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*The Italian regularisation of migrant workers
facing the Covid-19 pandemic: a first critical analysis*

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Key words

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Abstract

This blogpost addresses the contents of the 2020 Italian migrant workers' regularisation and its main criticalities. Even if the Italian Government's choice to launch a new regularisation plan surely represents a step forward towards the enforcement of irregular migrant workers' rights, especially considering the timidity of the current Executive on migration issues, at the same time a number of steps back have been made, which risk to frustrate the positive effects. Indeed, various normative impediments and boundaries to the regularisation have been introduced. They do not only raise many doubts, but especially will have a considerable impact on the number of workers who may benefit from the regularisation plan and, consequently, on fundamental conditions of dignity and legality for the irregular migrant workers.

As paradoxical as it may seem, especially for those who are not familiar with the Italian context, recurrent regularisations of undocumented migrant workers have represented, in the history of national migration policies, the core of the system. Over the years Italy has failed to effectively organise the entry and regular stay of migrants for work-related reasons. Instead, it has based its policy on recurrent provisions of regularisation of migrants, who have entered and/or have been residing irregularly in the Italian territory. The Covid-19 pandemic did nothing but confirm this failing of the Italian migration policies.

Therefore, it is not surprising that the second Government led by Giuseppe Conte and supported by an unexpected left-wing majority, composed by the 5 Stars Movement (*Movimento 5 Stelle*) and the Democratic Party (*Partito Democratico*), has decided – in the middle of the Covid-19 health emergency and [after sharp and tense discussions](#) – to remit, once again, the management of migration to a regularisation procedure. The procedure provided for by [Law Decree no. 34 of 19 May 2020 \(Article 103\)](#), which is reviewed in its main elements hereinafter, represents therefore only the latest plan for regularisation that Italy has adopted since 1987 (to be precise: the eighth; [see S. BRIGUGLIO](#)).

In the Italian experience of migration management, regularisation plans have always accompanied the “ordinary” model of regularisation of migration inflows, that is the so-called “*decreto flussi*”. The “*decreto flussi*”, approved almost every year, as a matter of fact has been nearly entirely deprived of its original function of regulating new arrivals, especially for work-related reasons. Indeed, it has turned into an instrument that allows to yearly legalize the position of migrants already residing in Italy, rather than the tool to preventively set the cap on new arrivals from abroad. What is more, the numbers set by the latest “*decreti flussi*” have proven to be totally insufficient in relation to the actual needs of the national labour market in terms of workforce (since 2015, the annual “*decreto flussi*” established a total amount of only 30.850 work permits per year, the vast majority of which has been destined to the conversion of permits released on different grounds). As a matter of fact, the demands for entry permits have, since ever, concerned mostly migrant workers already residing (and irregularly working) in Italy. In other words, the “*decreto flussi*” has been – and still is – used as a sort of *de facto* regularisation, aimed at draining the basin of irregularity that characterizes the Italian labour market.

In this context, three main reasons have led the Italian Government to launch another regularisation procedure: firstly, the necessity to «guarantee adequate levels of protection of individual and collective health as a consequence of the contingent and exceptional health emergency linked to the calamity deriving from the spreading of Covid-19» (art. 103, para. 1); secondly, the awareness that most of [irregular migrants, who are around 600.000 in Italy](#), have irregular employment relationships and that, therefore, it is desirable to facilitate the regularisation of, at least, some of these employment relationships; thirdly, and above all, the [current lack of workforce](#), especially in the agricultural sector.

As far as the health protection is concerned, the Italian legal system may be considered as one of the most advanced and protective in Europe (see [G. TERRANOVA](#)). In Italy, the right to access to healthcare is also guaranteed to irregular migrants, especially with regard to those medical treatment that cannot be postponed or are urgent (art. 35, Legislative Decree no. 286/1998). The access to healthcare is free of charge for those who are not in a position to afford it due to insufficient economic resources. Moreover, the access of an irregular migrant to the health facilities normally does not imply a reporting duty to Police Authorities. Accordingly, even an irregular migrant affected by Covid-19 can ask and receive medical treatment without risking any consequence due to its legal status, first and most importantly, in terms of criminal law. The Government was well aware of the public health risk factor represented by the spreading of the contagion, especially in those area of the country where irregular migrants live in precarious conditions also and especially from an hygienic-medical point of view, and where the compliance with the anti-Covid-19 measures (that often require social distancing and home confinement) is particularly difficult (see [M. D'ONGHIA](#)). As a consequence, it has attempted to neutralize such risk also by means of a regularisation (which, *inter alia*, entails the right to have an attending doctor, which should prevent an infected migrant from going to the first aid and, possibly, spreading the virus).

With regard to the shortage of workforce, while *Confagricoltura* – the most important organization that protects and represents agri-food enterprises – has reported [the lack of at least 250.000 seasonal workers](#), immediately needed to avoid damages to crops, [others](#) have even set the number at 370,000. However, despite the urgent need of workforce in the agricultural sector, the procedure designed by Law Decree no. 34/2020 will likely regularise only a minor number of migrant workers, who will not obtain the new legal status before the end of summer due to the inevitable bureaucratic delays. Hence, too late to save the season.

In order to fill the gap between supply and demand of workforce, it would have been more appropriate to follow the steps of other countries (France, Germany, United Kingdom, Austria, Denmark, Finland, Norway and Spain) that have signed bilateral agreements with Eastern European countries based on the principles of circular migration (see [G. TERRANOVA](#)). The [European Commission](#), for its part, had urged Member States to guarantee, through green lanes, the free movement of seasonal workers in strategic sectors, as the agricultural one. Accordingly, the receiving State could have released a temporary permit for work-related reasons together with a multi-annual re-entry visa for those migrants who, at the end of the harvesting, would have guaranteed to return to their country of origin. However, the Italian Government has preferred, once again, the “traditional” way of regularisations to circular migration.

The main contents of the regularisation measure

This blogpost will not focus on an in-depth assessment of Article 103 of Law Decree no. 34/2020, which is an intricate provision, hardly coherent with the declared objective to regularise the informal work and protect individual and collective health (on this topic, see [M. PAGGI](#)). Rather, it will analyse the main eligibility criteria established in order to access the regularisation process and the related procedural problems, which support the following conclusion: even if the Government's choice represents a step forward towards the enforcement of irregular migrant workers' rights, a number of drawbacks risks to frustrate the positive effects. Indeed, the regularisation appears to be affected by the introduction of various normative impediments, which will have a considerable impact on the number of workers who will actually benefit from the regularisation plan.

First of all, Law Decree no. 34/2020 identifies two distinct hypotheses of regularisation.

The first option allows employers (Italian citizens, EU citizens or migrants with EU long-term residence permit) to apply for a) the conclusion of an employment contract with a foreigner already present on the national territory; or b) to declare the existence of an irregular employment relationship, which was already in place until 19 May 2020, with a foreign citizen, as well as with an Italian or EU citizen. In both cases, foreigners have to prove their presence in Italy before 8 March 2020 by submitting one of the means of proof expressly identified by the Law Decree.

The second option, instead, allows foreigners who hold a residence permit expired after 31 October 2019, and who have been working in one of the sectors listed by the Law Decree (which are addressed below), to apply for a temporary residence permit in order to look for a job. This kind of permit lasts six months and can be converted into a residence permit for work reasons in the event that the beneficiary successfully finds a job in one of the eligible sectors. With that being said, it is hard to believe that the foreigner who has not found a job within six months will report himself/herself to the public authorities or ask them to be repatriated. Rather, it is more likely that he/she will go back to the informal economy.

The Law Decree provides also for, on the one hand, a series of conditions for the extinguishment of previous crimes and, on the other, specific impediments, which may cause inadmissibility or dismissal of the application, for workers as well as employers, linked to facts particularly dangerous or relevant under criminal law. For instance, according to the Law Decree, the following persons are excluded from the possibility to regularise their status: foreigners served with an expulsion order; foreigners reported as inadmissible in Italy; foreigners condemned, also with a non-definitive ruling, for crimes against personal freedom, drug dealing, aiding and abetting of irregular immigration, recruiting and exploitation of prostitution or minors employed in illicit activities; foreigners who are considered a threat to public order and safety in Italy or in other countries that have an agreement of freedom of movement with Italy.

The application suspends administrative and criminal proceedings linked to the illegal stay in Italy, against both the employer and the workers, but for those attributable to irregular immigration, illicit intermediation and labour exploitation. If the regularisation application is not accepted, the proceedings are immediately re-activated.

The applications must be submitted electronically between 1 June and 15 August 2020 (the deadline has been extended from 15 July to 15 August at a later stage). The application for the regularisation of the migrant worker can be submitted following the payment of a lump sum of EUR 500 for each worker. Moreover, for applications concerning the irregular employment relationship, Article 103 of Law Decree no. 34/2020 requires the employer to pay an extra lump sum, in compensation for the contribution, remuneration and taxes that should have been paid while the employment relationship was irregular (the precise amount is to be determined by a Decree of the Ministry of Labour). As to the application for a temporary residence permit, before its submission, the worker must pay EUR 130 plus additional EUR 30 for the administrative procedure. Previous experiences teach that, even in this case, there is a concrete risk that, in spite of the law, the regularisation costs are going to be afforded by the workers.

In addition, as mentioned above, the two hypotheses of regularisation do not concern indistinctly all migrant workers with an irregular status. Only those who perform their activity in specific sectors – i.e. agriculture, livestock, animal husbandry, fisheries, aquaculture and related activities, and care and domestic work – are involved. This is a radical cutback of the circle of potential beneficiaries, which has the effect of excluding significant sectors where the presence of irregular workers is consistent (e.g. foodservice, hospitality, constructions and logistics). At the same time, it is incoherent with the declared aim of facilitating the emergence of irregular workers and granting health and safety to all citizens.

Those who do not meet the strict eligibility criteria imposed by the Law Decree, but still want to benefit from the regularisation, have no other option than trying to purchase fake employment contracts. This is especially true for the care sector where it is highly difficult, also for the inspections service, to intervene. Situations as such, which have already occurred during the previous regularisation procedures, are already taking place: the media refer to [costs that range between 3000 and 5000 euros for each fake employment contract.](#)

Additionally, the Law Decree provides for a number of further eligibility criteria noticeably burdensome and which can be hardly met by the interested persons. These include, *inter alia*, the need to provide evidence of their presence on the national territory before 8 March 2020 (in order to avoid possible further entries subsequent to the regularisation: circumstance that is actually highly unlikely due to the pandemic context) and that they have not left Italy after that same date (which is equally unlikely, given the lockdown and the pandemic-related measures which have blocked the entire country).

As regards the first hypothesis of regularisation, in particular, it is provided that the proof of the presence before 8 March must be necessarily provided through: i) digital fingerprinting, which is imposed only to those who are under investigation, have been expelled or have already had a residence permit (and, hence, not to the “mere” irregular migrant); ii) the declaration of presence under Law no. 68/2007 (which is never submitted by those who enter from another EU country with a Schengen visa or with a visa-free regime); iii) documents with certified dates issued by a public body (i.e., basically, a report issued by a public health department, where irregular migrants only go – with suspicion – in case of urgency, or an administrative sanction, which is rarely preserved). In brief, it constitutes a *probatio diabolica*, whose rigidity, in addition, is in conflict with the [ridiculous number of irregular migrants which managed to enter in Italy after the beginning of the pandemic](#).

Less problems are linked to the second hypothesis of regularisation, which requires an easier proof of the presence in Italy. Article 103 of Law Decree no. 34/2020 in this case does not establish a strict list of admissible evidentiary means, and the migrant with an expired work permit can prove his/her presence by submitting the photographic identification, which he/she surely has in light of the issuing of the work permit.

The various eligibility criteria requested by the Law Decree subsequently trigger a series of administrative controls and procedural burdens for the processing of the regularisation. These will not be discussed here, however, they undoubtedly create a number of “bottlenecks” and a lengthening of the bureaucratic process that further complicate the procedure.

In conclusion, the measure has been drafted having in mind more our necessities (economic ones above all), rather than those of migrant workers and their right to a decent work and life. The elements that have been briefly highlighted in this contribution will surely limit the effects and scope that a wider and more refined regularisation may have, conversely, generated. The first available data seem to confirm this hypothesis: [until July 15th 123.429 applications have been submitted, while 11.101 are in the process of being submitted](#). The large majority of those applications concern domestic workers and care givers, who represent 87% of the applications already submitted (97.968) and 76% of those in progress (8.386). Even if it is too early to draw conclusions, these data seem far away from the Government’s expectations, which foresee 220.000 applications before 15 July, and now by 15 August (which should bring to the State [94 million euros](#)).

The Law Decree adopted by the Government has just been converted into [Law no. 77 of 17 July 2020](#). The Parliament, however, did not make the amendments which would have been necessary to widen the scope of the regularisation, also on the grounds of the [reasonable requests of the civil society](#). These amendments should have guaranteed not only the stability of the agri-food system and appropriate levels of individual and collective health, but also (and especially) the fundamental conditions of dignity and legality for the irregular migrant workers. But, unfortunately, this has not happened.

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