

Associazione
"No Border"

presents:

A INFORMATION GUIDE FOR MARKET MENDORS



Inside the guide

- Risk a street vendors
- Consequences from penal and administrative point
- How to do?
- Street trading on public areas

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Information guide for market mendors

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Rimini estate 2006

This small guide wants to be a valid means to help all migrant citizens who live in these territories and see themselves denied some fundamental rights. Firstly, the damaging of the human dignity through repressive arrangements and control very similar to states of war and military control, that some of you have known in your own countries of origin.

We believe the time has come to put in effect a real form of resistance against of who want incriminate, repress and shut in human beings only because they come from other countries, thanks a law such as Bossi-Fini on immigration an Biagi's law for the job market which allows the exploitation and imprisonment on a global scale creating in new form of slavery relation to demand of the neo-liberalist market, the global war system is permantly here, as elsewhere.

This small guide wants to be useful means not to provide incentives for the market business but relay that it cannot tackle the terms of public order dealing with trials and prison it is true that through reflection and enforcing discussions on life conditions, in which, many emigrant citizens live in, are left out from the city, invisible to many.

This small guide wants to give a contribution so that you should have a guaranteed dignified defence, and above all for those unseen persons like you, Italian or non Italian. I am at your side, to construct ways of acceptance, to be able to express resistance and to have the principal right of happiness and to lead a dignified life without boundaries or exploitation.

**Sisters and brothers of
the ass. No Border and
Laboratory Social Occupant P.A.z.**

LEGAL GUIDE FOR MARKET VENDORS

RISK A STREET VENDORS TAKES WHEN WORKING WITHOUT A LICENCE

1. The consequences from all the administration point of view.

To be able to work as a street market vendor in a moving form, it is necessary to obtain a special trading licence, given only from the town hall. For those who haven't got one, and nevertheless sell t-shirts, clothes, costume jewellery or object of any kind, even articles of original making, can be fined.

This is what happens:

- The armed force(traffic wardens, carabinieri, state police ect.) who are employed to control this kind of activity, especially during the summer carries out verification on the street market vendors. If they do find you without licence, they carryout it known as a verbal notification, which states that the vendor "is trading commercially, in a moving form without the mayors authority".
- In addition to this written report, the armed force proceeded to confiscate the goods, which will in turn be destroyed. It is highly unlikely that without a trading licence, goods will be returned.

Information guide for market vendors

- As well as losing the goods, after a few days, the vendor will receive a fine, called an *injunction order* which will be sent to the home address.

The amount of the sanction is estimated by the art. 28, 2 and 4 in relation to art.29, 1 dl 114/1998 and is equivalent to the sum comprising between euro 2.582 to euro 15.443 as well as confiscation and destruction of the goods.

Generally the sanction that is allocated is equivalent to euro 5.164, but then halved, that is to euro 2.587, when the vendor is stopped for the first time. Nevertheless the sanction remains "low" if is paid before the established date which is indicated on the injunction order, but if the vendor, as often is usually case, is a precarious social and economic situation, and is not able to pay before the established date, the sanction will rise to higher amount indicated above.

If the sanction doesn't get paid (for example, if the vendor hasn't got necessary funds), there can be future unpleasant consequences.

In particular:

- The unpaid sanction is communicated to CO.RI.T (concession to this recovery of tax duties)where it is registered in special dossiers called tax duties roll. The CO.RI.T is fact the corporation that occupies in the recovery of the fines that occupies in the recovery of the fines that haven't been paid to the public corporations. They act slowly but surely. So it is possible for the vendor to find himself a few years later receiving a new request to pay the fine, with an act called *tax duty dossier*. It is a special act, in which the CO.RI.T, as well as asking for the unpaid fine, also ask for interest and extra interest on the delayed payment. (a new fine for not having paid the old one).
- Not only the moment CO.RI.T can take action in an executor manner, they can then proceed to coercive



recuperation. That is to say they have the even if the person doesn't pay spontaneously. For the example, if the vendor, in the mean time, as it often happens, has legalised his position, find a job, and has bought a car, he could find himself seeing CO.RI.T distaining a fifth of his wages or clamp the car, or in any case ask for an increased amount, since some years have gone by.

1.1 What possible actions can be taken against the administrative sanctions.

There are many actions that a vendor can take to safeguard themselves.

Here is what **one should do when written in a verbal notification** (fine and distaining of goods):

- First of all it is useless to refuse to sign the verbal notification or to take a copy(refusing to sign doesn't make the notification void). It is instead advisable to take the verbal notification and take action immediately(perhaps with some legal help) and if possible try to ask for the verbal notification and the fine. It is important to verify what the agent has written on the verbal notification, because if any errors has occurred then objections can be made, and hopefully cancel the sanction.
- During the verification, the drafting of the verbal minutes, and distaining of the goods, it is important, always to keep a "well-mannered and correct" behaviour with the armed force. Avoid a report of resistance or offending a public officer which would worsen the street market seller's position with a penal charge.
- Never forget the date in which has been made because from the moment of its completion handing over to the vendor, there is a 30 day limit to be able to present an appeal, that is to say make a formal notification, after which, you have to just pay. Therefore it is

Information guide for market vendors

necessary to move into action as soon as possible.

- The way to contest the verbal notification as we mentioned before is to send an appeal to the mayor to propose to the art. 18 L.689/1981. it deals with a simple act(it can written also by the vendor without legal aid), free of a tax stamp, where the vendor can ask for his appeal to be re-examined , with the appeal justification and documents may be produced and exceptions can be raised (e.g. an error in the verbal notification).
- As well as the appeal to the mayor, one can ask to be *heard in person*. It is a very possibly recognized by law that obliges the public administration to summon the person. All other successive act issued are considered null and void (therefore, also the fine).

Having done this first contestation against the verbal notification, and it doesn't get filled away this is what must be **done against the injunction order**:

- a. the injunction order can be appealed within thirty days, with an appealed a judge of peace, art.22 and 22bis of the L689/1981. in this case, as there may be expenses, it is necessary to have legal aid. Each case has to be valued individually if there are grounds to do so.

If in any case the two appeals above mentioned have not been made, or in the case that they have been made but without positive results, here is **what is to be done against the next tax duty file CO.RI.T**(which arrives when the fine hasn't been paid):

- b. Firstly, you to control the action of CO.RI.T., if it has been correctly developed often CO.RI.T. sends the notification of the tax file when the sanction has been prescribed or that notification hasn't been received.
- c. In these cases the tax duties file may be appealed, that is to say, contested with be appealed, that is to say, contested with a snit able appeal in court always within 30 days from the notification.



- d. In the case in which it is not possible to contest the tax duties file, eventually it may be possible after a valuation of the situation to pay by instalments.

1.2 Practical advise to follow if administrative sanctions are incurred.

There are some simple rules to keep in mind either from the position you find yourself in now or from the position you find yourself in now or from when the administrative sanction was made:

- 1) Never forget the fine or verbal notification or administrative sanction. Keep all of acts received by post, so that they can be examined by a legal advisor by an expert who can then value immediately on how can then value immediately on how to take legal proceedings. Never throw them away. Always keep in mind the date, as the Italian law establishes precise time within which appeals can be made once expired nothing can be done to prove other lose even if you are right.
- 2) From the moment the notification been made and armed force starts sequestration always try to keep a calm and correct behaviour possible. Even if we do understand the anger and exasperation that such acts can create. Do not reach with the vehemence to the sequestration of the goods, because it can only worsen your position and you might to see yourself being contested as resisting to the public officer committing outrage or something of that kind.
- 3) The Italian law provides a special tool called "*autotutela*" that allows to you to reason to argument at any time. The law in fact foresees that whenever the public administration has made an obvious mistake, it is possible to take it to their notice with a special act ("*autotutela*") without tax stamp. In which the correction of the error is requested. The public administration is held by law

Information guide for market vendors

to take into consideration this instance. (that is not to ignore it) and if it notices the error, they must correct it without extra expense adding also the annulment of the sanction.

It is important to be active, remember the sanctions, take a legal aid or expert but above all do not let too much time lapse from the time you receive the notification of sanction and sequestration.

2. Consequences from penal point of view sales of imitation goods, cd, dvd, bags ect.

The street market seller risks penal charges when as well as the lack of the licence, which as stated before involves exclusively an administrative sanction, sells in addition imitation goods (clothes, bags, glasses ect.) or without the mark SIAE.

It must be said with regard to cd's and dvd's without the mark SIAE, the rules as laid down by the law regarding the protection of author's rights, that is to say the law n.633 of 1941, has been modified many times and today provides severe sanctions.

It punishes penalty not only the sale of cd's and dvd's and music cassettes without the mark SIAE but also the simple holdings of the goods with the intention of sale. This means for the example that a street vendor can be prosecuted even if he is just found with a full bag and not selling.

At the moment for **who sells or is in possession of imitation cd's or dvd's risk:**

- The seller risks charges for the violation of the art. 17ter L 633/1941 (sales or possession of cd's or dvd's)



without the mark SIAE), which provides punishment of reclusion from 6 months to 3 years.

- A charge for the receiving of stolen goods provides reclusion from 2 to 8 years.

In the same way **who sells imitation goods (clothes, bags, glasses ect.) risk:**

- A charge for the violation of art. 474 (it is an offence to introduce into the country products with false marks), it provides a reclusion penalty for up to two years.
- A charge for receiving stolen goods art. 648 c.p., that provides a reclusion penalty from 2 to 8 years.

The fact that the main charge is placed side by side with a specific charge for the receiving of stolen goods is considered legitimate by the court of cassation, who pronounced itself on the question of this in the united section in 2005. (sent. Cass. sect. unite, n.47164 in the 23.12.2005).

Therefore, at the moment, it is considered that if a seller that buys goods knowing that they were false or from illicit source, will for these reasons be charged even for the receiving of stolen goods.

Consequences of the charge for receiving stolen goods are:

- When you are charged for a serious crime punishment is imprisonment from a minimum of two years to a maximum of eight years;
- Punishment remains quite hard even if a special rite is chosen during the trial;
- Prescription times of the crime become very long;
- If it is possible in some way to defend yourself from the main accusation. It is more difficult to be acquitted from the accusation of receiving stolen goods.

Information guide for market vendors

2.1 Consequences from the penal point of view with respect to migrant citizens with a valid permit to stay (law Bossi-Fini)

The charge for the violation of the art 474 c.p. and 171ter L. 633/1941 has also other very negative:

- Art.26, 7bis D.lg.286/1998 and successive modifications for sees that when there is a definitive sentence for one of for seen crimes under the art.474 c.p. (sales of imitation goods) or under the art. 171ter L.633/1941, (sales of support without the mark SIAE), there is the *revocation of the permission to stay and thereon expulsion*.

This law shows us a situation of a great severity and there is a precise position of the legislator. The street market seller not only risk a heavier penalty and imprisonment, but also the revocation the permission to stay, which is the necessary document required to be able to live and work in Italy.

The art. 26, 7bis D.lg.286/1998 has been introduced by the legislator only and exclusively to be able to expel street market sellers.

Questions have raised about the constitutionality and in turn tried to abolish this law, but recent pronunciations on the subject (constitutional court) have confirmed the validity of this law, so still today you must realize this

2.2 Consequences from the penal point of view regarding emigrants without permission to stay. (law Bossi-Fini)

The situation above mentioned gets worse for all migrants citizens, who are without permission to stay. The art.26,7bis D.Lg.286/1998 and modifications are not applied to these persons, however this is **what happens to the street seller when in an irregular condition:**

- In the case where expulsion has already occurred and



the person hasn't obeyed the order to move away within 5 days, he will be charged for the violation of the art.14, 5terD.lg.286/1998. Therefore an immediate arrest trial and probable imprisonment takes place. Besides the violation of the rules on immigration there is to face, also, the charge of selling imitation goods. At this moment in time, an migrant citizen who is without a permit to stay or has already had an expulsion, judges would have great difficulty to difficulty to consent to home arrest, or obligation to sign on report or other kinds of a cautionary measures other than detention. The judge, in fact, from the moment the migrants has been expelled identified (because more often than not the migrant is without any form of identification document; fears that, on being released, these persons disappear or commit crimes because they have no other means to live on for these reasons the judge orders cautionary custody in jail. If these conditions exist, the street vendors will find it very difficult to get out of jail before finishing the sentence.

- In the case of the vendor who has never received expulsion, he will be identified and then notified with a decree of expulsion and an order to leave the territory of the country.

2.3 Useful strategies for both cases:

It has to be said beforehand that each case is considered separately for which valid general rules cannot be given for every situation. However here are **some considerations**:

- Often with this type of trial, **negotiations** can be used. It is a special rite where it waives the right to defend himself (therefore it is as if he is declaring himself guilty). So the judge immediately passes sentence condemning though a lighter penalty. (much lower, and calculated on precise rules written in the code). This special rite has been introduced so as to lighten the judge's work, and can only be done with the

Information guide for market vendors

accused' s consent, and it is because the accused has waived his right to a long trial, and waives the right to defend himself, he is "favoured" with a lighter sentence. Another advantage is that more often than not the sentence is declared suspended (suspended conditionally), that is the accused does not have to serve sentence and is free from the day of the trial. Finally the rite even costs less as legal aid. This rite is useful when the accused is clearly guilty and therefore, it would be useless to try and defend himself. Negotiations consents to face a sentence with the least damage possible. For this reason in specific cases it is wise to use it.

- However negotiating is not always the best solution. In fact negotiations cannot be contested (you cannot ask for an appeal) and the sentence soon becomes definite (a definite sentence cannot appeal) this means that the art. 26, 7bis D.lg. 286/1998 and its modification can be applied immediately and can cause revocation of the permission to stay. The advantage gained with the lowering of the negotiated sentence gets an annulment and the loss is more than the permission to stay.
- In conclusion negotiations should only be used after careful valuation of the case, this should be done with a legal assistant. Other alternative rites exist, for example the abbreviated rite which allows you to receive a deduction on the final sentence but doesn't stop you asking for an appeal in consequence a sentence takes more time to become definite. It is in fact very important with these kind of trials to consider the possibility of appeal against the given sentence. The appeal allows the case to be re-examined and so obtain a lighter sentence or absolution. It is possible that while you are awaiting trial the law changes (for example in relation to art.26,7 bis D.lg. 286/1988 which is bound to the permission to stay) or that the crime is prescribed.



2.4 Other useful advise:

- ⇒ If imitation goods are being sold, pay attention to the amount, because if you are stopped with a small number of objects, it allows you to have a lighter sentence (for example art.17ter, 3L.633/1941 an extenuating fact to the sentence applied when there is a low quality of imitation goods. A bag, or a car full of cd's, dvd's or other imitation goods, makes the defence difficult.
- ⇒ Sales of imitation goods (art. 474.p.c.) can be called a "bad copy", which excludes it from the crime. Usually the level of the quality of imitation goods is often low and obvious to the client who is buying.
- ⇒ Some sentences given the street seller have been absolved, due to the fact, that having been in the country for a short while, there were no other means for survival. Therefore a necessary state was evoked.
- ⇒ For the receiving of stolen goods (art.648p.c.) it has to be verified whether the street seller knew at the time of acquiring the goods that the objects came from an illegal source.

3. Legal assistance with free legal aid:

The law offers to all citizens, whether Italian or foreign, with or without permission to stay, free legal aid which allows you to be defended in court with the assistance of a lawyer paid by the State.

For this purpose a **distinction** has to be made:

- ⇒ The *defender of the council* is a lawyer for whom the government assigns, to act on behalf of those who have not got their own legal assistant; and it is based on the principle that everyone has a right to be defended. Often in these proceedings a defender of the council is appointed because the migrant has not

Information guide for market vendors

got a trustworthy legal assistant. It is important to always keep contact with your legal assistant. Even if the defender of the council has been appointed by the State. He has to be paid by the accused, who can if he wishes revoke the charge and hand it over to another legal assistance.

- ⇒ The defender who is written on the legal aid's list is lawyer who is qualified to assist persons with legal aid paid by the State.

When a client is in the condition to take advantage of legal aid, the lawyer has the duty to assist him, in this way, and cannot ask or receive money.

To be able to take advantage of legal aid it is necessary to have some **qualifications**:

- a. Yearly income must be less than euro 9.700 annum (for annum means from January till December)
- b. This income must remain low even when the person is living at home (to the limit of euro 9.700, euro 1.000 can be added for each person living in the same abode).
- c. It has to be verified, through the consulate, that the person does not have income in his own country
- d. Identity of the person must be certain even if it is not necessary to have an insurance number in Italy.

From the moment it is deemed that legal aid **is necessary**:

- Choose a trustworthy lawyer from the legal aid's list (the list can be found in court or at the offices "consiglio dell'ordine degli avvocati" or go on site www.avvocati.rimini.it)
- Contact the lawyer and bring him all the necessary documents (it is a simple bureaucratic practise that needs a little documentation to prepare and sign. The collaboration between a client and his legal aid is fundamental).



STREET TRADING ON PUBLIC AREAS

The necessary documents

A few useful steps to take to obtain authorisation for street trading. The indications are here to be found in the offices stated in Rimini's town hall.

For those who live in other towns it is possible to apply to the municipal office "URP" presented in every town hall, where it is possible to find all information required.

The necessary documents to obtain authorization to work as a street vendor.:

- 1 PERMISSION FROM THE MUNICIPAL
- 2 OCCUPATION TAX FOR PUBLIC AREAS
- 3 REQUEST FOR V.A.T. NUMBER
- 4 REGISTRATION AT INPS
- 5 REGISTRATION AT MINISTRY OF COMMERCE

1.PERMISSION FROM THE MUNICIPAL

Permission from the municipal "law of which R.D.law 16/12/1926 n.2174 converted to the law on the 18/12/1927 n.2105 has to be asked for at the market office section "economic activities";

According to the law of the D.L. 114/98. The topology of commerce on public areas two:

- Typology "A" authorisation with concession of a stand;
- Typology "B" itinerary activity.

Information guide for market vendors

Requirements:

- For the food section it is necessary to have professional quality.
- The sales procedure and the requirements for the equipment are established from the ministry of health with a special order.

Documents that should be presented:

⇒ Typology "A"

A request with a duty stamp addressed to the municipality, stall stand section, requesting to take the place of stand on a prepared form and available at the public relations office-*Corso d'Augusto* n.158, enclosed with:

- A photocopy of the cessation of the activity or the business's lease duly registered;
- Documents or certified statement showing the possession of professional qualifications (only for the food section);
- a photocopy of an identity document;
- a photocopy of the permit to stay (only for non European people).

NOTE: The authorisation registered under the prior owner must be returned to the office before the new authorisation is released

⇒ Typology "B" (itinerary):

Only for residents in the municipality of Rimini request with duty stamp addressed to the municipal enclosed with:

- Photocopy of a identity document;



- Photocopy of a valid permit to stay;
- Photocopy of the cessation or business let;
- Documentation of the professional qualification (for the goods section)

• **NOTE: (for those who live in the municipality of Rimini):** By order of the mayor n.105332b of 12/05/2000 and the n. 18047t of the 09/08/2000, **prohibits** (even the businessman who sell products of their own ingenuity):

- Commercial trading on public areas in an itinerary form in the territory comprising between the boundaries of the municipality of Bellaria Igea Marina to the municipality of Riccione and from the S.S. 16 ADRIATICA until the sea, beach included.
- Commercial trading on the public seaside areas, is divided between authorized permission and permission from the nautical authorities.
- Commercial trading on public areas in airport, stations and the motorways, is divided between authorized possession and permission from the landlord or manager.

Where to go:

C.so Augusto 154 – 47900

Sector: *Attività economiche e Sportello Unico per le imprese*

Telephone: 0541 704673 **FAX:** 05410704200

E-mail: wmorri@comune.rimini.it

Time of work: from Monday to Friday 10-13.15; from Tuesday to Thursday too 15.30 –16.30

Information guide for market vendors

2. TAX FOR OCCUPATION OF PUBLIC AREAS

Once a licence has been obtained from the municipal office, you then have to go to the office COSAP(rent for occupation of public and open areas) to pay tax on open public areas. The occupation of the area, permanent or temporary of the ground, basement and the subsoil of the public seaside area or of the municipality is subject to concession/authorization. Consequently you get:

- they are PERMANENT POSITIONS those that are fixed, made even by hand. Which have a duration not less than a year and not more than twenty-nine years.
- they are called temporary positions those that are made by even by hand, but has a duration of less than a year.

Also:

- For occasional positions with a duration of less than six consecutive hours or the stopping of means of transport for the time needed to the either load or unload concession or permission is not required.
- For the pedestrian area or limited traffic zone permission to circulate is necessary. It is subordinate when shown proof of the payment of the rent which has paid using a note form of postal c/c n.11236478 addressed to the municipality of Rimini –COSAP-SERVIZIO TESORERIA – otherwise pay directly to the municipal treasury.

What is to be presented:

- Request with a tax stamp on a pre-ordained form from the office;
- Plan metric map;
- Copy of authorization to do work whenever work is



foreseen to tamper with the public ground;

- An insurance or bank guarantee (for building site).

Where to go:

COSAP office: *Via Ducale 7*

Telephone: 0541704310

Fax: 0541704310

Email: catia.caprili@comune.rimini.it

Info: from Monday to Friday 10-13.15; Thursday 9.00-17.00

3. REQUEST A V.A.T. NUMBER

To claim a V.A.T. number and the business code, they can be asked for at the **office of the revenue**, fill in the required forms and present them at the proposed counters.

Where to go:

Via Mancanno n. 37 –Colonella –47900 Rimini (RN)

Telephone: 0541300111- or -0541300203 **fax:** 0541 300280

E-mail: ul.rimini@agenziaentrate.it

4. REGISTRATION AT I.N.P.S.

Where to go:

Via Maccanno n.25 Colonella –C.A.P. 47900 Rimini (RN)

Telephone: 0541 398111- **contact centre:** 803164 free number calling from house

Information guide for market vendors

5. REGISTRATION AT CAMERA DI COMMERCIO

Where to go:

Camera di Commercio I.A.A. of Rimini

Unità operativa Registro Imprese

V.le Vespucci, 58 – 47900

Tel. 0541/363818 **fax:** 0541/363825

E-mail: registro.imprese@rn.camcom.it

Requests for summer markets must be transmitted before march of the running year in which the request is transmitted.



A MINI INFORMATION GUIDE FOR MARKET MENDORS:

Associazione No Border Rimini

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To care of:

Dott. Manila Ricci

Advice and legal supervision (to care of):

Avvocato Paola Urbinati – Foro di Rimini

paola.urbinati@email.it - tel. +39 349 0544141

In cooperation with:

Laboratorio Sociale Occupato P.A.z.

lab.paz@gmail.com - tel. +39 0541 751653

via Montevecchio n. 7

Progetto Melting Pot Rimini

rimini@meltingpot.org - tel. +39 339 7688990

www.meltingpot.org

Information guide for market mendors

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P.A.Z.



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