

LAW No. 189 of 30th July 2002

Changes in regulations on the matter of immigration and asylum
In force as from 10-9-2002

The Chamber of Deputies and the Senate having approved;
THE PRESIDENT OF THE REPUBLIC OF ITALY

Promulgates the following law:

SECTION I PROVISIONS ON THE MATTER OF IMMIGRATION

Art. 1

(Cooperation with foreign nations)

1. In order to encourage donation in favour of humanitarian development initiatives, of whatsoever nature, the Consolidated Act on income taxation issued as per Presidential Decree No. 917 of 22nd December 1986, and subsequent amendments, are amended as follows:

a) in article 13-bis, paragraph 1, letter i-bis), after the words: “non-profit organisations of social utility (ONLUS),” the following words are inserted: “humanitarian, religious or non-confessional initiatives, conducted by foundations, associations, committees and bodies identified by decree issued by the Prime Minister, in countries that are not members of the Organisation for Economic Cooperation and Development (OECD) “;

b) in article 65, paragraph 2, letter c-sexies), after the words: “in favour of the ONLUS” the following words are added at the end: “, and also the humanitarian, religious or non-confessional initiatives conducted by foundations, associations, committees and bodies identified by decree issued by the Prime Minister as per article 13-bis, paragraph 1, letter i-bis), in countries that are not members of the OECD;”.

2. In the formulation and possible review of the bilateral cooperation and aid programmes for intervention measures not for humanitarian purposes, in relation to countries that are not members of the European Union, with the exception of initiatives of a humanitarian nature, the Government also takes into account the cooperation provided by the countries concerned in the prevention of illegal migratory flows and in combating the criminal organisations operating in the fields of clandestine immigration, trafficking in human beings, the exploitation of prostitution, and trafficking in narcotics and armaments, and also in the matter of judicial and penal cooperation and in the application of international regulations on the safety of navigation.

3. The cooperation and aid programmes indicated in paragraph 2 may be subjected to revision in the event that the Governments of the countries concerned do not adopt appropriate prevention and vigilance measures to prevent the illegal re-entry of expelled citizens into Italy..

Art. 2

(Coordination and Monitoring Committee)

1. In the consolidated act regarding the provisions governing immigration and regulations concerning the status of foreigners, as per legislative decree No. 286 of 25th July 1998, hereinafter called the “consolidated act as per legislative decree No. 286 of 1998”, after article 2, the following is inserted:

“Art. 2-bis. - (Coordination and monitoring committee) - 1. A Committee is instituted for the coordination and monitoring of the provisions of this consolidated act, hereinafter called the “Committee”.

2. The Committee is chaired by the Prime Minister or Deputy Prime Minister or by a Minister delegated by the Prime Minister, and consists of the Ministers concerned by the matters dealt with at each meeting, numbering not less than four, and by a president of a region or autonomous province nominated by the Conference of presidents of the regions and autonomous provinces.

3. For the preliminary examination of the matters in the Committee’s sphere of competence, a technical working group is established in the Ministry of Internal Affairs, consisting of the representatives of the Departments for regional affairs, equal opportunities, coordination of European Community policies, innovation and technologies, and of the Ministries of Foreign Affairs, Internal Affairs, Justice, Productive Activities, Education, Universities and Research, Labour and Social Policies, Defence, Economics and Finance, Health, Agricultural and Forestry Policies, Cultural Assets and Activities, and Communications, and also of a representative of the Minister for Italians elsewhere in the world and three experts appointed by the unified Conference indicated in article 8 of legislative decree No. 281 of 28th August 1997. Representatives of any other public administration concerned with the implementation of this consolidated act, and also of the national bodies

and associations and workers' and employers' associations indicated in article 3, paragraph 1, may also be invited to the meetings, in relation to the matters under examination.

4. A set of regulations, to be issued pursuant to article 17, paragraph 1, of law No. 400 of 23rd August 1988 and subsequent amendments, at the proposal of the Prime Minister, in concert with the Minister of Foreign Affairs, the Minister of Internal Affairs and the Minister for European Community Policies, define the procedures for coordination of the activities of the technical working group with the structures of the Prime Minister's Office “.

Art. 3

(Migration Policies)

1. In the consolidated act as per legislative decree No. 286 of 1998, in article 3, paragraph 1, after the words: “every three years “ the following are inserted: “save for the need for a shorter time-limit “.

2. In the consolidated act as per legislative decree No. 286 of 1998, in article 3, paragraph 4 is replaced by the following:

“4. By decree issued by the Prime Minister, after hearing the Committee indicated in article 2-bis, paragraph 2, the Unified Conference indicated in article 8 of legislative decree No. 281 of 28th August 1997, and the competent Parliamentary Committees, on the basis of the general criteria specified in the programmatic document, the maximum quotas of foreigners to be admitted into Italy for employment, including work to meet seasonal requirements, and for self-employed work, are defined at yearly intervals, also taking into account family reunions and whatever temporary protection measures may have been ordered pursuant to article 20. Whenever it is deemed advisable, additional decrees may be issued during the year. The entry visas and residence permits for employment, including work to meet seasonal requirements, and for self-employed work, are issued within the limits of the aforementioned quotas. If no annual programming decree has been published, the Prime Minister may attend to this matter on a provisional basis, by his own decree, within the limit of the quotas set for the previous year. “.

Art. 4

(Admission to enter Italian territory)

1. Article 4 of the consolidated act as per legislative decree No. 286 of 1998, is amended as follows:

a) paragraph 2 is replaced by the following:

“2. 2. The entry visa is issued by the Italian diplomatic or consular representatives in the foreigner's country of origin or permanent residence. For temporary residence not exceeding three months, the visas issued, on the basis of specific agreements, by the diplomatic or consular authorities of other countries are considered equivalent to those issued by the Italian diplomatic and consular authorities. Simultaneously to the issue of the entry visa, the Italian diplomatic or consular authority gives the foreigner a notice written in a language he or she understands, or if this is not possible, in English, French, Spanish or Arabic, which explains the rights and duties of foreigners regarding entry and residence in Italy. If the requisites foreseen by the current regulations for the issue of a visa are lacking, the diplomatic or consular authority communicates the refusal to the foreigner in a language he or she understand, or if this is not possible, in English, French, Spanish or Arabic. In derogation of what is foreseen in law No. 241 of 7th August 1990 and subsequent amendments, for reasons of security or public order the grounds for the refusal need not be stated, except when it concerns visa applications presented pursuant to articles 22, 24, 26, 27, 28, 29, 36 and 39. The presentation of false or counterfeited documentation or false attestations to back a visa application automatically entails, in addition to the relative penal liabilities, the unacceptability of the application. For a foreigner who holds a residence permit, a prior communication to the frontier authority is sufficient for the purposes of re-entering Italian territory.”

b) in paragraph 3, the last sentence is replaced by the following:

“Foreigners cannot be admitted to Italy if they do not satisfy these requirements or are considered a threat to public order or to the national security of Italy or of one of the countries with which Italy has signed agreements for the elimination of internal frontier checks and the free circulation of persons, or who has been sentenced, even following application of the punishment upon request pursuant to article 444 of the Penal Procedure Code, for offenses foreseen in article 380, paragraphs 1 and 2, of the penal procedure code or for offences regarding drugs, sexual freedom, abetting clandestine immigration towards Italy or clandestine emigration towards other countries or for offences involving the recruitment of persons for purposes of prostitution or the exploitation of prostitution or minors to be employed in unlawful activities”.

Art. 5
(Residence permit)

1. The following amendments are made to article 5 of the consolidated act as per legislative decree No. 286 of 1998:

- a) in paragraph 1, after the words: “residence permit issued” the following is inserted: “and currently valid,”;
- b) after paragraph 2, the following is inserted:

“2-bis. Foreigners who apply for a residence permit are subjected to photodactyloscopic recording of finger-prints”;

- c) in paragraph 3, first line, after the words: “The duration of the residence permit” the following is inserted: “not issued for work reasons “;

- d) in paragraph 3, letters b) and d) are cancelled;

- e) after paragraph 3, the following is inserted:

“3-bis. The residence permit for employment reasons is issued following the signature of the residence contract for employment indicated in article 5-bis. The duration of the relative residence permit for employment reasons is the same as the duration foreseen in the residence contract and in any case cannot exceed::

- a) in relation to one or more seasonal employment contracts, an overall duration of nine months;
- b) in relation to a temporary employment contract, a duration of one year;
- c) in relation to a permanent employment contract, a duration of two years.

3-ter. A foreigner who can prove that he or she has come into Italy for at least two consecutive years to perform seasonal work may be issued, when repetitive jobs are involved, with a multi-annual permit, on such grounds, for up to three years, for the annual length of time he or she had utilised in the latter of the two preceding years under a single measure. The relative entry visa is issued every year. The permit is immediately revoked in the event of non-compliance by the foreigner with the provisions of this consolidated act.

3-quater. In addition, foreigners may reside in Italy if they hold a residence permit for self-employed work issued on the basis of certification by the competent Italian diplomatic or consular authority of the existence of the requisites foreseen by article 26 of this consolidated act. The residence permit cannot be valid for a duration of more than two years.

3-quinquies. The Italian diplomatic or consular representative office that issues the entry visa for reasons of work, as per paragraphs 2 and 3 of article 4, or the entry visa for self-employed work, as per paragraph 5 of article 26, reports it to the Ministry of Internal Affairs and the INPS (National Social Security Institute), even by telematic means, for the purpose of its inclusion in the archive foreseen in paragraph 9 of article 22 not later than thirty days after receiving the documentation. The same reporting procedure to the Ministry of Internal Affairs is followed in the case of entry visas for family reunion issued as per article 29, not later than thirty days after receiving the documentation.

3-sexies. In cases of family reunion, for the effects and purposes of article 29, the duration of the residence permit cannot exceed two years”;

- f) paragraph 4 is replaced by the following:

“4. Renewal of the residence permit is applied for by the foreigner to the head of police administration (questore) of the province in which he or she is living, at least ninety days before the expiry date in the cases indicated in paragraph 3-bis, letter c), sixty days before expiry in the cases indicated in letter b) of the said comma 3-bis, and thirty days before expiry in the remainder of cases, and is subject to verification of the conditions foreseen for issue and of the various conditions foreseen in this consolidated act. Without prejudice to the different time-limits foreseen in this consolidated act and in the implementation regulations, the residence permit is renewed for a duration not exceeding that foreseen when initially issued”;

- g) after paragraph 4, the following is inserted:

“4-bis. Foreigners who apply for renewal of residence permits are subjected to photodactyloscopic recording of finger-prints”;

- h) paragraph 8 is replaced by the following:

“8. The residence permit and the residence card indicated in article 9 are issued through the use of advanced-technology equipment, with forgery prevention characteristics in conformity with the types to be approved by decree of the Minister of Internal Affairs, in concert with the Minister for Innovation and Technologies, implementing the common action measure adopted by the European Union Council on 16th December 1996, regarding the adoption of a uniform standard model for residence permits “;

- i) after paragraph 8, the following is inserted:

“8-bis. Whoever forges or tampers with an entry or re-entry visa, a residence permit, a residence contract or a residence card, or forges or tampers with documents for the purpose of bringing about the issue of an entry or re-entry visa, is punished with imprisonment for one to six years. If the forgery concerns a document or part of a document that is to be deemed probative until a charge of forgery is brought, the period of imprisonment is from three to ten years. The punishment is increased if the act is committed by a public official. “.

Art. 6

(Residence contract for employment)

1. 1. In the consolidated act as per legislative decree No. 286 of 1998, after article 5, the following is inserted:

“Art. 5-bis. - (Residence contract for employment) - 1. The residence contract for employment entered into between an Italian employer or foreign employer lawfully residing in Italy and a worker who is a citizen of a non-European Union country or a stateless person, contains:

a) a guarantee on the part of the employer of the availability of accommodation for the worker that meets the minimum requirements foreseen by law for housing in public residential building projects;

b) an undertaking on the part of the employer to pay the travel expenses for the worker’s return to his or her country of origin.

2. A contract that does not contain the declarations indicated under letters a) and b) of paragraph 1 does not constitute a valid document for the purposes of issue of a residence permit.

3. The residence contract for employment is signed on the basis of what is foreseen in article 22 at the unified public office for immigration of the province in which the employer resides or has its registered office or where the work will be performed in accordance with the procedures foreseen in the implementation regulations.”.

2. The regulations indicated in article 34, paragraph 1, ensure the implementation and completion of the provisions contained in article 5-bis of the consolidated act as per legislative decree No. 286 of 1998, introduced by paragraph 1 of this article, with particular reference to bearing the costs of the housing indicated in paragraph 1, letter a), of the said article 5-bis, foreseeing on what conditions these are to the worker’s charge.

Art. 7

(Faculties pertaining to residence)

1. Article 6 of the consolidated act as per legislative decree No. 286 of 1998, is amended as follows:

a) in paragraph 1, after the words: “before its expiry date,” the following are inserted: “and subject to prior stipulation of the residence contract for employment or prior issue of certification attesting the existence of the requisites foreseen in article 26”;

b) in paragraph 4, the words: “may be subjected to the recording of identification data” is replaced by “is subject to the recording of photodactyloscopic and identification data “.

Art. 8

(Penalties for non-compliance with notification obligations by providers of hospitality and employers)

1. The following is added at the end of article 7 of the consolidated act as per legislative decree No. 286 of 1998, after paragraph 2:

“2-bis. Violations of the provisions of this article are subject to an administrative penalty consisting of the payment of a sum ranging from 160 to 1.100 euro”.

Art. 9

(Residence card)

1. In article 9, paragraph 1 of the consolidated act as per legislative decree No. 286 of 1998, the words “five years” are replaced by the following: “six years”.

Art. 10

(Coordination of frontier control)

1. The following is inserted in article 11 of the consolidated act as per legislative decree No. 286 of 1998, after paragraph 1:

“1-bis. The Minister of Internal Affairs, after having heard, if necessary, the National Committee for public order and security, issues the measures necessary for the unified coordination of frontier control along Italy’s sea and land frontiers. The Minister of Internal Affairs also promotes appropriate coordination measures between the Italian authorities responsible for immigration control and the European authorities responsible for immigration control as per the Schengen Agreement, ratified as per Law No. 388 of 30th September 1993”.

Art. 11

(Provisions against clandestine immigration)

1. Article 12 of the consolidated act as per legislative decree No. 286 of 1998 is amended as follows:

a) paragraph 1 is replaced by the following:

“1. Save for acts constituting more serious criminal offences, whoever in violation of the provisions of this consolidated act performs acts aimed to bring about the entry of a foreigner into Italian territory or acts aimed to bring about illegal entry into another country in which that person is not a citizen or is not entitled to permanent residence, is punished by imprisonment for up to three years and a fine of up to 15,000 euro for each person”;

b) paragraph 3 is replaced by the following:

“3. Save for acts constituting more serious criminal offences, whoever performs acts, in order to profit from them even indirectly, aimed to bring about the entry of any person into Italian territory in violation of the provisions of this consolidated act, or to bring about illegal entry in another country of which the person is not a citizen or is not entitled to permanent residence, is punished by imprisonment for four to twelve years and with a fine of 15,000 euro for each person. The same punishment is applied when the act is committed by three or more persons acting in association with one another or utilising international transport services or documents that are forged or altered or in any way illegally obtained “;

c) after paragraph 3, the following are inserted:

“3-bis. The punishments indicated in paragraph 3 are increased if:

a) the act regards the illegal entry or residence in Italy of five or more persons;

b) for the purposes of bringing about illegal entry or residence the person's life or safety has been endangered; c) for the purposes of bringing about illegal entry or residence the person has been subjected to inhumane or degrading treatment.

3-ter. If the acts indicated in paragraph 3 are committed for the purpose of recruiting persons to be destined for prostitution or in any case for sexual exploitation or regard the entry of minors to be utilised in unlawful activities for the purposes of fostering their exploitation, the punishment of imprisonment for five to fifteen years and a fine of 25,000 euro per person are applied.

3-quater. Mitigating circumstances, other than what is foreseen in article 98 of the penal code, concurrent with the aggravating circumstances indicated in paragraphs 3-bis and 3-ter, cannot be deemed equivalent or predominant in relation to the latter and the punishment reductions are applied on the overall punishments resulting from the increase consequent to the aforementioned aggravating circumstances.

3-quinquies. For the crimes foreseen in the preceding paragraphs, the punishments are reduced by up to half in the case of an accused who seeks to prevent the criminal activity being carried to any further consequences, by concretely helping the police authority or judicial authority to obtain evidence and information of decisive importance for the reconstruction of events, for the identification or capture of one or more persons responsible for committing crimes and the removal of resources having a significant role in the accomplishment of the crimes.

3-sexies. In article 4-bis, paragraph 1, third sentence, of law No. 354 of 26th July 1975 and subsequent amendments, after the words:

“609-octies of the penal code” the following are inserted: “and also of article 12, paragraphs 3, 3-bis and 3-ter, of the consolidated act as per legislative decree No. 286 of 1998”;

d) after paragraph 9, the following are added:

“9-bis. An Italian ship on police duty which encounters, in Italy's territorial waters or in an adjacent area, a ship which there is good reason to believe is used for or involved in the unlawful transportation of migrants, can stop the said vessel, subject it to inspection and, if evidence is found that confirms the ship's involvement in migrant trafficking, seize it and conduct it into an Italian harbour.

9-ter. The ships of the Italian Navy, without prejudice to the institutional spheres of competency on the matter of national defence, can be used to participate in the activities indicated in paragraph 9-bis.

9-quater. The powers indicated in paragraph 9-bis can be exercised outside the territorial waters, not only by ships belonging to the Navy but also by ships on police duty, within the limits allowed by the law, by international law or by bilateral or multinational agreements, if the ship flies the Italian flag or even that of another country, or if the ship flies no national flag or a flag of convenience.

9-quinquies. The procedures for intervention by Navy ships and also for liaison with the activities performed by the other vessels on police duty are defined by interministerial decree signed by the Ministers of Internal Affairs, Defence, Economics and Finance and Infrastructures and Transport.

9-sexies. The provisions of articles 9-bis and 9-quater apply, insofar as compatible, also to control activities concerning air traffic”.

Art. 12
(Administrative expulsion)

1. Article 13 of the consolidated act as per legislative decree No. 286 of 1998 is amended as follows:

a) paragraph 3 is replaced by the following:

“3. Expulsion is ordered in all cases by a decree with stated reasons which is immediately enforceable, even if subject to objections or contestation on the part of the person concerned. If the foreigner is subject to penal proceedings and is not in a state of precautionary custody in prison, the head of police administration (questore), before executing the expulsion, requests a “nulla osta” from the judicial authority, who may refuse it only in the presence of mandatory trial requirements considered in relation to ascertainment of the guilt of other persons possibly involved in the crime or accused in proceedings for connected offences, and the interest of the victim. In this case the execution of the expulsion measure is suspended until the judicial authority reports that the mandatory trial requirements have ceased to apply. The head of police administration, having obtained the “nulla osta”, proceeds with the expulsion in accordance with the procedures indicated in paragraph 4. The “nulla osta” is deemed to have been granted if the judicial authority does not decide otherwise within a period of fifteen days commencing from the date of receipt of the request. While awaiting the decision on the request for the “nulla osta”, the head of police administration may adopt the measure of detention in a temporary-stay facility, as per article 14”;

b) after paragraph 3, the following are inserted:

“3-bis. In the cases of arrest of a person caught in the act or a person held in custody, the judge issues the “nulla osta” at the time of convalidation, unless he applies the measure of precautionary custody in prison as per article 391, paragraph 5, of the penal procedure code, or unless one of the reasons for denying a “nulla osta” as per paragraph 3 is present.

3-ter. The provisions of paragraph 3 apply also to any foreigner subject to penal proceedings, after the revocation or declared termination, for whatsoever reason, of the measure of precautionary custody in prison applied to the said person. The judge, in the same measure in which he revokes or declares the termination of the measure, decides on the issue of the “nulla osta” allowing the expulsion to be executed. The measure is immediately communicated to the head of police administration.

3-quater. In the cases foreseen in paragraphs 3, 3-bis and 3-ter, the judge, having obtained proof that the expulsion has occurred, if the measure foreseeing the trial has not yet been issued, decrees a non-suit. Confiscation of the items indicated in the second paragraph of article 240 of the penal code is ordered in all cases. The provisions of paragraphs 13, 13-bis, 13-ter and 14 are applied.

3-quinquies. If an expelled foreigner illegally re-enters the country before the expiry of the period foreseen in paragraph 14 or, if longer, before the debarment by limitation of the most serious offence for which he or she had been prosecuted, article 345 of the penal code is applied. If the foreigner had been released from prison due to expiry of the time-limit for precautionary custody, the latter is re-established as per article 307 of the penal procedure code.

3-sexies. A “nulla osta” for expulsion cannot be granted while proceedings are under way regarding one or more of the crimes foreseen in article 407, paragraph 2, letter a), of the penal procedure code, and/or by article 12 of this consolidated act “;

c) paragraph 4 is replaced by the following:

“4. Expulsion is always enforced by the head of police administration (questore) by having the foreigner accompanied under police escort to the frontier save in the cases indicated in paragraph 5”;

d) paragraph 5 is replaced by the following:

“5. In the case of a foreigner who has remained in Italy for more than sixty days after the expiry of his or her residence permit and has not applied for its renewal, the expulsion order contains an injunction to leave the country within a period of 15 days. The head of the police administration (questore) arranges to have the foreigner immediately escorted to the frontier if the prefect considers that there exists a concrete danger that the person concerned may evade compliance with the order.

e) paragraph 8 is replaced by the following:

“8. An appeal against an expulsion order must be addressed solely to the monocratically-composed tribunal of the place in which the authority that ordered the expulsion has its seat. The deadline is sixty days after the date of the expulsion measure. The monocratically-composed tribunal accepts or rejects the appeal, in a single decision measure issued, in all cases, not later than twenty days after the date on which the appeal was filed. The appeal indicated in this paragraph may even be signed personally by the person concerned, and may also be presented through the Italian diplomatic or consular representative office in the country of destination. The signature of the appeal by the person concerned is legalised by the officials of the diplomatic or consular representation office, who certify its authenticity and have it forwarded to the judicial authority. The foreigner is allowed legal assistance by a legal counsel bearing a special power of attorney issued before the consular authority. The foreigner is also entitled to free legal assistance at Government expense and, if he or she does not have a defence counsel, assistance is provided by a defence counsel nominated by the judge from amongst those registered in the role indicated in article 29 of the implementation, coordination and transitional provisions

regarding the Penal Procedure Code, approved by legislative decree No. 271 of 28th July 1989 and subsequent amendments, and also, where necessary, by an interpreter”;

f) paragraphs 6, 9 and 10 are cancelled;

g) paragraph 13 is replaced by the following:

“13. An expelled foreigner cannot re-enter Italy without special authorisation from the Minister of Internal Affairs. In case of violation of this provision, the foreigner is punished by arrest and detention for six months to one year, and is then again expelled with immediate accompaniment by police escort to the frontier.

13-bis. In the case of expulsion ordered by a judge, violation of the prohibition of re-entry is punished by imprisonment for one to four years. The same punishment is applied to any foreigner who, having already been reported for the offence indicated in paragraph 13 and expelled, has re-entered Italian territory.

13-ter. For the offences indicated in paragraphs 13 and 13-bis, arrest of persons caught in the act is always permitted, and in the case indicated in paragraph 13-bis, holding in custody is also allowed. In all cases, the person who committed the offence is tried following the most rapid procedure “;

h) paragraph 14 is replaced by the following:

“14. Unless otherwise specified, the prohibition indicated in paragraph 13 operates for a period of ten years. The expulsion order may foresee a shorter period, but in any case not less than five years, in consideration of the overall conduct of the person concerned during the period spent in Italy “.

Art. 13

(Execution of expulsion)

1. The following amendments are made to article 14 of the consolidated act as per legislative decree No. 286 of 1998:

a) paragraph 5 is replaced by the following:

“5. Convalidation entails detention in the facility for a total period of thirty days. If ascertainment of identity and nationality, or the obtainment of travel documents entails serious difficulties, the judge may, at the request of the head of police administration (questore), extend the period for a further thirty days. Even before this time-limit has expired, the head of police administration enforces expulsion or rejection, informing the judge without delay”;

b) after paragraph 5, the following are added:

“5-bis. If it is not possible to detain the foreigner in a temporary-stay facility, or the time-limit has expired without execution of the expulsion or rejection, the head of police administration orders the foreigner to leave the country within a period of five days. This order is imparted in written form, indicating the penal consequences of disobedience.

5-ter. A foreigner who remains in Italy in violation of the order imparted by the head of police administration as per paragraph 5-bis is punished by detention for six months to one year. In this case a new expulsion measure is proceeded with, foreseeing accompaniment to the frontier under police escort.

5-quater. A foreigner expelled as per paragraph 5-ter who is found, in violation of the provisions of this consolidated act, in Italian territory is punished by imprisonment for one to four years.

5-quinquies. For the offences foreseen in paragraphs 5-ter and 5-quater, arrest of the transgressor is compulsory and the most rapid form of trial proceedings are adopted. For the purpose of assuring the enforcement of expulsion, the head of police administration may order the measures indicated in paragraph 1 of this article”.

2. For the construction of new temporary-stay and assistance facilities, the relative expenditure is authorised up to a maximum limit of 12.39 millions euro for the year 2002, 24.79 million euro for the year 2003 and 24.79 millions euro for the year 2004.

Art. 14

(Further provisions for the execution of expulsion)

1. The following is added to article 15 of the consolidated act as per legislative decree No. 286 of 1998, after paragraph 1::

“1-bis. The issue of a precautionary custody measure or a final sentence applying a detentive punishment to a foreigner from non-European Union countries is promptly reported to the head of police administration and to the competent consular authority for the purpose of commencing the procedure for identification of the foreigner and allow, if the requisites foreseen by law are met, the execution of expulsion immediately after the termination of the precautionary custody or detention period “.

2. The heading of article 15 of the consolidated act as per legislative decree No. 286 of 1998 is replaced by the following: “Expulsion by way of security measure and provisions for the execution of such expulsion “.

Art. 15

(Expulsion by way of punishment in lieu of or alternative to detention)

1. Article 16 of the consolidated act as per legislative decree No. 286 of 1998 is replaced by the following:
“Art. 16. - (Expulsion by way of punishment in lieu of or alternative to detention) - 1. The judge, when passing sentence for an offence committed with criminal intent or applying a punishment upon request as per article 444 of the penal procedure code against a foreigner who is one any of the situations indicated in article 13, paragraph 2, when he considers it necessary to apply a detentive punishment amounting to not more than two years and neither the requisites for ordering the conditional suspension of the punishment as per article 163 of the penal code nor the impediments indicated in article 14, paragraph 1 of this consolidated act are present, may substitute for the said punishment the measure consisting of expulsion for a period of not less than five years.
2. The expulsion indicated in paragraph 1 is executed by the head of police administration (questore) even if the sentence is not irrevocable, in accordance with the procedures indicated in article 13, paragraph 4.
3. The expulsion indicated in paragraph 1 cannot be ordered in cases in which the sentence concerns a person found guilty of one or more crimes foreseen in article 407, paragraph 2, letter a), of the penal procedure code, or crimes foreseen in this consolidated act and carrying a foreseen maximum punishment greater than two years.
4. If the foreigner expelled pursuant to paragraph 1 illegally re-enters Italian territory before the expiry of the period foreseen in article 13, paragraph 14, the measure substituted for detentive punishment is revoked by the competent judge.
5. Expulsion is ordered against identified foreigners held in detention who are in any of the situations indicated in article 13, paragraph 2, and must serve a period of detention, including a residual period, not exceeding two years. It cannot be ordered in cases in which they have been sentenced for one or more crimes foreseen in article 407, paragraph 2, letter a), of the penal procedure code, and/or the crimes foreseen in this consolidated act.
6. The person competent to order expulsion as per paragraph 5 is the surveillance magistrate, who decides by motivated decree, without formalities, having obtained the information regarding the identity and nationality of the foreigner from the police channels. The expulsion order is communicated to the foreigner who may, within a period of ten days, contest it before the surveillance tribunal. The tribunal reaches its decision within a period of twenty days.
7. The execution of the expulsion order indicated in paragraph 6 is suspended until the expiry of the period foreseen for its contestation or for the decision by the surveillance tribunal, and in any case, the state of detention is continued until the necessary travel documents have been acquired. The expulsion is executed by the head of police administration (questore) competent for the place of detention, by having the foreigner escorted to the frontier by the police.
8. The punishment ceases to be applicable at the expiry of the period of ten years commencing from execution of the expulsion as per paragraph 5, provided that the foreigner has not illegally re-entered the country, in which case the state of detention is restored and the enforcement of the punishment is again continued.
9. Expulsion as punishment in lieu of or alternative to detention does not apply in the cases indicated in article 19”.

Art. 16

(Right of defence)

1. In article 17, paragraph 1, of the consolidated act as per legislative decree No. 286 of 1998, after the words “A foreigner” the following are inserted “who is an injured party or” and after the word “request” the following are inserted: “of the injured party or”.

Art. 17

(Establishment of incoming flows)

1. The following amendments are made to article 21 of the consolidated act as per legislative decree No. 286 of 1998:
 - a) in paragraph 1, after the first sentence, the following is inserted: “In establishing the quotas the decrees foresee numerical restrictions on the entry of workers from countries that do not cooperate adequately in combating clandestine immigration or in the readmission of citizens of theirs subject to repatriation measures “;
 - b) in paragraph 1, second sentence, after the words “quotas reserved” the following are inserted: “for workers of Italian origin through at least one of their parents up to the third level of straight-line descent, resident in countries not belonging to the European community, who ask to be included in a specific list, to be kept at diplomatic or consular offices, indicating the occupational skills and/or qualifications of the workers in question, and also “;
 - c) after paragraph 4, the following are inserted:

“4-bis. The annual decree and the infra-annual decrees must also be drawn up on the basis of the data on the actual demand for labour subdivided by regional and by provincial utilisation areas, processed by the computerised records office set up in the Ministry of Labour and Social Policies, as per paragraph 7. The implementation regulations foresee possible forms of collaboration with other public and private structures, within the limits of the ordinary budget appropriations.

4-ter. The regions may send, not later than the 30th of November each year, to the Prime Minister’s office a report on the presence and situation of non-European Union immigrants in the region’s territory, also containing the forecast data regarding sustainable flows in the following three years in relation to the absorption capacity of the social and production fabric”.

Art. 18

(Temporary and permanent employment and self-employed work)

1. Article 22 of the consolidated act as per legislative decree No. 286 of 1998 is replaced by the following:

“Art. 22. - (Temporary and permanent employment) -

1. In each province, at the prefecture-local office of the Government, a unified office is established for immigration matters, which is responsible for the entire procedure regarding the hiring of foreign workers as temporary or permanent employees.

2 1. An Italian employer, or foreign employer lawfully resident in Italy, who intends to employ in Italy, on a temporary or a permanent basis, a foreigner resident in another country, must present to the unified office for immigration of the employer’s province of residence or province where the registered office of the firm is located:

- a) application for a nulla osta for employment naming the worker concerned,
- b) appropriate documentation regarding the manner in which accommodation will be available to the foreign worker.
- c) a draft residence contract specifying the relative conditions, including an undertaking on the employer’s part to pay the expenses for the foreigner’s return to the country of origin;
- d) declaration undertaking to report any changes in the employment relationship.

3. In cases in which the foreigner is not personally known to the employer, the Italian or lawfully resident foreign employer may request, presenting the documentation indicated in letters b) and c) of paragraph 2) a nulla osta for the employment of one or more persons registered in the lists indicated in article 21, paragraph 5, selected according to criteria defined in the implementation regulations.

4. The unified office for immigration communicates the requests as per paragraphs 2 and 3 to the employment center, as indicated in article 4 of legislative decree No. 469 of 23rd December 1997, competent in relation to the province of residence, domicile or registered address. The employment centre proceeds to communicate the offers by telematic means to the other centres and to make them available on the INTERNET site or by all other possible means and activates, if applicable, the measures foreseen in article 2 of legislative decree No. 181 of 21st April 2000.

After twenty days have passed without any application being presented by a national or European Community worker, even by telematic means, the centre sends the requesting unified office a no-replies certificate, or the job applications received, which it also reports to the employer. If this period elapses without any reply from the employment centre, the unified immigration office proceeds as foreseen in paragraph 5.

5. The unified immigration office, within a maximum overall period of forty days after presentation of the application, provided that the provisions of paragraph 2 and the provisions of the collective employment agreement applicable to the case in question have been complied with, in any case after having heard the head of police administration (questore), issues its nulla osta subject to compatibility with the numerical, quantitative and qualitative numerical limits established as per article 3, paragraph 4, and with article 21, and at the request of the employer, sends the documentation, including the internal revenue code, to the consular offices, preferably by telematic means when possible. The nulla osta for employment is valid for a period of not more than six months running from the date of issue.

6. The consular offices of the foreigner’s country of residence or origin proceed, after the required ascertainment formalities, to issue the entry visa, bearing the internal revenue code, as indicated by the unified immigration office. Not later than eight days after entering the country, the foreigner must go to the unified immigration office that issued the nulla osta to sign the residence contract, which remains in the keeping of the immigration office, which sends copies of the said document to the competent consular authority and to the competent employment centre.

7. Any employer who fails to report to the unified immigration office any change that has occurred in the employment relationship with the foreigner is punished by an administrative fine of 500 to 2,500 euro. The Prefect is responsible for the assessment and application of the fine.

8. Without prejudice to the provisions of article 23, for the purposes of entering Italy for reasons of employment, non-European Union workers must be in possession of the visa issued by the Italian consulate in their country of origin or residence.

9. The local police headquarters (questure) send the INPS (National Social Security Institute), by telematic means, the anagraphical data regarding the non-European Union workers who have been granted a residence permit for employment reasons, or in any case one valid for access to employment, and also report the issue of permits concerning family members as per the provisions of part IV; The INPS, on the basis of the information received, sets up an "Anagraphical data-base on non-European Union workers", to be shared with other public administrations; the information exchanges take place on the basis of agreements between the administrations concerned. The same identity data is transmitted, by telematic means, by the local police headquarters (questure) to the competent internal revenue office, which proceeds to assign the relative internal revenue codes.

10. The unified immigration office informs the Ministry of Labour and Social Policies of the number and type of nulla ostas issued in accordance with the classifications adopted in the decrees indicated in article 3, paragraph 4.

11. Loss of employment does not constitute grounds for revoking the residence permit of a lawfully resident non-European Union worker and his lawfully resident family members. A foreign worker who hold a residence permit for employment reasons who loses his or her job, even due to resignation, can be registered in the job-seekers lists for the residual period of validity of the residence permit, and in any case, save in the case of a residence permit for seasonal work, for a period of not less than six months. The implementation regulations establishes the procedures for informing the employment centres, also for the purposes of registering the foreign worker in the job-seekers lists with priority over new non-European Union workers.

12. An employer who employs foreign workers who lack the residence permit foreseen in this article, or whose permit has expired without application being made for its renewal within the time-limit foreseen by law, or has been revoked or cancelled, is punished by detention for three months to one year and a fine of 5,000 euro for each worker employed.

13. Without prejudice to what is foreseen for seasonal workers in article 25, paragraph 5, in the event of repatriation the non-European Union worker retains the pension and social security rights already accrued and is entitled to the relative benefits independently of the current existence of a reciprocity agreement when the requisites foreseen by the current regulations are met, upon reaching the age of sixty-five years, even in derogation of the minimum contributions requisite foreseen by article 1, paragraph 20, of law No. 335 of 8th August 1995.

14. The appointed tasks and competencies of the benevolent and social assistance institutes, as per law No. 152 of 30th March 2001, are extended to non-European Union workers lawfully working in Italy.

15. Italian and non-European Union workers may request recognition of vocational and professional training qualifications obtained abroad; in the absence of specific agreements, the Minister of Labour and Social Policies, having heard the central committee on employment, decides the terms and manner of recognition of qualifications for individual cases. Non-European Union workers may also attend, in accordance with this consolidated act, all training and requalification courses scheduled in Italy.

16. The provisions of this article apply to the special status regions and to the autonomous provinces of Trento and Bolzano in accordance with the statutes and relative implementation regulations ".

2. The following sentence is added at the end of paragraph 5 of article 26 of the consolidated act as per legislative decree No. 286 of 1998: "The diplomatic or consular representative office also issues the foreigner with an attestation of the existence of the requisites foreseen by this article for the purposes of the formalities foreseen by article 5, paragraph 3-quater, for the granting of a residence permit for self-employed work ".

Art. 19

(Preferential qualifications)

1. Article 23 of the consolidated act as per legislative decree No. 286 of 1998 is replaced by the following:
"Art. 23. - (Preferential qualifications) -

1. In the framework of approved programmes, also at the proposal of the regions and autonomous provinces, the Ministry of Labour and Social Policies, Education., and Universities and Research, and also developed and organised in collaboration with the regions, autonomous provinces and other local bodies, national employers' and workers' organisations, and international organisations concerned with the transfer of foreign workers into Italy and their integration in the productive sectors of this country, and bodies and associations that have been operating in immigration sector for at least three years, education and professional or vocational training activities can be foreseen in the countries of origin.

2. The aims of the activity indicated in paragraph 1 are as follows:

- a) piloted job-placement in Italian productive sectors that operate inside Italy;
- b) piloted job-placement in Italian productive sectors that operate inside the countries of origin;
- c) development of autonomous productive or entrepreneurial activities in the countries of origin.

3. The foreigners who have participated in the activities indicated in paragraph 1 are given preference in the employment sectors to which the activities refer for the purposes of calls to employment as per article 22, paragraphs 3, 4 and 5, in accordance with the procedures foreseen in the implementation regulations of this consolidated act..

4. The implementation regulations of this consolidated act foresee employment facilitations for foreign self-employed workers who have followed the courses indicated in paragraph 1”.

Art. 20
(Seasonal work)

1. Article 24 of the consolidated act as per legislative decree No. 286 of 1998 is replaced by the following:
“Art. 24. - (Seasonal work) – 1. An Italian employer, or foreign employer lawfully resident in Italy, or the employers’ associations on behalf of their members, who intend to employ a foreigner in Italy on a seasonal basis must present an application naming the worker concerned to the unified immigration office of the province of residence as per article 22. In the cases in which the Italian employer, or foreign employer lawfully resident in Italy, or the employers’ associations do not know the foreigner personally, the request, drawn up in the manner foreseen in article 22, must be immediately communicated to the competent employment centre, which ascertains within a period of five days the availability of any Italian or European Union workers to fill the seasonal job offered. The provisions of article 22, paragraph 3 apply.
2. The unified immigration office issues the authorisation in any cases respecting the entitlements to precedence acquired, after ten days have elapsed since the communication indicated in paragraph 1 and not later than twenty days after the date of receipt of the employer’s request.
3. Authorisations for seasonal work can have a validity period ranging from a minimum of twenty days to a maximum of nine months, corresponding to the duration of the seasonal work requested, also with reference to grouping together sets of jobs of shorter duration to be performed for several employers.
4. A seasonal worker who has complied with the conditions indicated in the residence permit and has returned to the country of origin at the expiry of same, has the right of precedence for re-entering Italy in the following year for seasonal work reasons, in relation to citizens of his or her country who have never lawfully entered Italy for work reasons, and may in addition convert the residence permit for seasonal work into a residence permit for temporary or permanent employment, when the requisite circumstances arise.
5. The three-sided regional committees indicted in article 4, paragraph 1, of legislative decree No. 469 of 23rd December 1997 may stipulate with the most representative trade union and employers’ organisations at regional level, with the Regions and with the local bodies, specific agreements aimed to facilitate the access of foreign workers to seasonal jobs. These agreements may specify the applicable wage rates and regulations, which must in any case not be inferior to those foreseen for Italian workers, and the measures to assure suitable working conditions for the labour force, and also possible direct or indirect incentives to foster the activation of incoming and outgoing seasonal-labour flows and the complementary measures relative to accommodation.
6. An employer who employs on work of a seasonal nature one or more foreigners with no residence permit for seasonal work, or whose permit has expired or been revoked or cancelled, is punished as per article 22, paragraph 12.

Art. 21
(Entry and residence for self-employed work)

1. The following is added at the end of article 26 of the consolidated act as per legislative decree No. 286 of 1998, after paragraph 7:
“7-bis. A verdict of guilty by irrevocable sentence for any of the offences foreseen by the provisions of Part III, Section II, of law No. 633 of 22nd April 1941 and subsequent amendments regarding the protection of copyright, and by articles 473 and 474 of the penal code entails revocation of the residence permit issued to the foreigner and expulsion with accompaniment to the frontier under police escort “.

Art. 22
(Sports activities)

1. The following amendments are made to article 27 of the consolidated act as per legislative decree No. 286 of 1998:
 - a) in paragraph 1, after letter r) the following is added:
“r-bis) professional nurses employed by public and private health structures”;
 - b) after paragraph 5, at the end, the following is added:
“5-bis. By decree of the Minister for Cultural Assets and Activities, at the proposal of the Italian National Olympic Committee (CONI), after having heard the Ministers of Internal Affairs and Labour and Social Policies, the annual maximum limit is set for the admission of foreign athletes who engage in sports activities on a professional, or in in any case a remunerated basis, to be divided out amongst the national sports federations. This distribution is effected by the CONI by resolution to be submitted for approval by the supervising Minister. The same resolution also establishes the general criteria for assignment and association membership for each sports season also with a view to safeguarding the stock of promising young sports-players “.

Art. 23
(Family reunion)

1. The following amendments are made to article 29 of the consolidated act as per legislative decree No. 286 of 1998:

a) in paragraph 1:

1) the following is inserted after letter b):

“b-bis) dependent offspring of legal age, if they cannot for objective reasons provide for their own maintenance because of their state of health which entails total disablement”;

2) to letter c), the following words are added at the end: “if they have no other offspring in the country of birth or origin or parents aged over sixty-five if the other offspring are not able to provide for their maintenance due to documented reasons of health “;

3) letter d) is cancelled;

b) paragraphs 7, 8 and 9 are replaced by the following:

“7. The request for a “nulla osta” for family reunion, accompanied by the required documentation including that attesting the ties of blood kinship and marriage and minor age, authenticated by the Italian consular authority, is presented to the unified immigration office at the prefecture-local Government office competent for the applicant’s place of abode, which issues a copy of same bearing a date stamp and the initials of the employee responsible for receiving it. The office, having verified, also through ascertainments with the competent local police headquarters (questura), the existence of the requisites indicated in this article, issues the requested measure or a measure refusing the “nulla osta”.

8. Once ninety days have elapsed after the date of application for the nulla osta, the person concerned may obtain the entry visa directly from the Italian diplomatic and consular representatives, upon exhibition of the copy of the documents stamped by the unified immigration office to show the date of presentation of the application and relative documentation.

9. The Italian diplomatic and consular representatives also issue the entry visa for admission of following family members in the cases foreseen in paragraph 5”.

Art. 24
(Residence permit for family reasons)

1. In article 30 of the consolidated act as per legislative decree No. 286 of 1998, in paragraph 5, before the words: “In case of separation”, the following are added: “In case of death of the family member in possession of the requisites for reunion and “.

Art. 25
(Minors entrusted to foster-parents who come of age)

1. In article 31 of the consolidated act as per legislative decree No. 286 of 1998, after paragraph 1, the following are added:

“1-bis. The residence permit indicated in paragraph 1 can be issued for reasons of education, access to employment or employment or self-employed work, upon coming of age, provided a decision by the Committee for foreign minors indicated in article 33 has not intervened, to unaccompanied foreign minors who have been admitted for a period of not less than two years in a social and civil integration project managed by a public or private body that is nationally represented and is in any case registered in the register kept at the Prime Minister’s Office as per article 52 of Presidential Decree No. 394 of 31st August 1999.

1-ter. The body that manages the project must guarantee and prove by appropriate documentation, at the time when the foreign minor indicated in paragraph 1-bis comes of age, that the person concerned has been in Italy for not less than three years, has participated in the project for not less than two years, has available accommodation and attends educational courses or performs work for pay in the forms and in the manners foreseen by Italian law, and/or holds an employment contract even if such employment has not yet commenced.

1-quater. The number of residence permits issued pursuant to this article is deducted from the entry quotas established annually in the decrees indicated in article 3, paragraph 4”.

Art. 26
(Access to university courses)

1. Paragraph 5 of article 39 of the consolidated act as per legislative decree No. 286 of 1998 is replaced by the following:

“5. 5. Access to university courses, on equal terms with Italian students, is in any case allowed for foreigners who hold a residence card or a residence permit for employment or self-employed work, for family reasons, political asylum, humanitarian asylum, or religious reasons, and for foreigners lawfully resident in Italy for at least one year who hold a diploma for higher studies awarded in Italy, and for foreigners, wherever their place of

residence may be, who hold final school-leavers' diplomas from Italian schools overseas or from the foreign or international schools, operating in Italy or abroad, that are the object of bilateral agreements or special provisions for the recognition of educational qualifications and meet the general conditions required for entry for educational purposes “.

Art. 27

(Reception centres and access to housing)

1. Article 40 of the consolidated act as per legislative decree No. 286 of 1998 is amended as follows:

a) in paragraph 1, the last sentence is deleted;

b) the following is inserted after paragraph 1:

“1-bis. Access to the social integration measures is reserved for foreigners who are not nationals of European Union countries and can prove that they are in compliance with the regulations governing residence in Italy for the effects and purposes of this consolidated law and the regulations currently in force on the same matter”;

c) paragraph 5 is cancelled;

d) paragraph 6 is replaced by the following:

“6. Foreigners who hold a residence card and lawfully resident foreigners who hold a residence permit valid for at least two years and hold a regular job as employees or self-employed workers are entitled to access, on equal terms with Italian citizens, to public residential housing, and to the intermediation services of whatever social agencies may have been set up by each Region or by local bodies to facilitate access to rented housing and to facilitated loans in the fields of the construction, rehabilitation, purchasing and leasing of first homes.”

Art. 28

(Updating of provisions)

1. In the consolidated act as per legislative decree No. 286 of 1998, the words: “local office of the Ministry of Labour and Social Security” are replaced, wherever they occur, by the following: “Prefecture-local office of the Government “ and the words: “the lower-court magistrate” are replaced by the following: “the monocratically-composed tribunal “.

2. In article 25 of the consolidated act as per legislative decree No. 286 of 1998, the first sentence of paragraph 5 is replaced by the following: “To the contributions indicated in paragraph 1, letter a), the provisions of article 22, paragraph 13 are applied with regard to the transfer of same to the insurance institution or body of the country of origin”.

3. In article 26 of the consolidated act as per legislative decree No. 286 of 1998, in paragraph 3, the words from: “or of a corresponding guarantee “ up to the end of the paragraph are deleted.

Art. 29

(Marriages entered into for the purpose of evading the regulations on the entry and residence of foreigners)

1. In article 30 of the consolidated act as per legislative decree No. 286 of 1998, after paragraph 1, the following is inserted:

“1-bis. The residence permit in the cases indicated in paragraph 1, letter b), is immediately revoked if it is ascertained that the marriage has not been followed by effective cohabitation unless offspring have been born from the said marriage “.

Art. 30

(Measures for strengthening diplomatic representation offices and consular offices)

1. In order to provide for the exceptional service requirements connected with the implementation of the measures foreseen by this law, and while awaiting completion of the foreseen permanent staffing needs of the Ministry of Foreign Affairs through recourse to the ordinary procedures for taking on personnel, the diplomatic representation offices and first-class consular offices may take on, subject to prior authorisation by the central administration, personnel under temporary employment contracts for a duration of six months, up to a maximum overall number of 80 persons, even in derogation of the contingent limits foreseen in article 152, first paragraph, of Presidential decree No. 18 of 5th January 1968 and subsequent amendments. To meet the same requirements, the employment contract may be renewed for two further successive periods of six months, even in derogation of the time limit indicated in article 153, second and third paragraphs, of the said Presidential Decree No. 18 of 1967. The said personnel units are to be employed on ordinary administrative duties in the aforementioned offices in foreign countries. In the same offices a corresponding number of personnel units on the permanent staff of the pertinent functional areas is consequently assigned to the performance of institutional functions in the matter of immigration and asylum, and also including the issuing of entry visas.

2. For the purposes of taking on the personnel indicated in paragraph 1, the procedures foreseen for temporary personnel as per article 153 of the said Presidential Decree No. 18. of 1967 are to be applied.

Section II

PROVISIONS ON THE MATTER OF ASYLUM

Art. 31

(Residence permit for asylum seekers)

1. The last sentence of paragraph 5 of article 1 of decree-law No. 416 of 39th December 1989, converted with amendments by law No. 39 of 28th February 1990, is replaced by the following: “The local head of police administration (questore), when the circumstances foreseen in articles 1-bis and 1-ter are not present, issues upon request a temporary residence permit valid until the recognition procedure has been completed “.

Art. 32

(Simplified procedure)

1. Decree-law No. 416 of 39th December 1989, converted with amendments by law No. 39 of 28th February 1990, is amended as follows:

- a) in article 1, paragraph 7 is cancelled;
- b) after article 1, the following is inserted:

“Art. 1-bis. - (Cases of detention) - 1. Asylum seekers cannot be detained for the sole purpose of examining the request for asylum presented. They can, however, be detained for the time strictly necessary for processing the authorisations to remain in the country on the basis of the provisions of the consolidated act containing the provisions governing immigration and regulations concerning the status of foreigners as per legislative decree No. 286 of 25th July 1998, in the following cases:

- a) to verify or establish the foreigner’s nationality or identity, if he or she lacks travel or identity documents, or has, upon arrival in the country, presented documents found to be false;
- b) to verify the information on which the application for asylum is based, if such information is not immediately available;
- c) consequent to the procedure concerning recognition of the right to be admitted into Italian territory

2. Detention must always be ordered in the following cases:

- a) following presentation of an application for asylum presented by a foreigner taken into custody for having evaded or attempted to evade frontier controls or immediately afterwards, or, in any case, in an irregular residence situation;
- b) following the presentation of an application for asylum by a foreigner who has already been the object of an expulsion or rejection measure.

3. The detainment foreseen in the cases indicated in paragraph 1, letters a), b) and c), and in the cases indicated in paragraph 2, letter a), is effected in the identification centres in accordance with the provisions of specific regulations.

The same regulations establish the number, characteristics and operating procedures of these facilities and takes into account the measures adopted by the United Nations High Commission for Refugees (UNHCR), the Council of Europe and the European Union. In the identification centres, UNHCR representatives will in any case be allowed access. The refugees’ lawyers and refugee protection bodies with well-established experience in this field, authorised by the Ministry of Internal Affairs, will also be allowed access.

4. For detention as per paragraph 2, letter b), the provisions of article 14 of the consolidated act as per legislative decree No. 286 of 25th July 1998 are observed. In the temporary-stay and assistance centres indicated in the said article 14, UNHCR representatives will in any case be allowed access. The refugees’ lawyers and refugee protection bodies with well-established experience in this field, authorised by the Ministry of Internal Affairs, will also be allowed access.

5. At the expiry of the period foreseen for the simplified procedure indicated in article 1-ter, and if the said procedure has not yet been completed, the foreigner is allowed a temporary residence permit until the said procedure has been concluded.

Art. 1-ter. - (Simplified procedure) - 1. In the cases indicated in letters a) and b) of paragraph 2 of article 1-bis the simplified procedure for the processing of applications for recognition of refugee status is instituted in accordance with the provisions of paragraphs 2 to 6.

2. As soon as the application for recognition of refugee status as per article 1-bis, paragraph 2, lettera a) has been received, the head of police administration (questore) competent for the place where the request has been presented orders the detention of the foreigner concerned in one of the identification centers indicated in article 1-bis, paragraph 3. Not later than two days after receiving the application, the head of police administration proceeds to transmit the necessary documentation to the local committee for recognition of refugee status which, not later than fifteen days after the date of receipt of the documentation, proceeds to hear the case. The decision is passed within the following three days.

3. As soon as the request for recognition of refugee status indicated in article 1-bis, paragraph 2, letter b) has been received, the head of police administration competent for the place where the request was presented orders

the detention of the foreigner concerned in one of the temporary-stay centres indicated in article 14 of the consolidated act as per legislative decree No. 286 of 25th July 1998; if detention is already under way, the head of police administration asks the monocratically-composed tribunal to extend the period of detention for a further 30 days to allow the completion of the procedure indicated in this article. Not later than two days after receipt of the application, the head of police administration proceeds to send the necessary documentation to the local committee for recognition of refugee status which, not later than fifteen days after the date of receipt of the documentation, proceeds to hear the case. The decision is passed within the following three days.

4. Unauthorised departure from the centres indicated in article 1-bis, paragraph 3, is equivalent to abandonment of the application for asylum.

5. The Italian Government is competent to examine the applications for recognition of refugee status referred to in this article, when not allowed by the time-limits, for the effects and purposes of the Dublin Convention ratified as per law No. 523 of 23rd December 1992.

6. The local committee, with the addition of a member of the national committee for the right of asylum, proceeds within a period of ten days to re-examine the decisions at the adequately grounded request of a foreigner whose detention is one of the identification centres indicated in article 1-bis, paragraph 3, has been ordered. The request must be presented to the local committee not later than five days after notification of the decision. The decision of the local committee may be appealed against to the competent monocratically-composed tribunal within a maximum of fifteen days. The appeal may also be presented from abroad, through diplomatic representation offices. The appeal does not suspend the measure of expulsion from Italian territory; the asylum seeker may however ask the competent prefect to be authorised to remain in the country until the outcome of the appeal. The decision to reject the appeal is immediately enforceable

Art. 1-quaer. - (Local committees) - 1. Local committees for the recognition of refugee status are set up at the Prefectures-local offices of the Government indicated in the regulations referred to in article 1-bis, paragraph 3. These committees, appointed by decree of the Minister of Internal Affairs, are chaired by an official from the prefectural career line, and composed of a National Police official, a local body representative appointed by the Government-towns and local autonomous bodies conference, and a representative of the UNHCR. A deputy must be foreseen for each member. These committees may be supplemented, at the request of the Chairman of the Central Committee for the recognition of refugee status foreseen in article 2 of the regulations as per Presidential Decree No. 136 of 15th May 1990, by an official of the Ministry of Foreign Affairs with the status of full member, whenever it is necessary, in relation to particular inflows of asylum seekers, in relation to applications for which it is necessary to be able to take into account particular evaluation aspects regarding the situation of the countries of origin which are in the sphere of competency of the Ministry of foreign affairs. In the event of a tied vote, the Chairman has the casting vote. When necessary, in relation to particular inflows of asylum seekers, the committees may be composed of personnel who have been placed in detached positions or retired.. The participation of the personnel indicated in the preceding sentence in the committee's proceedings does not give rise to the payment of remunerative sums or indemnities of any kind whatsoever.

2. Not later than two days after receiving the application, the head of police administration proceeds to transmit the necessary documentation to the local committee for recognition of refugee status which, not later than thirty days after the date of receipt of the documentation, proceeds to hear the case. The decision is passed within the following three days.

3. During the hearing of the case, when necessary, the local committees make use of interpreters. Minutes are drawn up which record the interview with the applicant. The decisions are set forth in a written document, stating the reasons for same, and are communicated to the applicant, together with the information on the procedures for contesting same, in the forms foreseen in article 2, paragraph 6, of the consolidated act containing the provisions governing immigration and regulations concerning the status of foreigners as per legislative decree No. 286 of 25th July 1998.

4. When examining the application for asylum the local committees evaluate for the measures foreseen in Article 5, paragraph 6, of the said consolidated act as per legislative decree No. 286 of 1998, the consequences of repatriation in the light of the obligations arising out of the international conventions signed by Italy, and in particular, article 3 of the European Convention for the protection of the rights of man and fundamental freedoms, ratified as per law No. 848 of 4th August 1955.

5. The decisions of the local committees may be appealed against to the ordinary tribunal having local jurisdiction, which decides as per article 1-ter, paragraph 6.

Art. 1-quinquies. - (National Committee for the right of asylum) - 1. The Central Committee for recognition of refugee status foreseen in article 2 of the regulations as per Presidential Decree No. 136 of 15th May 1990 is converted into the National Committee for the right of asylum, hereinafter referred to as the "National Committee", appointed by decree of the Prime Minister at the joint proposal of the Ministers of Internal Affairs and Foreign Affairs. The Committee is chaired by a prefect and is composed of a managerial official serving on staff of the Prime Minister's Office, a diplomatic career official, a prefectural career official serving on the staff of the Department of Civil Freedoms and Immigration, and a managerial official of the Department of Public Security. A representative of the UNHCR delegate for Italy also participates its the meetings. Each

administration concerned also appoints a deputy. The National Committee, when necessary, may be articulated into sections composed in the same manner.

2. The tasks of the National Committee include the guidance and coordination of the local committees, the training and updating of the members of these committees, the collection of statistical data as well as decisional powers on the matter of revocation and cessation of the statuses granted.

3. The regulations indicated in article 1-bis, paragraph 3, establish the operative procedures of the National Committee and the local committees.

Art. 1-sexies. - (Protection system for asylum seekers and refugees) - 1. The local bodies that provide services regarding the reception of asylum seekers and the protection of refugees and foreigners receiving other forms of humanitarian protection may include in the framework of the said reception and protection services asylum seekers lacking means of support provided that the cases foreseen in articles 1-bis and 1-ter do not apply.

2. The Minister of Internal Affairs, by decree bearing his sole signature, after hearing the Unified Conference as per article 8 of legislative decree No. 281 of 28th August 1997, annually provides, within the limits of the Fund indicated in article 1-septies, for the financial support of the reception services indicated in paragraph 1, to an extent not exceeding 80 percent of the overall cost of each individual territorial initiative.

3. In the initial implementation phase, the decree indicated in paragraph 2:

a) establishes the guidelines and standard forms for the presentation of applications for contributions, the criteria for ascertaining their correct administration and the procedures for the possible revocation of same;

b) ensures, within the limits of the financial resources of the Fund indicated in article 1-septies, the continuity of the intervention measures and services already in progress, as foreseen by the European Fund for Refugees;

c) determines, within the limits of the financial resources of the Fund indicated in article 1-septies, the procedures for and extent of payment of an initial-assistance financial contribution to asylum seekers not comprised in the cases foreseen in articles 1-bis and 1-ter and not provided for in the framework of the reception services indicated in paragraph 1.

4. For the purposes of rationalising and optimising the protection system for asylum seekers, refugees and foreigners with humanitarian permits as per article 18 of the consolidated act containing the provisions governing immigration and regulations concerning the status of foreigners as per legislative decree No. 286 of 25th July 1998, and to facilitate the national-level coordination of the local reception services, the Minister of Internal Affairs activates, after hearing the National Association of Italian Municipalities (ANCI) and the UNHCR, a central service to supply information, promotion, advice, monitoring and technical support to the local bodies that provide the reception services indicated in paragraph 1. The central service is entrusted, through a specific agreement, to the ANCI.

5. The central service indicated in paragraph 4:

a) monitors the number of asylum seekers, refugees and foreigners with humanitarian permits in the country;

b) creates a data bank on the intervention measures implemented at local level in favour of asylum seekers and refugees;

c) fosters the spreading of information on these initiatives;

d) provides technical assistance to the local bodies, also in the preparation of the services indicated in paragraph 1;

e) promotes and implements, in agreement with the Ministry of Foreign Affairs, repatriation programmes through the International Organisation for migration matters or other national or international bodies of a humanitarian character.

6. The operating and management expenses of the central service are financed within the limits of the Fund indicated in article 1-septies.

Art. 1-septies. - (National fund for asylum policies and services) - 1. For the purposes of financing the activities and intervention measures indicated in article 1-sexies, the National Fund for asylum policies and services is established in the Ministry of Internal Affairs, endowed as follows:

a) the resources entered in basic budgetary item 4.1.2.5 "Immigrants, asylum seekers and refugees" - chapter 2359 - of the forecast statement of the Ministry of Internal Affairs for the year 2002, already destined for the intervention measures indicated in article 1-sexies and amounting to 5.16 million euro;

b) the annual allocations of the European Fund for Refugees, including those already assigned to Italy for the years 2000, 2001 and 2002 in the process of being credited to the Revolving Fund of the Ministry of Economics and Finance;

c) any contributions and endowments made by private persons, bodies or organisations, even of an international nature, and other European Union bodies.

2. The sums indicated in paragraph 1, letters b) and c), are paid into the national budget for reallocation to the Fondo indicated in paragraph 1.

3. The Minister of Economics and Finance is authorised to make the necessary budget variations by decrees bearing his sole signature".

2. For the construction of new identification centres, expenditure is authorised up to a maximum of 25,31 million euro for the year 2003.

Art. 33

(Declaration of emergence of irregular employment)

1. Whoever, in the three months preceding the date on which this law comes into force, has employed personnel of non-European Union origin to assist family members suffering from illnesses or handicaps that curtail their self-sufficiency or to perform domestic work in support of family needs, may report, not later than two months after the date on which this law comes into force, the existence of this employment relationship to the competent local prefecture-local office of the Government by presenting the emergence declaration in the forms foreseen in this article. The emergence declaration is presented by the application, at his or her own expense, through the post offices. The date is validly attested by the stamp of the post office by which it is accepted. The report indicated in the first sentence of this paragraph is limited to one person per household, with regard to domestic work in support of family needs.

2. The emergence declaration must specify, under pain of inadmissibility:

- a) the personal particulars of the employer and a declaration attesting the latter's Italian citizenship or, in any case, the lawfulness of his or her presence in Italy;
- b) the personal particulars and nationality of the workers employed;
- c) the type and manner of employment;
- d) the agreed wages, amounting to not less than foreseen in the currently applicable national collective employment agreement.

3. For the purposes of receivability, the following must be attached to the emergence declaration:

- a) certification of payment of a lump-sum contribution, equal to the quarterly sum relative to the employment relationship reported, without the addition of further sums by way of fines and interest;
- b) copy of an undertaking to enter into, in accordance with the provisions of article five, the residence contract with the worker foreseen in article 5-bis of the consolidated act as per legislative decree No. 286 of 1998, as introduced by article 6 of this law;
- c) medical certification of the illness or handicap of the family member assisted by the worker. This certification is not required in the case of a non-European Union worker employed on domestic work in support of family needs.

4. In the twenty days following receipt of the declaration indicated in paragraph 1, the locally competent prefecture – local Government office verifies the admissibility and receivability of the declaration and the local police headquarters check whether there exist any reasons to prevent the issue of the relative residence permit for a duration of one year, consequently informing the prefecture – local Government office, which keeps a computerised record of those who have presented the report indicated in paragraph 1 and the non-European Union workers to whom the report refers.

5. In the ten days following communication of the absence of impediments to the issue of the residence permit as per paragraph 4, the prefecture – local Government office invites the parties to present themselves to sign the residence contract in the forms foreseen by this law and on the terms contained in the emergence declaration and for the simultaneous issue of the residence permit, provided the requisite conditions indicated in paragraph 4 are still met. The residence permit is renewable following prior ascertainment by the competent authority of the continuing existence of the employment relationship and the regularity of the situation as regards the social security contributions for the workers employed. Failure of the parties to present themselves gives rise to the closing of the relative procedure.

6. Employers who send in the declaration of emergence of irregular employment as per paragraphs 1 to 5 are not punishable for violations of the regulations regarding residence and employment and of a financial nature, committed prior to the date on which this law came into force, in relation to the employment of the non-European Union workers indicated in the emergence declaration presented. The Minister of Labour and Social Policies establishes, by decree bearing his sole signature, the wage parameters and the manner of calculation and payment of the sums indicated in paragraph 3, letter a), and also the procedures for the subsequent charging of same both to provide for the organisation and performance of the tasks indicated in this article, and in relation to the pension and social security contributions situation of the worker concerned so as to assure the financial balance of the relative benefit funds. The Minister, by decree bearing his sole signature, also establishes the manner of payment of the sums and interests due for the social security and pension contributions for reported periods prior to the three months indicated in paragraph 3.

7. The provisions of this article do not apply to employment relations with non-European Union workers: a) against whom an expulsion measure has been issued for reasons other than failure to renew a residence permit; b) who have been reported, also on the basis of international agreements or conventions in force in Italy, for the purposes of non-admission to Italian territory; c) who have been reported for one of the offences indicated in articles 380 and 381 of the penal procedure code, unless the relative proceedings have been concluded with a measure that excludes the offence or the responsibility of the person concerned, or have been subject to the application of a preventive measure, without prejudice in any case to the effects of rehabilitation. The provisions of this article do not constitute an impediment to the expulsion of foreigners deemed dangerous for reasons of national security.

8. Whoever presents a false declaration of emergence as per paragraph 1, for the purposes of evading the provisions of this law on the matter of immigration, is punished by detention for two to nine months, save in cases constituting a more serious offence.

Section III COORDINATION PROVISIONS

Art. 34

(Transitory and final provisions)

1. Not later than six months after the date of publication of this law in the Official Gazette, the necessary steps are taken as per article 17, paragraph 1, of law No. 400 of 23rd August 1988 and subsequent amendments to issue the regulations for the implementation and completion of this law, and also to review and harmonise the provisions contained in the regulations as per Presidential Decree No. 394 of 31st August 1999. The said regulations also define the manner of operation of the unified immigration office foreseen in this law; until the date on which the aforementioned regulations come into effect the functions indicated in articles 18, 23 and 28 continue to be performed by the provincial department of labour.

2. Not later than six months after the date of publication of this law in the Official Gazette, the necessary steps are taken, by regulation issued as per article 17, paragraph 1, of law No. 400 of 23rd August 1988 and subsequent amendments, to review and supplement the regulatory provisions currently in force on immigration, the status of foreigners and the right of asylum, solely with a view to the following objectives:

a) rationalising the use of telematic means in communications, in the aforementioned matters, amongst public administrations;

b) ensuring the greatest possible degree of interconnection amongst the archives already set up in this regard or being created in public administrations;

c) promoting the appropriate initiatives for reorganisation of the existing archives.

3. The regulations foreseen by article 1-bis, paragraph 3, of decree-law No. 416 of 30th December 1989, converted with amendments by law No. 39 of 28th February 1990, introduced by article 32, are issued not later than six months after the date on which the present law comes into force. The provisions of articles 31 and 32 apply as from the date on which the said regulations come into effect; until that date, the previous regulations apply.

4. Until the completion of an adequate programme for the creation of a network of temporary-stay and assistance centres, ascertained by decree of the Minister of Internal Affairs after hearing the Committee indicated in paragraph 2 of article 2-bis of the consolidated act as per legislative decree No. 286 of 1998, introduced by article 2 of this law, the mayor, in particular emergency situations, may order that hospitality be provided in the reception centres indicated in article 40 of the said consolidated act as per legislative decree No. 286 of 1998, for foreigners not in compliance with the provisions concerning entry and residence in Italian territory, without prejudice to the provisions regarding their expulsion from sa,e.

Art. 35

(Institution of the Department of Immigration and Frontier Police)

1. The Department of Immigration and Frontier Police is instituted, in the framework of the Department of Public Security of the Ministry of Internal Affairs, with the tasks of promoting and coordinating frontier police activities and combating clandestine immigration, as well as the activities delegated to the public security authorities on the matter of the entry and residence of foreigners. The said Department is headed by a prefect, in the framework of the existing staffing endowment.

2. Without prejudice to the provisions of paragraph 1, the establishment of the number and competencies of the offices in which the Department of Immigration and Frontier Police is articulated, its staffing plans and available resources, are effected by decree of the Minister of Internal Affairs, in concert with the Minister of Economics and Finance, as per article 5 of Law No. 121 of 1st April 1981. The institution of the said Department, which utilises already existing human, instrumental and financial resources, does not give rise to any new or greater costs for the national budget.

3. The name of the Department indicated in article 4, paragraph 2, letter h), of the regulations indicated in Presidential Decree No. 398, is consequently changed to "Department of Road Railway and Communications Police and special divisions of the State Police".

4. Any additions and amendments to the provisions indicated in the preceding paragraphs are effected by the procedure indicated in article 17, paragraph 4-bis, of law No. 400 of 23rd August 1988.

Art. 36
(State Police experts)

1. In the framework of the strategies aimed to prevent clandestine immigration, the Minister of Internal Affairs, in agreement with the Minister of Foreign Affairs, may send to the diplomatic representative office and consular offices officials belonging to the State Police as experts appointed in accordance with the procedures foreseen in article 168 of Presidential Decree No. 18 of 5th January 1967. To this end, the contingent foreseen in the said article 168 is increased by up to a maximum of a further eleven units, reserves for the State Police experts, corresponding to the experts appointed for the effects and purposes of this paragraph.

2. The cost arising out of the implementation of this article, established as 778,817 euro for the year 2002 and 1,557,633 euro per annum commencing from the year 2003, is provided for by a corresponding reduction in the appropriation entered, for the purposes of the 2002-2004 three-year budget, in relation to the current basic budgetary item "Special Fund" in the forecast statement of the Ministry of Economics and Finance for the year 2002, partially availing for this purpose the amount set aside in relation to the said Ministry.

Art. 37

(Provisions regarding the Parliamentary Committee for supervision of the implementation of the Schengen agreement, vigilance over the activities of Europol, and supervision and vigilance on the matter of immigration)

1. The Parliamentary Committee instituted by article 18 of Law No. 338 of 30th September 1993, which assumes the name of "Parliamentary Committee for supervision of the implementation of the Schengen agreement, vigilance over the activities of Europol, and supervision and vigilance on the matter of immigration" is also entrusted with guidance and vigilance tasks regarding the concrete implementation of this law, and also of the international agreements and other legislation on the matter of immigration and asylum. On these matters, the Government presents an annual report to the Committee. The Committee reports annually to the Houses of Parliament on its activities.

Art. 38

(Financial provision)

1. The application of articles 2, 5, 17, 18, 19, 20, 25 and 34 must not give rise to any additional costs to the charge of the national budget .

2. The cost arising from the implementation of article 30, paragraph 1, evaluated as euro 1,515,758 for the year 2002, and euro 3,031,517 for the year 2003, is provided for by a corresponding reduction in the appropriation entered, for the purposes of the 2002-2004 three-year budget, in relation to the current basic budgetary item "Special Fund" in the forecast statement of the Ministry of Economics and Finance for the year 2002, partially availing for this purpose the amount set aside in relation to the Ministry of Foreign Affairs.

3. The cost arising from the implementation of articles 1, 12, paragraph 1, letter c), 13 and 32, evaluated as 25.91 millions euro for the year 2002, 130.65 millions euro for the year 2003, 125.62 millions euro for the year 2004 and 117.75 millions euro from 2005 onwards, is provided for by a corresponding reduction in the appropriation entered, for the purposes of the 2002-2004 three-year budget, in relation to the current basic budgetary item "Special Fund" in the forecast statement of the Ministry of Economics and Finance for the year 2002, partially availing for this purpose the amount set aside in relation to the said Ministry.

4. The Minister of Economics and Finance is authorised to make the necessary budgetary variations by decrees bearing his sole signature.

This law, bearing the national seal, will be included in the Official Collection of Legislative Acts of the Republic of Italy. It is obligatory for all concerned to obey it as the law and ensure that it is thus obeyed by others.

Issued in Rome on 30th July 2002

CIAMPI

Berlusconi, Prime Minister
Fini, Deputy Prime Minister
Maroni, Minister of Labour and Social Policies
Pisanu, Minister of Internal Affairs
Bossi, Minister for Institutional Reforms and Decentralization
Buttiglione, Minister for European Community Policies
Endorsed by the Minister of Justice: Castelli