, through the introduction of a "narrating label" for each product revealing not only its country of origin but also giving "information regarding who the suppliers of the product are and where they sit along the supply chain"<sup>247</sup>. The assumption is that clear information allows consumers to choose products that are "slavery free", by putting pressure on producers and retailers. The campaign is also promoted through the use of simple figures which illustrate the processes to be monitored, by making all the steps of the process and the critical dynamics which foster workers' exploitation understandable and clear, even for non-experts.

#### 4.2.3. Alternative Short Supply Chains

In recent years in Italy, groups of migrant workers who have experienced exploitation, and farmers, together with scholars, activists and associations, have begun to develop an alternative agricultural system of production and distribution, promoting a short supply chain model based on respect for human rights, environmental contexts and territories. It is an interesting attempt to evade the dictates of competition and the intensive production of the contemporary agricultural sector imposed by large retailers, based on the lowering of costs and thus on work exploitation. After the launch of some localised trials, these groups decided to connect with each other within a network called "**Fuori Mercato**", with the aim of "redesigning cities, countryside, territories, through concrete practice that leads to change [...] for building a sustainable future where development is projected from below,

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<sup>246</sup> <http://www.fileriasporca.org/>

<sup>247</sup> Mangano, A. 2016, 'Behind the "ghetto": the path from exploited migrant labour to the supermarkets' shelves, *Open Democracy*, 28 July. Available at <https://www.opendemocracy.net/beyondslavery/antonello-mangano/behind-ghetto-path-from-exploited-migrant-labour-to-supermarkets-s-0>

on the basis of real needs for cohesive and supportive communities in the respect of land, human and living beings, and in the name of social justice<sup>248</sup>". This network brings together different realities from Sicily to Northern Italy. Their map reproduces a cartography of resilience and proactive reaction in the best-known sites of agricultural workers' exploitation.

The Project **Sos Rosarno**, for instance, being sustained by several supportive purchase groups, sells oranges and oil at a fair price, through the collaboration of some farmers who regularly employ formerly exploited migrants.

In the plain of the river Sarno (Campania), the project "**Funky Tomato**", has for some years promoted "a European campaign against agricultural workers' exploitation, and support[ed] the creation of a participatory supply chain of production and transformation of high quality tomatoes, by constituting a social alliance among migrant workers, farmers, consumers, precarious workers and artists"<sup>249</sup>. This project involves several small farmers who respect Funky Tomato's disciplinary rules.

The project **Contadinazioni**, in Campobello di Mazara, was founded by a group of Italians and migrants after the death, in 2013, of a young migrant worker from Senegal, who lost his life due to the explosion of a gas oven in an encampment next to the harvesting zone. Developing an awareness campaign which has involved several small farmers who have agreed to convert their production in compliance with a set of ethical, quality and environmental standards, the project has also created an agricultural cooperative.

Finally, it is worth mentioning that the network Fuori Mercato also includes **Rimaflow**, a former factory near Milan that has been occupied by some laid-off workers, giving rise to a new cooperative by starting a project of production reconversion in the direction of environmental sustainability<sup>250</sup>. Rimaflow is a distribution centre for products arriving from ethical, sustainable and exploitation-free agricultural production.

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<sup>248</sup> <http://www.fuorimercato.com/rimaflow/>

<sup>249</sup> <http://www.funkytomato.it>

<sup>250</sup> [https://respondingtogether.wikispiral.org/tiki-read\\_article.php?articleId=116](https://respondingtogether.wikispiral.org/tiki-read_article.php?articleId=116)

## 5. CONCLUSIVE REMARKS AND POLICY RECOMMENDATIONS FOR EU INSTITUTIONS AND MEMBER STATES

This Chapter provides concluding remarks and recommendations for EU institutions and Member States concerning legal and political interventions in the field of preventing, monitoring and sanctioning exploitation and trafficking of migrant women workers in agriculture, and protecting and assisting victims.

### 5.1 Concluding remarks

- Today, due also to the lack of safe and legal entry channels, and to the current economic crisis, the main protagonists of current migratory movements towards and within Europe are **refugees, asylum seekers and, above all, poor intra-EU-migrants, in particular Romanians**. Their situations of vulnerability, which are created and fostered by the interplay of diverse structural and circumstantial factors, **may easily be exploited in the agricultural sector in the EU**.
- **These migrants' situations of vulnerability meet the needs of a model of production** and distribution which involves different actors within a supply-chain that tends, at different levels, to curtail costs and increase profit margins by reducing expenditure on labour. This leads to a compression of the rights of the workers up to cases of severe exploitation and trafficking, involving also women workers and, in particular, **migrant women**.
- **Real and disaggregated data**, concerning sex, nationalities, ages, social and legal conditions, migratory paths and modalities of recruitment on migrant women living and working in rural areas and farms in the EU, **are still lacking**. Indeed, existing data are aggregated for the general category of "labour exploitation"; disaggregated data on migrant women mainly regard well-identified feminised sectors, such as sexual or care and domestic work. Moreover, they are mainly based on victims who have presented a report against exploiters. Yet, victims who actually come forward constitute a lean minority. All this highlights **the need to develop gendered and more analytic categories and tools** to address the specific conditions of women workers, especially women migrant workers in sectors, such as agriculture, which tend to be underestimated with respect to the exploitation and trafficking of women. From this perspective, attention should be given to both victims and potential victims of severe abuses.
- Policies providing for **systems of seasonal, temporary and circular migration** tend to be viewed by EU and international institutions as interventions favouring women's empowerment and co-development processes. However, they reveal some specific problems with regard to the modalities in which they are currently implemented. Indeed, these systems seem mainly to be built and developed considering the economic needs of the countries of arrival and from an **employer-centred perspective**. As a result, migrants' freedom of choice and possibilities to improve their working conditions appear to be limited, within a situation of unbalanced power between employers and migrant workers. Moreover, these kinds of migratory paths may facilitate the continuous replacement and substitution of the migrant labour force, relying on workers' docility and flexibility and profiting from specific situations of vulnerability. A direct consequence is often **the preference for**

**hiring migrant women with family responsibilities.** For instance, the fact they have a family, in particular children, in the countries of origin becomes a guarantee they will return to their countries of origin when their contract expires. These kinds of temporary migratory movements also prevent migrants from having the possibility to build a social network in the country of arrival, by increasing their vulnerability. In this context, activities performed by temporary work agencies, especially in the Eastern EU countries, need to be more constantly controlled and monitored.

- In recent years, there has been **a significant increase in the number of asylum seekers and refugees working in agriculture in exploitative conditions.** As studies in Italy clearly reveal, this is also due to the combined effect of the slowness of asylum procedures, fostering a condition of legal and social insecurity, and the lack of an adequate hosting and protection system for asylum seekers, which leads many migrants to accept any job opportunity they can find. This is also facilitated by the inadequacies of accommodation hosting centres located in rural and isolated areas.
- On the basis of our case studies we can conclude that migrant women's suspected sexual exploitation in rural zones does not only entail situations of blackmail directly linked to the possibility to work on farms. Indeed, as the case studies have shown, **the ghettoisation and inadequate housing conditions of migrant workers in rural areas may also foster commercial sexual exploitation of migrant women.**
- The adoption of **Directive 2011/36/EU** has marked an important change in EU policies on trafficking, in favour of an approach which, in addition to criminal and migration controls, also pays attention to **human rights concerns and the protection of the victims.** Yet, its approach seems not to have been fully embraced by EU policies. In the *European Agenda on Migration*, as in the *European Agenda on Security*, vulnerability tends to be considered only with regard to specific groups, such as children, while trafficking is still mainly seen as an illegal border crossing and transnational organised crime issue. Even the EU Strategy on Trafficking pays scant attention to the **structural factors creating the conditions of vulnerability** and, although it adopts an integrated approach on trafficking, it does not include important provisions regarding the protection of the rights of victims.
- In recent years, several **legal and policy interventions** have been developed, at a national level, in order to prevent labour exploitation, to protect victims, and to foster transparency in supply chains. Some of these can be considered as good practices, even if there are different limits in their implementation. On the other hand, interesting **from-below innovative practices**, as the case of Italy shows, have addressed labour exploitation by tackling, also from a gendered perspective, some of the structural factors which produce migrants' vulnerability, such as isolation and lack of the access to social services. Other from-below practices have promoted a different agricultural production model which does not entail labour exploitation, also by creating models of alternative and short supply chains.
- The only way to prevent and combat exploitation in the agricultural sector is to implement **a variety of concerted actions** aimed, **from a gendered and human rights perspective**, at tackling the structural factors of a socio-economic system which relies on the poverty and precariousness of workers and their vulnerability to being blackmailed and abused.

## 5.2 Recommendations for EU institutions

- **To develop gendered and more analytic categories and tools in order to collect and elaborate real and disaggregated data** concerning sex, nationalities, ages, social and legal conditions, migratory paths and modalities of recruitment of women workers in the EU, in sectors such as agriculture. Attention should be given to both victims and potential victims.
- **To revise policies on temporary and circular migration**, taking into account their limits and risks in terms of unbalanced power between employers and migrant workers, and the creation of a particularly vulnerable labour force. For instance, **a revision of Directive 2014/36/EU on seasonal workers is needed** with respect to the provision on the possibility to change the employer, by making it mandatory and not discretionary for Member States. More attention also needs to be dedicated to the role of temporary work agencies.
- **To develop a system of constant monitoring the activities of labour market intermediaries**, contractors, subcontractors and temporary work agencies, especially in the Eastern EU countries and in high risk sectors.
- **To promote**, in accordance with the 2014 ILO Forced Labour (Supplementary Measures) Recommendation (No. 203), **coordinated actions to regulate, license and control labour providers and employment agencies in order to prevent forms of abuse and exploitation.**
- **To provide that Common Agricultural Programme subsidies are also conditional on the protection of labour and social rights of workers.**
- **To promote legal and safe entry channels to Europe, not directly linked to quotas regarding labour market sectors**, also as a tool to combat forms of trafficking and abuses experienced in particular by women and children, during and after their dangerous journeys to Europe.
- **To promote forms of regularisation of undocumented migrants**, such as denied asylum seekers, to avoid their becoming a target for traffickers and exploiters due to their situation of vulnerability.
- **To ensure that in the EU legislation, European citizens are adequately protected from severe exploitation. Special attention should be given to gender-based violence and exploitation.**
- **To review EU policies on asylum** promoting a harmonisation of the reception system, ensuring that asylum procedures occur quickly and that accommodation centres are located in urban and well-connected areas. Special attention should be given to a gendered perspective.
- **To promote the recognition of the right to access to safe abortion services, especially for victims of abuse and trafficking.**
- **To revise EU policies by adopting the innovative approach of Directive 2011/36/EU** in terms of a greater attention to the gender dimension and human rights' protection, incorporating the definition of the position of vulnerability contained in the Directive.

- **To include, in all EU instruments and policies, the provision on the non-punishment of victims** for their involvement in criminal activities, as established by Directive 2011/36/EU and by the Council of Europe Anti-Trafficking Convention, and by 2014 ILO Protocol No. 29 and Recommendation No. 203.
- **To include, in all EU instruments and policies, the provision on unconditional assistance to victims**, independently of their national origins and their cooperation with the investigating authorities, as required by Directive 36/2011/UE, and by the Council of Europe Anti-Trafficking Convention. This leads to the need to modify in this sense Directive 2004/81/EC on residence permits, as a residence permit is a pre-condition for victims' assistance.

## 5.3 Recommendations for Member States

### 5.3.1 To improve measures of prevention:

- **Providing analytic instruments and promoting research activities for identifying victims and potential victims** of exploitation and trafficking, on the basis of the definition of the position of vulnerability offered by Directive 2011/36/EU, by paying attention to the gender dimension.
- **Creating safe and legal entry channels not directly linked to quotas** regarding specific labour market sectors.
- **Revising special national programmes for the admission of migrant agricultural workers**, by ensuring their possibility to change employer and facilitating the obtainment of a permanent employment contract.
- **Promoting and developing national campaigns and awareness-raising activities** at all levels aimed at addressing the **social acceptability of abusive practices** in the agricultural sector, with special concern to the gender dimension.
- **Implementing concerted measures aimed at regulating, licensing, and monitoring the activities of labour providers and employment agencies.**
- **Strengthening labour inspection activities** carried out with a gender sensitive approach in identifying situations of labour exploitation, trafficking and connected abuses.
- **Providing systematic training** to members of trade unions, NGOs, labour inspectors, lawyers, law enforcement agencies, and judicial authorities on gendered features of labour exploitation and trafficking, and on applicable provisions.

To directly address the situation of vulnerability of women migrant agricultural workers:

- **Developing programmes for adequate housing and transport** for migrant agricultural workers and their children, paying special attention to gender related needs.
- **Providing systematic information** to both employers and workers about their rights and duties.

- **Developing bilateral agreements with non-EU countries of origin in order to allow workers to redeem contributions in case of return to their countries.**
- **Ensuring full access to social rights and assistance**, with special regard to pregnancy and maternity related rights and protections.
- **Developing national programmes** aimed to improve access and *information to sexual and reproductive health services*, including safe abortion services, especially for victims of trafficking and abuse.
- **Enhancing rights information and access to justice and remedies** through qualified legal counselling to victims and fostering their access to free legal assistance.
- **Developing specific programme of assistance and protection** of female victims of sexual and/or labour exploitation aimed at providing victims with **concrete job alternatives**.
- **Supporting and promoting the role of trade unions and NGOs** in monitoring respect for fair employment and working conditions and sustaining workers in claiming their rights.
- **Fostering co-operation and knowledge sharing** between law enforcement authorities and NGOs involved in identifying, assisting and protecting victims of THB and severe exploitation in agricultural sector.

#### 5.3.2 To Promote transparency in supply chains:

- **Implementing a system of joint and several liability** for the payment of compensation to workers
- **Establishing certifications of quality** for companies that respect fair working conditions, taking into account the entire supply chain and defining, at the same time, effective procedures for evaluating the criteria to obtain such certifications.
- **Encouraging companies to make a list of their suppliers known.**
- **Requiring products to have a label indicating their origin**, as well as information about the supply chain.
- **Developing solid campaigns of information about transparency in supply chains and corporate social responsibility.**

#### 5.3.3 To enhance legal and political instruments on trafficking and exploitation:

- **Ensuring the full transposition of Directive 2011/36/EU** from a gendered perspective, and including unconditional assistance for and non-prosecution of victims, and the definition of the position of vulnerability, by developing adequate monitoring systems on the factors which foster it.

- **Ensuring the full transposition of Directive 2012/29/EU**, on minimum standards on the rights, support and protection of victims of crime, including the right to reside in and access the labour market of the Member State where the victim has been abused.
- **Ensuring that both EU and non-EU nationals are protected from labour exploitation** in national legislations.
- **Establishing efficacious mechanisms through which workers can recover their wages or any differential wages**, and in particular, for third country nationals, guaranteeing the full transposition of the provisions of Directive (EU) 2009/52 concerning the back payments to be made by employers (Article 6).
- **Providing an efficient system of data collection on victims** of trafficking and severe exploitation, disaggregated on the basis of gender, nationality, age, social and legal conditions, migratory paths and modalities of recruitment of women workers in the EU, in sectors such as agriculture.
- **Securing funding** for victim assistance and protection programmes.
- Establishing an independent National Rapporteur to ensure data analysis, monitoring, and assessment of anti-trafficking measures.

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This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Women's Rights and Gender Equality, explores the working conditions of migrant women in agriculture in the EU, focusing on some case studies in Italy and Spain. In particular, it aims to examine the factors that render women vulnerable to exploitation, paying attention to gendered dynamics and power relations. The study contends that to prevent and combat exploitation in agriculture it is necessary to implement concerted actions aimed at tackling, from a human rights and gender perspective, the structural factors of a socio-economic system which fosters and relies on workers' vulnerability.

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