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OPINION ON CERTAIN ARTICLES OF THE BILL NO. 1660 RELATING TO COUNTERING TERRORISM, PUBLIC SECURITY, PROTECTION OF PERSONNEL IN SERVICE AND PRISON REGULATIONS

ITALY

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Based on an unofficial English translation of the Bill commissioned by the OSCE Office for Democratic Institutions and Human Rights.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Government Bill No. 1660 (hereinafter "the Bill"), under review, covers a wide array of issues, ranging from counter-terrorism, public security, crimes or other offences against law enforcement authorities, to weapons regulations and the conditions of detention. The Bill is analyzed in light of its compliance with international human rights standards and OSCE commitments.

Overall, the Bill aims to introduce new criminal offences, such as preparatory acts to terrorist offences or arbitrary occupation of property, and new forms of preventive administrative measures, along with more severe sanctions with a view to deter potential offenders from committing future crimes or other offences. While some clauses of the Bill may aim to rectify regulatory gaps across the legal framework, the majority of the provisions carry the potential to undermine the fundamental tenets of criminal justice and the rule of law. Overall, the Bill exhibits several shortcomings that are likely to impede the exercise of human rights and fundamental freedoms, including the prohibition of ill-treatment and the rights to liberty and security of persons, freedoms of peaceful assembly, expression and of movement, as well as the rights to a fair trial and to respect for private and family life, among others.

In particular, certain proposed new offences are framed in broad and vague terms, lack specification as to the constitutive elements of the criminal offences, thereby leaving room for potential arbitrary interpretation and application. Moreover, several provisions fail to adequately uphold the principle of proportionality of criminal sanctions, particularly in cases of potential disruption of traffic or violence against public officials, risking creating a chilling effect on the exercise of human rights and fundamental freedoms by individuals. Additionally, certain provisions warrant further examination to ensure they respect the human rights and adequately address the specific needs of prisoners, including pregnant women and foreign inmates. Of particular concern is the treatment of passive resistance by prisoners envisaged in the Bill, which may be deemed disproportionate, especially when utilized as a means of punishing peaceful expression of dissent.

More specifically, and in addition to what is stated above, many of the provisions of the Bill raise serious human right concerns and should be reconsidered entirely or substantially revised, taking into account the following recommendations based on international human rights standards and OSCE human dimension commitments:

A. Regarding crimes associated with terrorism and public safety: to more clearly circumscribe the constitutive material and mental elements of the criminal offences in Article 1 of the Bill, including by removing broad wording, specifying the requirement of specific intent of committing or contributing to the commission of actual terrorist offences and including an exception or exclusion clause to safeguard legitimate activities, especially the defence or exercise of human rights and fundamental freedoms, activities of human rights and humanitarian organizations, and other legitimate activities, such as for education, scientific and academic research, legal assistance, journalistic or artistic purposes; [para. 20]

B. Regarding revocation of citizenship:

   1. To specify in Article 7 (1) of the Bill that citizenship revocation is only possible when the individual already possesses or has acquired another citizenship and remove the reference to "being eligible to obtain" another citizenship; [para. 29]
   2. To reconsider entirely the extension of the time period during which citizenship can be revoked in Article 7 (2) of the Bill; [para. 32]

C. To reconsider entirely the introduction of the new criminal offence of arbitrary occupation of property and related procedure potentially leading to the eviction of the occupant, or at minimum, more strictly circumscribe them while ensuring that any eviction should be carried out only upon a court order, after a procedure offering all guarantees of due process, also taking into account all relevant personal circumstances of the occupant and fully complying with international human rights standards and recommendations; [para. 42]

D. To reconsider Article 10 entirely or at least considerably limit the temporal scope of the contemplated police commissioner's powers while providing exceptions to access restriction to certain specified areas, at least to ensure access to essential services and the possibility, if relevant, to access residential premises and to commute to work and other activities; [para. 50]

E. To reconsider the increase of the sanctions and criminalization of behaviour that is peaceful in nature though causing some disruption or obstruction of road traffic, ensuring that no penalty of imprisonment is provided for in such cases; [para. 57]

F. To reconsider entirely the suppression of the mandatory deferral of the execution of a sentence of imprisonment for pregnant women or those with children under one year old, or at minimum, specify the considerations, beyond the seriousness or violent nature of the offence, to be taken into account, including the best interests of the child, women's medical condition, health risks and the ability of the detention facility to monitor their condition or to provide the medical care required, to determine whether or not to defer the execution of the prison sentence; [para. 61]

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 27 February 2024, the Vice President of the Justice Committee of the Senate of Italy sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Bill No. 1660 containing various provisions relating to counter-terrorism, public security, protection of personnel in service and prison regulations, which was submitted to the Chamber of Deputies by the government on 22 January 2024 (hereinafter "the Bill"). The Bill was introduced to the Chamber of Deputies on 22 January 2024 and subsequently referred to the Justice Committee on 9 February 2024. The Chamber of Deputies is expected to discuss it from 27 May 2024 onwards.

2. On 1 March 2024, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of the Bill with international human rights standards and OSCE human dimension commitments.

3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.[1]

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only certain provisions of the Bill submitted for review. Since the requesting authority asked ODIHR to focus in particular on Articles 10-11, 14-16 and 18-20 of the Bill, the Opinion does not provide a detailed analysis of all the provisions but primarily focuses on these articles, along with additional comments on other concerning aspects of the Bill relating to the impact of the draft amendments on the exercise of human rights and fundamental freedoms. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating counter-terrorism, public security, prison regulations and other related issues in Italy.

5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Bill. The ensuing legal analysis is based on international and regional human rights and rule of law standards, case law, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field.

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1 See especially OSCE Ministerial Council Decision No. 7/08 *Further Strengthening the Rule of Law in the OSCE Area* (2008),, "Further Strengthening the Rule of Law in the OSCE Area", 8 December 2008, point 4, where the Ministerial Council *"[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention […]"*.

6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[2] (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[3] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion seeks to integrate, as appropriate, a gender and diversity perspective.

7. This Opinion is based on an unofficial English translation of the Bill commissioned by ODIHR, which is attached to this document as an Annex. Errors from translation may result. Should the Opinion be translated in Italian language, the English version shall prevail in case of discrepancies.

8. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Italy in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

9. The Bill under review covers a wide array of issues, ranging from counter-terrorism, public security and the introduction of new forms of preventive administrative measures to the protection of usury victims, crimes or other offences against law enforcement authorities, weapons regulations, and the penitentiary system. Overall, the Bill aims to introduce new criminal offences and new forms of preventive administrative measures, along with more severe criminal and other sanctions for a number of offences with a view to deter potential offenders from committing future crimes or other offences. While some provisions of the Bill may aim to rectify some regulatory gaps across legislation, the majority of them have the potential to undermine the fundamental tenets of criminal justice and the rule of law.

10. The Bill under review is analysed from the perspective of its compliance with international human rights obligations and standards, primarily the International Covenant on Civil and Political Rights (ICCPR).[4] Overly broad or ill-defined definitions of criminal offences may facilitate arbitrary application of criminal law and procedures, which, along with disproportionate sanctions, may have undue consequences for the enjoyment of rights including the right to life and the prohibition of ill-treatment (Articles 6 and 7 ICCPR), liberty and security of persons (Article 9 ICCPR), the rights to freedom of peaceful assembly and of association (Articles 21 and 22 ICCPR), freedom of expression (Article 19 ICCPR), as well as, the rights to a fair trial (Article 14 ICCPR) and to privacy (Article 17 ICCPR), among others. Broad or vague definitions of criminal offences also run the risk of discriminatory application. Other documents adopted at the UN level may also serve as useful reference documents in the sphere of prison

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2 See the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations, General Assembly resolution 34/180, adopted 18 December 1979. Italy ratified this Convention on 10 June 1985.

3 See OSCE Ministerial Council, Decision No. 14/04, "Action Plan for the Promotion of Gender Equality", Sofia, 7 December 2004, para. 32.

4 See the International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Italy ratified the ICCPR on 15 September 1978.

regulations[5] and on the conduct and use of firearms by law enforcement officials.[6] Additional international instruments, guidance and recommendations relevant to other aspects of the Bill, including with respect to counter-terrorism and the prevention of statelessness, are also referenced later in the Opinion.

11. At the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),[7] the developed case law of the European Court of Human Rights (ECtHR), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)[8] and other Council of Europe (CoE) instruments, with respect to prison regulations and the prevention of terrorism,[9] are of relevance. Particularly, the Bill could potentially unduly impact the enjoyment of several rights enshrined in the ECHR, including the right to life and the prohibition of ill-treatment (Articles 2 and 3 ECHR), liberty and security of persons (Article 5 ECHR), the rights to freedom of peaceful assembly and of association (Article 11 ECHR), freedom of expression (Article 10 ECHR), as well as, the rights to a fair trial (Article 6 ECHR) and to respect for private and family life (Article 8 ECHR), among others. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also published several reports with specific recommendations addressed to Italy regarding the rights of persons deprived of their liberty and the reform of its prison system.[10]

12. At the OSCE level, participating States have committed to upholding human rights and the rule of law in criminal justice systems and other fields (see also other OSCE documents below).[11] OSCE participating States specifically committed to respect the right to a fair trial, as an essential component of the rule of law.[12] Moreover, in its

5 See e.g., the Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules"), United Nations, General Assembly resolution 70/175, adopted 17 December 2015; Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders ("Bangkok Rules"), United Nations, General Assembly resolution 65/229, adopted 16 March 2011; Rules for the Protection of Juveniles Deprived of their Liberty ("the Havana Rules"), United Nations, General Assembly, resolution 45/113, adopted 14 December 1990; Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), United Nations, General Assembly, resolution 40/33, adopted 29 November 1985; Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules"), United Nations, General Assembly, resolution 45/110, adopted 14 December 1990.

6 See e.g., Code of Conduct for Law Enforcement Officials, United Nations, General Assembly, resolution 34/169, adopted 17 December 1979; Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, United Nations, Economic and Social Council, resolution 1989/61, adopted 24 May 1989 and endorsed by the UN General Assembly, resolution 44/162 adopted 15 December 1989; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, United Nations, Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (hereinafter "1990 UN Basic Principles on the Use of Force and Firearms").

7 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR"), Council of Europe, signed on 4 November 1950, entered into force on 3 September 1953. Italy ratified the Convention on 26 October 1955.

8 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe, November 1987, ratified by Italy on 8 March 1999 and which entered into force on 1 March 2002.

9 See e.g., the European Convention on the Suppression of Terrorism, Council of Europe, 1977), ratified by Italy on 28 February 1986; the European Prison Rules, Council of Europe, (as revised in 2020, Recommendation Rec(2006)2-rev); the European Rules on community sanctions and measures, Council of Europe, Recommendation CM/Rec(2017)3; Guidelines for prison and probation services regarding radicalisation and violent extremism, Council of Europe, adopted 2 March 2016; Recommendation CM/Rec(2014)3 concerning dangerous offenders, Council of Europe, adopted19 February 2014;Recommendation CM/Rec(2012)12 concerning foreign prisoners, Council of Europe, adopted 10 October 2012; and Recommendation CM/Rec(2012)5 on the European Code of Ethics for Prison Staff, Council of Europe, adopted 12 April 2012, among others. See also a comprehensive list of CoE reference texts pertaining to prisons and community sanctions and rules.

10 See in particular, Report to the Italian Government on the periodic Visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment, Council of Europe, European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT),24 March 2023, Report to the Italian Government on the ad hoc Visit to Italy carried by CPT, Council of Europe, CPT, *21 January 2020*, and other CPT reports on Italy accessible here.

11 See OSCE Ministerial Council, Decisions No. 12/05, "Upholding human rights and the rule of law in criminal justice systems", Ljubljana, 6 December 2005. See also OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (4th Edition, 2023); see in particular para. 26 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), OSCE, 29 June 1990, which recognizes that "a vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions".

12 Most notably, see Concluding Document of the Vienna Meeting 1986 of the CSCE, OSCE, Vienna, 15 January 1989, par 13.9; and Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), OSCE,

Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area (2008), the OSCE Ministerial Council called upon OSCE participating States "*to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary*", as a key element of strengthening the rule of law in the OSCE area.[13]

13. Of particular relevance to this Opinion, the punishment of criminal or petty offences, in particular, when the nature of the offence and/or purpose and severity of the penalty render them criminal in nature, is generally considered as falling within the ambit of the right to a fair trial. Such right is protected by Article 14 of the ICCPR, Article 6 of the ECHR and Articles 47-48 of the *Charter of Fundamental Rights of the European Union*.[14] The UN Human Rights Committee further elaborated about the practical requirements of the right to a fair trial in its General Comment no. 32 on Article 14 of the ICCPR,[15] and in its jurisprudence on individual communications as well as concluding observations. In addition, the abundant case-law of the ECtHR relating to Article 6 of the ECHR (criminal limb) offers useful guidance regarding fair trial guarantees, including those applicable in petty offence cases.[16]

2. Provisions Pertaining to Terrorism

2.1. Definition of Terrorist Offences (Article 1)

14. Article 1 of the Bill proposes amendments to Articles 270 and 435 of the Criminal Code, which specifically target crimes associated with terrorism and public safety. More precisely, Article 1 aims to create two new criminal offences of (a) knowingly procuring or possessing material containing instructions on preparing or using various weapons, substances, techniques, or methods for carrying out acts of violence or sabotage for the purpose of terrorism,[17] and (b) distributing, disclosing, disseminating, or publicizing such material with the intent to commit various crimes against public safety.[18]

15. The proposed amendments reflect the growing trend in counter-terrorism legislation to expand the use of offences criminalizing ancillary, preparatory or inchoate offences, the purpose being to prevent an ultimate harm by criminalizing conduct before the actual causing of that harm.[19] This approach raises serious concerns as to the principles of legal

Copenhagen, OSCE, 29 June 1990, para. 5. See also OSCE Ministerial Council's Decision 12/05 "Upholding Human Rights and the Rule of Law in Criminal Justice Systems", Ljubljana, 6 December 2005, which states that "*rule of law must be based on respect for internationally recognized human rights, including the right to a fair trial, the right to an effective remedy, and the right not to be subjected to arbitrary arrest or detention*". As stated in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), OSCE, Copenhagen, OSCE, 29 June 1990, para. 2, "*the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression*".

13 See OSCE Ministerial Council Decision No. 7/08, "Further Strengthening the Rule of Law in the OSCE Area", Helsinki, 4-5 December 2008, para. 1.

14 See Charter of Fundamental Rights of the European Union, European Union, 18 December 2000.

15 See General Comment no. 32, "Right to Equality before Courts and Tribunals and to Fair Trial", UN Human Rights Committee (CCPR), 23 August 2007, especially paras. 9, 11, 13, 18, 19, 20, 21, 30 and 31.

16 See, among many others, European Court of Human Rights (ECtHR), *Engel and Others v. the Netherlands,* nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72; 8 June 1976; and *Öztürk v. Germany*, no. 8544/79, 21 February 1984. See also on the issue of independence of judicial assistants, ECtHR, *Luka v. Romania*, no. 34197/02, 21 July 2009, paras. 37-50; and the former system of assessors in Poland, *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, 30 November 2010.

17 Proposed amendments to Article 270, subject to penalties of imprisonment from two to six years.

18 Proposed amendments to Article 435, subject to penalties of imprisonment from six months to four years.

19 See e.g.,Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism, OSCE/ODIHR, 28 September 2023, para. 10.

certainty, presumption of innocence and that remoteness[20] should be limited in criminal law, and more generally as to its impact on fundamental rights and freedoms.[21] In principle, the preparatory acts, which may include planning or conspiracy with a view to committing or contributing to a terrorist offence, may be prosecuted but only if there is an actual risk that the terrorist act takes place (as opposed to an abstract danger), with a meaningful proximate link between the behaviour and the ultimate wrong, and while demonstrating criminal intent (intent to act and to cause the harm, or at least, to create a serious risk of foreseeable harm).[22] This is notwithstanding the lack of agreement at the international level on a definition of "terrorism",[23] although certain regional instruments seek to provide a definition.[24]

16. That said, to comply with international human rights guarantees, criminal legislation must adhere to the principle of legality, ensuring clarity and foreseeability, as guaranteed by Article 15 ICCPR and Article 7 ECHR.[25] This requirement entails that an offence must

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[20] i.e., that there should be a close connection between the individual's acts and any harm it engenders or risk of harm arising, meaning that individuals cannot be prosecuted absent a meaningful proximate link between their behaviour and the ultimate wrong (see e.g., Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework, OSCE/ODIHR, 2018, pp. 37-38).

[21] See Study on Directive (EU) 2017/541 on combating terrorism - Impact on fundamental rights and freedoms, EU Fundamental Rights Agency (FRA), 2021. See also Guidelines for Addressing the Threats and Challenges of " Foreign Terrorist Fighters" within a Human Rights Framework, OSCE/ODIHR, 12 September 2018; and ODIHR Submission for the Call for Inputs: Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space, OSCE/ODIHR, 16 January 2023.

[22] See Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism, OSCE/ODIHR, 21 September 2020, para. 64. See also Comments on the Law on Combatting Terrorism of the Republic of Uzbekistan, OSCE/ODIHR, 20 December 2019, Sub-Section 3.3; and Comments on the Law on Countering "Extremism" of the Republic of Uzbekistan, OSCE/ODIHR, 22 November 2019, para. 52. See also the UN Resolution 1624 (2005) adopted by the Security Council at its 5261st meeting, on 14 September 2005, regarding the prohibition of incitement to terrorism.

[23] See 2005 Report of the UN Special Rapporteur on Counter-Terrorism and Human Rights, UN Doc. E/CN.4/2006/98, paras. 26-28;, Annual Report: Ten areas of best practices in countering terrorism, UN Special Rapporteur on Counter-Terrorism and Human Rights, UN Doc. A/HRC/16/51, 22 December 2010, paras. 26-28 (2010 UNSR's Report); and 2019 Report to the UN Commission on Human Rights, UN Doc. A/HRC/40/52, 1 March 2019, para. 19. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter: "UN Special Rapporteur on Counter-Terrorism and Human Rights") has noted that any definition of terrorism should be confined to conducts that are of a "genuinely terrorist nature", i.e., it should amount to: (1) an act passing a certain threshold of seriousness, i.e., either (a) amounting to the intentional taking of hostages, or (b) intended to cause death or serious bodily injury to one or more members of the general population or segments of it, or (c) involving lethal or serious physical violence; and (2) done *with the intention* of provoking terror in the general public or a segment of it or compelling a government or international organization to do or abstain from doing something; and (3) corresponding to an offence under the universal terrorism-related conventions (or, in the alternative, action corresponding to all elements of a serious crime defined by national law), see Annual Report: Ten areas of best practices in countering terrorism, UN Doc. A/HRC/16/51, 22 December 2010, Practice 7 (Model definition of terrorism) at para. 28; and UN Security Council Resolution 1566 (2004), S/RES/1566 (2004), para. 3. On the definition of "terrorism" within the OSCE context, see e.g. ODIHR-TNTD/SPMU Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach, OSCE/ODIHR, 2014, pp. 27-30.

[24] See e.g., Article 3 of the EU Directive 2017/541 of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, 15 March 2017, which provides a list of acts which, when committed intentionally to seriously intimidate a population, unduly compel government or an international organization to perform or abstain from performing any act, or seriously destabilize or destroy the fundamental political, constitutional economic or social structures of a country or an international organisation, should be considered terrorist offences; Article 1 of the CoE Convention on the Prevention of Terrorism (CETS No. 196, hereinafter "Warsaw Convention"), ratified by Italy on 21 February 2017, defines "terrorist offence" as any of the offences within the scope of and as defined in one of the treaties listed in the Appendix, which itself refers to twelve international Conventions and related Protocols (Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973; International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979; Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999; and International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005); the CoE Committee on Counter-Terrorism (CDCT) is currently discussing a revised pan-European legal definition of "terrorism" for the purposes of the 2005 Warsaw Convention, see Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism, OSCE/ODIHR, 28 September 2023.

[25] The *nullum crimen sine lege* principle is enshrined in Article 15 (1) of the ICCPR and Article 7 (1) of the ECHR, as well as in the Universal Declaration of Human Rights, United Nations, General Assembly, Resolution 217 A(III) (UDHR), Article 11 (1). See also the

be clearly enough defined in law that "*the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him [or her] criminally liable*".[26] It is essential that all the constitutive elements of a criminal offence – the individual conduct concerned and the intent – be clearly stipulated in law. As noted by ODIHR in previous opinions, overly broad or ill-defined definitions of criminal offences may facilitate arbitrary application of criminal law and procedures with consequences for the enjoyment of rights including the rights to respect for private life (Article 8 ECHR, Article 17 ICCPR), freedoms of peaceful assembly and of association (Article 11 ECHR, Articles 21 and 22 ICCPR), freedom of expression (Article 10 ECHR, Article 19 ICCPR), freedom of religion or belief (Article 9 ECHR, Article 18 ICCPR), the right to political participation (Article 25 ICCPR) as well as the right to liberty and security (Article 5 ECHR, Article 9 ICCPR) and the right to a fair trial (Article 6 ECHR, Article 14 ICCPR).[27] This is especially important when dealing with preparatory, ancillary or inchoate criminal offences in light of the potential discriminatory impact when the constitutive elements of such offences are not strictly circumscribed.[28]

17. At the outset, it is noted that the CoE Convention on the Prevention of Terrorism and its Additional Protocol[29] as well as the EU Directive 2017/541 on combating terrorism (hereinafter "2017 EU Directive")[30] do not specifically include as preparatory acts to terrorism the procuring, possessing, distributing, disclosing, disseminating or publicising of instruction materials as contemplated in Article 1 of the Bill. Article 7 of the CoE Convention on the Prevention of Terrorism on training for terrorism deals with the criminalization of the provision of "*instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose*" when committed "*unlawfully and intentionally*". Articles 7 and 8 of the 2017 EU Directive also envisages the criminalization of providing and receiving training for terrorism, respectively.[31] However, in both cases, the material and mental elements of the criminal offence(s) are much more strictly circumscribed than those provided in Article 1 of the Bill, referring to specific intent as well as the knowledge that the skills are intended to be used for committing or contributing to the commission of a terrorist

Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force 1 July 2002, Articles 22 (*nullum crimen sine lege*) and 23 (*nulla poena sine lege*). See also, EU Directive 2017/541 on Combating Terrorism, para. 35, referring to "*the principles of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law.*"

26 See ECtHR, Kokkinakis v. Greece, no. 14307/88, 25 May 1993, para. 52; and ECtHR, Jorgic v. Germany, no. 74613/01, 12 July 2007, para. 100.

27 See e.g., Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism, OSCE/ODIHR, 28 September 2023, para. 6.

28 See e.g., Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism, UNODC, 2019, noting for instance that the definition of the mental element (*mens rea*) for support or preparatory offences is particularly significant in terms of gender implications. See also Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism, OSCE/ODIHR, 28 September 2023), para. 6.

29 Convention on the Prevention of Terrorism, Council of Europe, CETS No. 196, adopted 16 May 2005, ratified by Italy on 21 February 2017 (entry into force on 1 June 2017); and Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe, CETS No. 217), adopted 22 October 2015, ratified by Italy on 21 February 2017 (entry into force on 1 July 2017).

30 EU Directive 2017/541 of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, 15 March 2017.

31 Article 7 refers to the intentional provision of "instruction on the making or use of explosives, firearms or other *weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1), knowing that the skills provided are intended to be used for this purpose*", while Article 8 concerns the "*receiving [of] instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1)*" when committed intentionally.

offence. They also do not go as far as mentioning the mere disclosure or dissemination of materials.

18. Moreover, the preamble of the Directive specifies that while self-study could fall within the scope of "receiving training", this should only be the case "*when resulting from active conduct and done with the intent to commit or contribute to the commission of a terrorist offence*" while also referring to exceptions for "*legitimate purposes, such as academic or research purposes*".[32] It must also be noted that the overbroad coverage and lack of clearly circumscribed definitions of the constitutive elements for preparatory acts envisaged in the Directive and impact on fundamental rights and freedoms, including particular impact on individuals belonging to specific groups, have been criticized by the EU Fundamental Rights Agency.[33] It specifically noted the fundamental importance of providing as a constitutive element for receiving training the specific terrorist intent, emphasizing that this subjective element plays a crucial role in distinguishing between lawful behaviour and crime, while in addition ensuring exceptions for legitimate purpose.[34]

19. In this regard, the wording proposed in Article 1.a of the Bill raises several concerns in terms of the constitutive elements of the criminal offence. First, there is lack of clarity as to what might be regarded as covered by the phrase "*any other technique or method for carrying out acts of violence or sabotage*" since many normally innocuous items could be used for this purpose. Second, it is not clear whether the specific intent applies only to the act of "procuring or possessing" materials containing "*instructions on the preparation or use of various weapons, substances and techniques or methods for carrying out acts of violence or sabotage*" or also to the intent regarding the purpose of terrorism. This phrasing carries the risk of holding individuals liable for terrorist offence merely for possessing such materials, even if their purposes are unrelated to commission of acts of terrorism, e.g., for criminological studies, journalistic or literary work. It must be emphasized that terrorism is often considered a special (dual) intent crime[35] whereby the individual should not only intend to carry out the conduct but also intend to make the relevant contribution to a 'terrorist' act.[36] In light of the tendency of national jurisdictions to adopt an expansive interpretation of terrorism-related offences,[37] it is essential that the subjective elements, especially in terms of knowledge and specific terrorist intent, be clearly specified under the legal definition of the crime.

20. In light of the foregoing, if retained at all, **the constitutive material and mental elements of the criminal offences should be more strictly circumscribed, including by (i) removing broad wording such as "*any other technique or method for carrying out acts of violence or sabotage*", (ii) specifying the requirement of specific intent of committing or contributing to the commission of actual terrorist offences and (iii) including an exception or exclusion clause to safeguard legitimate activities, especially the defence or exercise of human rights and fundamental freedoms,**

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32 Directive (EU) 2017/541 of the European Parliament and of the Council on combating terrorism, 31 March 2017, recital 11.

33 Study on Directive (EU) 2017/541 on combating terrorism - Impact on fundamental rights and freedoms, EU Fundamental Rights Agency (FRA), *2021*, Section 4.

34 Summary of the Study on Directive (EU) 2017/541 on Combatting Terrorism: Impact on Fundamental Rights and Freedoms, EU Fundamental Rights Agency (FRA), (2022), p. 5.

35 See Special Tribunal for Lebanon, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging (2011), p. 3, which states: "*On the basis of treaties, UN resolutions and the legislative and judicial practice of States, there is convincing evidence that a customary rule of international law has evolved on terrorism in time of peace, requiring the following elements:* ***(i) the intent (dolus) of the underlying crime and (ii) the special intent (dolus specialis) to spread fear or coerce authority****; (*iii) the commission of a criminal act, and (iv) that the terrorist act be transnational."

36 See Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism, OSCE/ODIHR, 28 September 2023, para. 17.

37 See e.g., ECtHR, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023.

activities of human rights and humanitarian organizations, and other legitimate activities, such as for education, scientific and academic research, legal assistance, journalistic or artistic purposes.[38] Though beyond the scope of this Opinion, similar considerations should apply with respect to all ancillary, preparatory or inchoate offences provided in the Criminal Code of Italy.

RECOMMENDATION A.

To more clearly circumscribe the constitutive material and mental elements of the criminal offences in Article 1 of the Bill, including by removing broad wording, specifying the requirement of specific intent of committing or contributing to the commission of actual terrorist offences and including an exception or exclusion clause to safeguard legitimate activities, especially the defence or exercise of human rights and fundamental freedoms, activities of human rights and humanitarian organizations, and other legitimate activities, such as for education, scientific and academic research, legal assistance, journalistic or artistic purposes.

2.2. Revocation of Citizenship (Article 7)

21. Article 7 of the Bill proposes amendments to Law no. 91, which aim to modify the conditions under which citizenship can be revoked following a conviction for certain serious crimes, including crimes committed for the purpose of terrorism. These changes involve two key modifications: firstly, mandating that citizenship revocation, upon conviction, is subject to the individual having *or being eligible* to obtain another citizenship, and secondly, extending the period within which citizenship revocation can be enforced from three to ten years.

22. At the outset, it should be noted that revocation of citizenship as a counter-terrorism measure has long been criticized both for its severe human rights impact (in particular but not only when it leads to statelessness) and also on account of questions about its effectiveness in preventing terrorism risks.[39] Revoking citizenship does also not relieve states of other human rights obligations towards those affected, e.g., in connection with exclusion from its territory or the prohibition of refoulement as set out below. From an international counter-terrorism perspective, there is also a valid concern that revoking citizenship, if it is only aimed at removing the individual from one's own country, may weaken international security by merely transferring security risks posed by terrorists, their supporters, and foreign fighters outside of the state's jurisdiction.[40] For these reasons ODIHR has called on OSCE participating States to refrain in principle from resorting to revocation of citizenship as a counter-terrorism measure; and, if states use it at all, to do so only in the most exceptional circumstances while ensuring it is not applied arbitrarily,

[38] See Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism, OSCE/ODIHR, 28 September 2023, paras. 20-24 and references therein, including examples of exemption clauses in criminal codes of certain countries such as Switzerland, Canada and New Zealand.

[39] See e.g. Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework, OSCE/ODIHR, 2018, pp. 47-51; for example, citizenship revocation provisions that apply only to naturalized persons have been perceived as discriminatory for creating a group of "second-class citizens" (pp. 49-50).

[40] *Ibid*. pp. 50-51.

does not lead to statelessness or other unnecessary or disproportionate human rights restrictions.[41]

23. The first proposed amendment aims to align with Article 8(1) of the 1961 Convention on the Reduction of Statelessness,[42] which provides that a Contracting State "*shall not deprive a person of its nationality if such deprivation would render [them] stateless*". However, it is essential to note that the proposed amendment does not prohibit citizenship revocation in all cases where such revocation could result in statelessness, as it allows revocation when the individual would merely be eligible to acquire another citizenship in theory but has not obtained a second citizenship. Determining an individual's eligibility to obtain citizenship of another country falls beyond the jurisdiction of a domestic judge, as the criteria and procedures for the acquisition of citizenship are within the sovereign prerogatives of each state. Moreover, even if an individual meets in theory the criteria for acquiring another citizenship, this procedure may be lengthy or may not be practically feasible. The mere eligibility to obtain another citizenship does not guarantee that it will be obtained and an individual may thus remain stateless pending the final decision of the state authorities of the other country.

24. Decisions regarding citizenship revocation should also adhere to the UNHCR Guidelines on Statelessness No. 5, particularly paragraph 45, which emphasizes the state's obligation to assess the risk of statelessness before revoking citizenship.[43] Placing the burden solely on the individual to prove statelessness would not comply with this obligation. The process should be collaborative, with both the individual and the state providing evidence to determine the risk of statelessness accurately. As underlined by the UN Special Rapporteur on protection and promotion of human rights and fundamental freedoms while countering terrorism "*States may not deprive a citizen of nationality based on their own assessment that the individual holds another nationality where the other implicated State refuses to recognize the individual as a national. The question relevant to whether an individual will be rendered stateless through withdrawal of nationality is whether the individual currently possesses and has proof of another nationality. This assessment should not be made on the basis of one State's interpretation of another State's nationality law but rather should be informed by consultations with and written confirmation from the State in question*".[44]

25. From a human rights standpoint, forced statelessness contradicts established international human rights norms. While States have a legitimate right to take measures to address the national security threat posed by terrorism (Article 8(2) of the 1961 Convention on the Reduction of Statelessness), States remain bound by international law and, in particular, by the absolute prohibition of arbitrary deprivation of citizenship. Article 7 of the 1997 European Convention on Nationality, signed but not ratified by Italy, allows nationality

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[41] *Ibid*. p. 46.

[42] Italy acceded to the Convention on 1 December 2015.

[43] See the Guidelines on Statelessness No.5: Loss and Deprivation of Nationality under Articles 5-9 of the Convention on the Reduction of Statelessness, United Nations, UNHCR, 10 December 2019.

[44] See Human Rights Consequences of Citizenship Stripping in the Context of Counter-Terrorism, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, February 2022, p. 11. See also Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation of Nationality: Summary Conclusions of Expert Meeting, UN High Commissioner for Refugees, (2014), para. 6. See also Guidelines on Statelessness No.5: Loss and Deprivation of Nationality under Articles 5-9 of the Convention on the Reduction of Statelessness, United Nations, UNHCR, 10 December 2019, para. 81. See also Implementation of Security Council Resolution 2178 (2014) by States affected by foreign terrorist fighters, UN Security Council Counter-Terrorism Committee Executive Directorate (CTED), S/2015/975 Annex – Third report - 29 December 2015, paras. 52 and 73, noting states' worrying practice of revoking citizenship even if resulting in statelessness.

revocation only in specific cases.[45] Even where individuals are not left stateless, citizenship stripping has economic, social, cultural, and familial after-effects, particularly effecting children whose parents are deprived of their nationality.[46] The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has also pointed out the patterns of gender inequality and gendered exceptionalities in current counter-terrorism citizenship stripping practices.[47]

26. Moreover, revoking an individual's citizenship before they acquire another may leave them without valid identification documents, leading to legal uncertainty regarding their legal status and significantly impacting the enjoyment of their rights and directly impacting their personal and social identity, thereby interfering with their right to respect of their private and family life under Article 17 of the ICCPR and Article 8 of the ECHR.[48] As underlined in the caselaw of the ECtHR, revoking citizenship without adequate procedural safeguards, including the opportunity to challenge the decision before courts affording the relevant guarantees, or without the authorities acting diligently and swiftly, also violates the right to respect for private and family life protected under Article 8 of the ECHR.[49]

27. Further, in practice, the revocation of citizenship often precedes or is linked to other steps that implicate human rights, whether they include denial of entry to a state, expulsion or deportation to another state or other steps.[50] The proposed amendment may indeed increase the risk of such measures being adopted, potentially leading to the expulsion of individuals to countries where they might face torture or inhuman treatment or punishment due to their background. Article 19 of the Charter of Fundamental Rights of the European Union prohibits such actions, stating that no one should be expelled to a country where there's a risk of death penalty, torture, or other inhuman treatment or punishment.[51] Similarly, Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits the expulsion of a person to a

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[45] See the European Convention on Nationality, Council of Europe, 1997, signed by Italy in 1997 but not yet ratified. Though not legally binding on Italy, in principle, pursuant to Article 18 of the Vienna Convention on the Law of Treaties (which Italy ratified on 25 July 1974), "a state is obliged to refrain from acts which would defeat the purpose of a treaty when […] it has signed the treaty". Hence, following the signature of the European Convention on Nationality, Italy should not be adopting legislation that would be in flagrant contradiction with the provisions of the Convention, thus defeating the very purpose of this Convention and being in violation of Article 18 of the Vienna Convention on the Law of Treaties. Article 7 of the European Convention on Nationality provides that "*A State Party may not provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party except in the following cases: (a) voluntary acquisition of another nationality; (b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant; (c) voluntary service in a foreign military force; (d) conduct seriously prejudicial to the vital interests of the State Party; (e) lack of a genuine link between the State Party and a national habitually residing abroad; (f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the ex lege acquisition of the nationality of the State Party are no longer fulfilled; (g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents (...) A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this* article."

[46] See Human Rights Consequences of Citizenship Stripping in the Context of Counter-Terrorism, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism February 2022, p. 5. See also Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" Within a Human Rights Framework, OSCE/ODIHR, published 12 September 2018, pages 47-51 and 68-72..

[47] See Human Rights Consequences of Citizenship Stripping in the Context of Counter-Terrorism, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, February 2022, Section on Impact on Women, pp. 20-21. See also for example, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul, 26 February – 5 April 2024, para. 35.

[48] See e.g., ECtHR, *Emin Huseynov v. Azerbaijan,* no. 1/16, 13 July 2023, para. 52.

[49] See ECtHR, *Emin Huseynov v. Azerbaijan,* no. 1/16, 13 July 2023.

[50] See Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" Within a Human Rights Framework, OSCE/ODIHR, published 12 September 2018, page 50.

[51] See the Charter of Fundamental Rights of the European Union, European Union, 18 December 2000, Article 19.

country "*where there are substantial grounds for believing that the person would be in danger of being subjected to torture.*"[52]

28. In light of the foregoing, by enabling the revocation of citizenship of individuals who do not possess or have not already acquired another citizenship, **Article 7 of the Bill does not comply with international standards and should be revised by requiring that the individual already possesses or has acquired another citizenship and removing the reference to "being eligible to obtain" another citizenship.** In addition, it is essential that there is **proof of an individual's citizenship confirmed by the state in question and this should be specified in Article 7 of the Bill, unless already required by applicable legislation, secondary regulation or guidelines**.

29. The proposed second part of Article 7 of the Bill extends the timeframe for deciding on possible citizenship revocation to ten years – instead of three – after final conviction for certain crimes.[53] The person at risk of this occurring and possibly her/his family members could be left in a state of uncertainty regarding her/his/their future for up to ten years. Such uncertainty, as already noted, has the potential to impact adversely on the protection of private and family life under Article 17 of the ICCPR and Article 8 of the ECHR.

30. The rationale for the proposed amendment, according to the Technical Paper, is to ensure "greater protection of national security". It is unclear how extending the timeframe for a possible decision to revoke citizenship by seven additional years would enhance national security. Extending the period in which a decision can be taken would lead to a risk of subsequent factors, unrelated to the conviction, influencing the decision-making. Should a decision supposedly linked to the conviction be actually based on subsequent factors, it could be considered arbitrary and may lead to violations of individuals' rights under the ICCPR and the ECHR.[54]

31. **It is recommended to reconsider Article 7 (2) of the Bill entirely.** If retained at all, it must be noted that measures taken by the legislature, the administrative authorities or the courts after a final sentence has been imposed or while the sentence is being served which result in the redefinition or modification of the scope of the "penalty" imposed by the court, may fall within the scope of the prohibition of the retroactive application of penalties enshrined in Article 7 (1) of the ECHR.[55] This means that the extension of the timeframe for deciding on a potential revocation of citizenship contemplated by Article 7 (2) of the Bill could only be applicable to individuals whose final conviction has been pronounced after the entry into force of the Bill.

RECOMMENDATION B.

To specify in Article 7 (1) of the Bill that citizenship revocation is only possible when the individual already possesses or has acquired another

[52] See the *UN* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, General Assembly, resolution 39/46, adopted 10 December 1984, Article 3.

[53] i.e., crimes listed in Decree-Law No. 113 of 4 October 2018, converted into Law No. 132 of 2018 on international protection, immigration and public security, which added Article 10-bis to Law No. 91 of 1992 on citizenship. It provides for the revocation of Italian citizenship, only if acquired by marriage, by concession, or by choice at the age of eighteen for those born in Italy (not also *per iure sanguinis*, with an unreasonable differentiation in treatment), in the event of a final conviction for the offences provided for in Article 407, paragraph 2, letter a), no. 4), of the Code of Criminal Procedure, as well as for the offences provided for in Articles 270-ter and 270-quinquies.2, of the Criminal Code. This revocation is not automatic after conviction but is decided, on the proposal of the Minister of the Interior, within the peremptory term of three years (which would now become 10 years under the new Bill 1660) from the date of the final conviction.

[54] See e.g., ECtHR, *Ramadan v. Malta*, no. 76136/12, 21 June 2016, para. 62, noting that an arbitrary revocation of citizenship could in certain circumstances raise an issue under Article 8 of the ECHR because of its impact on the private life of the individual.

[55] See e.g., ECtHR, *Del Río Prada v. Spain* [GC], no. 42750/09, 21 October 2013, para. 89.

citizenship and remove the reference to "being eligible to obtain" another citizenship.

To reconsider entirely the extension of the time period during which citizenship can be revoked in Article 7 (2) of the Bill.

3. MEASURES TO COMBAT ARBITRARY OCCUPATION OF PROPERTY (ARTICLE 8)

32. Article 8 of the Bill introduces amendments to the Criminal Code and to the Criminal Procedure Code (CPC) of Italy, to combat the arbitrary occupation of property serving as the domicile of others. In particular, proposed new Article 634-*bis* of the Criminal code punishes with up to seven years' imprisonment anyone who, by means of violence or threats, occupies or holds without title a property used as a domicile of others, or prevents the re-entry into the same property of the owner or the person who lawfully holds it. The same punishment shall apply to anyone who takes possession of another person's real estate by means of deception or fraud or transfers the occupied property to another person. Article 634-*bis* (2) further specifies that "*Apart from cases of participation in the offence, anyone who interferes or cooperates in the occupation of the property, or receives or pays money or other benefits for the occupation of the property*". The proposed amendments to the CPC, although envisaging the role of a judge to order the reinstatement of possession of the property subject to arbitrary occupation, also provides that where the occupied property is the only actual dwelling of the complainant, a police officer who receives a report of the said offence may already act, without the order of a judge, when having "*good reasons to believe that the occupation is arbitrary*" (Art. 321-bis (2)-(4)).

33. Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights[56] recognizes the right of everyone to an adequate standard of living for oneself and one's family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The United Nations Committee on Economic, Social and Cultural Rights (hereinafter "the CESCR Committee") stipulates that the right to adequate housing should be interpreted in a broad manner, as the right to live somewhere in security, peace and dignity.[57] While the right to adequate housing does not require the State to build housing for the entire population,[58] it obliges governments to put in place an enabling legal and regulatory framework and identify funding priorities to prevent homelessness, prevent forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that housing is adequate – including housing of the most vulnerable populations.[59]

34. For housing to be considered "adequate", it must, at a minimum, meet the following seven criteria defined by the CESCR Committee: (1) security of tenure; (2) availability of services, materials, facilities and infrastructure; (3) affordability; (4) habitability; (5)

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[56] International Covenant on Economic, Social and Cultural Rights, United Nations, General Assembly, resolution 2200A, adopted 16 December 1966, ratified by Italy on 15 September 1978.

[57] See General Comment No. 4, "Right to Adequate Housing", United Nations, CESCR Committee,13 December 1991, para. 7.

[58] See, with respect to the progressive realization of housing rights, General Comment No. 3, "the Nature of State's Party Obligations", United Nations, CESCR Committee, 1990, para. 9. See also Factsheet No. 21 on the Right to adequate housing, Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Human Settlement Programme (UN-Habitat), November 2009, page 6.

[59] *Ibid.*

accessibility; (6) location; and (7) cultural adequacy.[60] In that respect, it is acknowledged that *forced* evictions without the provision of, and access to, appropriate forms of legal or other protection[61] are considered *prima facie* incompatible with the requirements of the ICESCR; the prohibition does not, however, apply to evictions carried out by force in accordance with the law, that come with sufficient legal or other protection, and are in conformity with international human rights standards.[62] The 2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement[63] of the UN Special Rapporteur on adequate housing further elaborate on states' obligations before, during and after an eviction and provide useful guidance.

35. At the CoE level, while the ECHR does not include a general right to housing, the ECtHR has referred to Article 8 which protects the right of individuals to respect for their private life, family life and home as well as to Article 1 of Protocol No. 1 to the ECHR which guarantees the right to property. In particular, the ECtHR has recognised that the protection of Article 8 of the ECHR shall apply independently from the question of the lawfulness of the occupation under domestic law.[64] Moreover, it has highlighted the obligation to secure shelter for particularly vulnerable individuals in exceptional cases,[65] and paid special attention to the underprivileged status of certain groups when considering how to deal with unlawful settlements and, where removal of occupants was considered necessary, when deciding on timing, modalities and, if possible, arrangements for alternative shelter.[66] The Court also held that the loss of one's home constitutes a most extreme form of interference with the right to respect for the home, whether or not the person concerned belonged to a vulnerable group and whether or not the occupation was lawful under domestic law.[67] The domestic courts should assess the necessity of the eviction by looking at the personal circumstances of the occupant, considering possible alternatives and ensuring that the eviction will not result in the homelessness of the occupant.[68] In addition, Article 16 of the European Social Charter, on the right of the family to social, legal and economic protection has been interpreted as including an obligation to promote and provide housing, extending also to security from unlawful eviction, and focusing on the needs of families and the adequacy of housing.[69]

36. Hence, when considering evictions, a number of considerations should be taken into account, including but not limited to: the question of how long a person has been staying/residing at a location and how long this has been tolerated by the local authorities,[70] an individual's situation as belonging to a potentially socially disadvantaged group,[71] the presence of children, the repercussions on the applicants'

[60] See General Comment No. 4 on the right to adequate housing, United Nations, CESCR Committee 13 December 1991, para. 8, with "security of tenure" being qualified as a degree of tenure security that guarantees legal protection against forced evictions, harassment and other threats.

[61] See General Comment No. 7 on forced evictions, United Nations, CESCR Committee, 1997, para. 4.

[62] See General Comment No. 4 on the right to adequate housing, United Nations, CESCR Committee, 13 December 1991, para. 18. See also of the General Comment No. 7 on forced evictions, United Nations, CESCR Committee, 1997, paras. 1 and 4.

[63] Annex I to the 2007 Report of the UN Special Rapporteur on adequate housing on "Basic Principles and Guidelines on Development-Based Evictions and Displacement", A/HRC/4/18, 5 February 2007,

[64] See ECtHR, *McCann v. the United Kingdom*, no. 19009/04, 13 May 2008, para. 46.

[65] See ECtHR, *Yordanova and others v. Bulgaria,* no. 25446/06, 24 April 2012, para. 130.

[66] *Ibid.* para. 133.

[67] *Ibid.* para. 118.

[68] See e.g., ECtHR, *Ahmadova v. Azerbaijan*, no. 9437/12, 18 November 2021; see also *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, 21 April 2016, paras. 49-62.

[69] See also e.g., European Committee of Social Rights, *European Roma Rights Center v. Greece,* complaint No 15/2003, decision of 8 December 2004, para. 24.

[70] See e.g., ECtHR, *Yordanova and others v. Bulgaria,* no. 25446/06, 24 April 2012, para. 113. See also ECtHR, *Winterstein et Autres c. France* (only available in French), no. 27013/07, 17 October 2013, para. 152.

[71] See e.g., ECtHR, *Yordanova and others v. Bulgaria,* no. 25446/06, 24 April 2012, para. 129.

lifestyle and social and family ties,[72] whether the eviction will render the person/family homeless, the impact on the rights of others (particularly the property rights of private individuals or legal entities), the public interest at stake, and/or the existence of alternative options.[73] Legislation should ensure that certain measures are in place to protect property against destruction and illegal appropriation, occupation or use, in case the evicted occupants should be obliged to leave behind any property or possessions in the course of eviction procedures.[74]

37. Article 8 of the Bill fails to provide due process guarantees, especially since a potential eviction appears possible without a court's prior order, and fails to take into account the personal circumstances of the occupant and possible repercussions on social and family ties, including potential homelessness. The new provision also runs the risk to overlap with the existing Articles 614 (Home trespassing) and 633 (Trespassing on lands or buildings) that potentially criminalize some instances of relatively similar criminal conduct, which may trigger legal uncertainty and confusion as to the applicable norms. Some of the constitutive elements of the offence, especially when referring to cases of participation in the offence appear rather broad or unclear.

38. The proposed new provision, contemplating imprisonment of two to seven years may also have a chilling effect on those seeking to peacefully occupy certain public or private properties as a sign of peaceful protest or even civil disobedience. It is important to underline that the right to freedom of peaceful assembly enshrined in Article 21 of the ICCPR and Article 11 of the ECHR protects a broad range of gathering and assemblies, including "occupy"-style manifestations.[75] Moreover, as underlined in the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, there are times when the manner in which an assembly is conducted intentionally violates the law – for instance by trespassing on private properties, in a fashion that organizers and/or participants believe will amplify or otherwise assist in the communication of their message, commonly referred to as "civil disobedience". Those who engage in civil disobedience often strive to do so in a peaceful manner, and State responses, including arrests and penalties, should be proportional to the respective offenses and sanctions shall take the nature of the unlawful conduct into account.[76] In this respect, it is noted that imprisonment could apply under the proposed provision even if there are no injuries to persons or damage to property, which seems disproportionate.

39. It is also noted that the new criminal offence envisages a minimum penalty of two (up to seven) years imprisonment, which may potentially have a chilling effect on the exercise of the right to peaceful assembly as described above. More generally, the practice of providing for relatively high *minimum* penalties has generally been criticized at the international level as they may lead to the imposition of disproportionately higher

[72] See ECtHR, *Chapman v. United Kingdom* [GC], no. 27238/95, 18 January 2001, para. 73.
[73] *Ibid.* paras. 103-104. See also Opinion on Certain Provisions of the Draft Act on Land-Use Planning and Construction of the Slovak Republic, OSCE/ODIHR, 2014, para. 77.
[74] Annex I to the 2007 Report of the UN Special Rapporteur on adequate housing on "Basic Principles and Guidelines on Development-Based Evictions and Displacement", A/HRC/4/18, 5 February 2007, para. 50. For instance, in the case of evacuation of the occupant from a substandard dwelling, Articles L. 542-1 and 542-2 of the French Construction and Housing Code provide that the public authorities shall list the left-behind possessions which shall then be stored at an appropriate place designated by the public authorities during one year, after which - if they have not been collected by the evacuated persons - they should be sold by public bidding.
[75] Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, United Nations, UN Human Rights Council, A/HRC/31/66, 4 February 2016, para.10.
[76] See Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission3rd edition, 2019, paras. 11 and 228.

sentences and may detract from the discretionary powers which judges require to award sentences tailored to each individual case.[77]

40. It is also questionable whether such behaviour should be criminalized at all in light of existing criminal law provisions on trespassing, other civil law mechanisms and housing policies that may be used. It should be recalled that the legitimacy of criminal law depends on it being used sparingly, *ultima ratio,* as reflected in international law and practice. This was expressed, for example, in the EU approach to Criminal Law which states: "*whereas in view of its being able by its very nature to restrict certain human rights and fundamental freedoms of suspected, accused or convicted persons, in addition to the possible stigmatising effect of criminal investigations, and taking into account that excessive use of criminal legislation leads to a decline in efficiency, criminal law must be applied as a measure of last resort (ultima ratio) addressing clearly defined and delimited conduct, which cannot be addressed effectively by less severe measures and which causes significant damage to society or individuals…"*[78]

41. In light of the foregoing, **the legal drafters should reconsider entirely the introduction of the new criminal offence and related amendments to the CPC.** If retained, the provisions should be substantially revised to be more strictly circumscribed and the penalties lowered, ensure that any eviction should be carried out only upon a court order, after a procedure offering all guarantees of due process, also taking into account all relevant personal circumstances of the occupant and fully complying with the above-mentioned international human rights standards and recommendations.

RECOMMENDATION C.

To reconsider entirely the introduction of the new criminal offence of arbitrary occupation of property and related procedure potentially leading to the eviction of the occupant, or at minimum, more strictly circumscribe them while ensuring that any eviction should be carried out only upon a court order, after a procedure offering all guarantees of due process, also taking into account all relevant personal circumstances of the occupant and fully complying with international human rights standards and recommendations.

4. Prohibition of Access to Areas of Transport Infrastructure (Article 10)

42. Article 10 of the Bill, amending Decree-Law No. 14, seeks to introduce new forms of preventive administrative measures.[79] It would grant the police commissioner the authority to restrict access to public transportation infrastructure and related facilities for individuals who have been reported or convicted – during the previous five years – of

[77] See e.g., Law and Justice – the Case for Parliamentary Scrutiny, Inter-Parliamentary Union (IPU), 2006, pp. 20 and 88; Mission to South Africa: Report of the Special Rapporteur on the independence of judges and lawyers UN Special Rapporteur on the independence of judges and lawyers, 25 January 2001, E/CN.4/2001/65/Add.2, page 4; and Mandatory Sentencing Discussion Paper the Law Council of Australia, May 2014.

[78] Resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)), European Parliament, P7_TA(2012)0208, Point I, cited in, Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework, OSCE/ODIHR, 2018, p. 39.

[79] Preventive administrative measures have been introduced in 2017 by Decree-Law No. 14, 'Urgent provisions on city security', converted into Law No. 48 of 18 April 2017, subsequently amended by Decree-Laws no.113/2018; no.53/2019; no.120/2020; no.123/2023, aimed at extending the personal and material scope of the preventive measures, the latest specifically targeting minors and expanding the possibility of pre-trial detention. Article 10(5) of Decree-Law No. 14/2017 also provides that: "In cases of conviction for offences against the person or property committed in the places or areas referred to in Article 9, the granting of a suspended sentence may be made conditional on compliance with a prohibition, imposed by the judge, on access to specifically identified places or areas".

specific minor offenses against persons or property (such as begging, drunkenness, indecency and prostitution). There is no reference to judicial supervision. Additionally, the suspension of sentences for these offenses is contingent upon the imposition by the court of a prohibition of access to the said areas.

43. The Explanatory Note argues that the police commissioner's power would mirror the mayor's power to ban persons repeating these offences from the areas specified for up to 12 months. It suggests that this "*would have the merit of enabling the police to intervene immediately to 'expel' from the aforementioned areas the persons targeted by the ban, thus performing the function of preventing possible crimes that they might commit there*".

44. First, it is not clear from the current wording of Article 10 of the Bill whether the maximum 12 months' time-limit of a ban imposed by a mayor would also apply to the police commissioner's new prerogatives. An indefinite duration of power would not be considered proportionate, especially considering the minor nature of the offenses targeted for the purpose of crime prevention.

45. The prohibition interferes with the right to freedom of movement within the territory of the State, as protected by Article 12 of the ICCPR and Article 2(1) of Protocol No. 4 to the ECHR. Restrictions to this right must pursue one of the legitimate aims mentioned in international instruments,[80] be prescribed by law, be necessary in a democratic society for the protection of these purposes, while being consistent with other rights recognized in international instruments.[81] Of note, Article 2(3) of Protocol No. 4 to the ECHR specifically refers to the prevention of crime as one of the legitimate aims.

46. In one prominent case, the ECtHR upheld a restriction imposed by a mayor to prohibit a person from entering certain parts of a town to prevent the public use of hard drugs.[82] However, this decision was contingent upon various factors, including the limited duration of the restriction (14 days), the absence of the affected individual's residence or workplace in the restricted area, and some exceptions to the prohibition for accessing essential services such as social security benefits, mail services and justice-related services.

47. In contrast, Article 10 of the Bill does not seek to circumscribe the scope of the restriction. The absence of clear conditions and safeguards exacerbates concerns over the proportionality of the restriction. Notably, the prohibition from accessing certain areas, coupled with the ensuing inability to utilize public transport, raises doubts regarding the necessity and proportionality of such measures. In these circumstances, the proposed amendment would grant the police commissioner the power to impose measures that are inconsistent with the freedom of movement. Further, the effect of completely barring persons subject to the restriction from using public transport could also entail an unjustified restriction on the right to respect the private and family life of those affected by it protected by Article 17 of the ICCPR and Article 8 of the ECHR.

48. Conditioning the suspension of sentence to the imposition by the court of a ban from specific areas will considerably limit judge's discretion to tailor the criminal sentence and/or its suspension on a case-by-case basis based on the individual circumstances and

[80] Article 12 (3) of the ICCPR refers to the protection of national security, public order (ordre public), public health or morals and the rights and freedoms of others; Article 2 (3) of Protocol No. 4 to the ECHR refers to "*national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*".

[81] See also General Comment No. 27, "the Right to Freedom of Movement", United Nations, UN Human Rights Committee 1999, paras. 11-17.

[82] See, for example, ECtHR *Landvreugd v. Netherlands*, no. 37331/97, 4 June 2002. Such a restriction was similarly held in ECtHR, *Oliveira v. Netherlands*, no. 33129/96, 4 June 2002.

actual and potential social dangerousness of the person involved. This constitutes an encroachment on the independence of judges to decide their cases. Similar comments apply when considering that if the ban is not respected, the judge must revoke the suspended sentence. More generally, even if imposed by a judicial decision rather than an administrative one, the resulting restriction's scope would still be substantial, hence being inconsistent with the right to freedom of movement.

49. **In light of the above, it is recommended to reconsider Article 10 entirely, or at a minimum to considerably limit its temporal scope while providing exceptions, for instance to ensure access to essential services and the possibility, if relevant, to access residential premises and to commute to work and other activities.**

RECOMMENDATION D.

To reconsider Article 10 entirely or at least considerably limit the temporal scope of the contemplated police commissioner's powers while providing exceptions to access restriction to certain specified areas, at least to ensure access to essential services and the possibility, if relevant, to access residential premises and to commute to work and other activities.

5. OFFENCES OF OBSTRUCTING TRAFFIC (ARTICLE 11)

50. Article 11 of the Bill introduces amendments to the Legislative Decree No. 66, which addresses the regulations on road. Notably, it revises Article 1 of the Legislative Decree, which currently pertains to the administrative penalty imposed on individuals obstructing *with their bodies* the free flow of traffic on regular roads. Under the proposed changes, this administrative offense is increased to a criminal offense, encompassing instances of obstructing railway roads. Additionally, it introduces an aggravating factor for cases involving multiple offenders, potentially resulting in imprisonment from six months to up to two years. The Explanatory Note argues that the provision aims to deter such conduct by increasing the severity of punishment and making such offenses criminal instead of administrative offences.

51. The existing provision already imposes an administrative sanction for disruption of the traffic and impediments to the free movement of citizens. Similarly, existing police powers should in principle be sufficient to deal with potential road blocks.

52. Given the importance of freedom of peaceful assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space, such as pedestrian and vehicular movement or economic activity.[83] A certain level of disruption to ordinary life caused by assemblies, including temporary disruption of traffic, should be accommodated and tolerated, unless they impose unnecessary and disproportionate burdens on others or create significant and

[83] See e.g., Guidelines on the Right to Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, 3rd edition, 2019, para. 62; see also, General Comment no. 37, "the right of peaceful assembly", united Nations, Human Rights Committee , para. 7; ECtHR, *Patyi and Others v. Hungary*, no. 5529/05, 7 October 2008, where the ECtHR rejected the Hungarian government's arguments regarding potential disruption to traffic and public transport; *Körtvélyessy v. Hungary*, no. 7871/10, 5 April 2016, para. 29, where the ECtHR concluded "*the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all.*"

imminent danger to public safety by hindering access to emergency health care services.[84] Where demonstrators do not engage in acts of violence, public authorities must show a certain degree of tolerance towards peaceful gatherings if the right is not to be deprived of all substance. In practice, some assemblies may be a mixture of various categories of gatherings and would make it difficult to decide how each should be categorized and by whom. This may potentially lead to a discriminatory application of the law by the public authorities in charge of its interpretation and implementation.

53. The ECtHR has made clear that the manner of an assembly, in itself, may constitute a form of political expression and has held that peaceful assemblies can constitute expressions of opinion within the meaning of Article 10 of the ECHR.[85] The organizers of an assembly should be able to decide upon, without undue state interference, the modalities that will help them maximize the reach of the event and effectively communicate their message.[86] A number of ECtHR rulings also suggests the importance of considering the circumstances as well as the impact of protest actions on road passage/traffic.[87] In one case, the ECtHR considered the custodial sentences disproportionate particularly when the domestic courts failed to assess whether that blocking of the road had been intentional or the result of contextual factors such as the size of the protest or the legality of police demands.[88] Similarly, in another case, the ECtHR concluded that no urgent social necessity was demonstrated for dispersing a road picket based on unverified claims of obstruction and endangerment to pedestrians and road users.[89] These rulings underline the importance of taking into account the circumstances and impact of particular protest action that may potentially obstruct traffic on the roads.

54. Moreover, it must be underlined that any penalties imposed due to the holding of an assembly must be necessary and proportionate.[90] Penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies.[91] In addition, penalties for acts of 'civil disobedience', i.e., non-violent actions that, while in violation of the law, are undertaken peacefully for the purpose of amplifying or otherwise assisting in the communication of a message, should similarly always be proportionate.[92] The ECtHR has also made clear that *"[w]here the sanctions imposed on the demonstrators are criminal in nature, they require particular*

[84] See, Guidelines on the Right to Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, 3rd edition, 2019, paras. 138 and 143. See also Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia, OSCE/ODIHR, 2023, para.39, and Urgent Opinion on the Law on Assemblies of the Republic of Moldova, OSCE/ODIHR. 2023, para. 34. See also ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 155, which underlines that the mere disruption of traffic in itself does not justify an interference with the right to freedom of assembly.

[85] The ECtHR has held that: "[t]he protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 [of the ECHR]", ECtHR, *Ezelin v. France*, no. 11800/85, 26 April 1991, para. 37.

[86] See Guidelines on the Right to Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, 3rd edition, 2019, para. 58. See also ECtHR, *Women on Waves v. Portugal* (2009), no. 31276/05, 3 February 2009, para. 38.

[87] See e.g., ECtHR, *Chumak v, Ukraine*, no. 44529/09, 6 March 2018, where no pressing social need was considered to exist for the dispersal of a picket on a road based on nsubstantiated conclusions that the protesters concerned had "obstructed the passage of pedestrians" and "endangered road users", with no estimate being made of the number of protesters or the size of the area they had allegedly blocked; more recently, custodial sentences were considered disproportionate in ECtHR, *Makarashvili and Others v. Georgia*, no. 23158/20, 1 September 2022, where no assessment was made by the courts of whether that blocking of a road had been intentional or a result of circumstances on the ground, such as the number of demonstrators and the related question of the "lawfulness" of the police demands, whereas one was not disproportionate in the case of demonstrators who had blocked the road during police attempts to reopen access to the Parliament building.

[88] See, for example, ECtHR, *Makarashvili and Others v. Georgia*, no. 23158/20, 1 September 2022,

[89] See, for example, ECtHR *Chumak v, Ukraine*, no. 44529/09, 6 March 2018.

[90] See Guidelines on the Right to Freedom of Peaceful Assembly, OSCE/ODIHR-Venice Commission, 3rd edition, 2019, para. 222.

[91] *Ibid.*

[92] *Ibid.* para. 228.

justification" and that a "*peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction […] and notably to deprivation of liberty*", underlining that it will examine with particular scrutiny all cases where sanctions imposed by national authorities for non-violent conduct involve a prison sentence.[93] An interference with an assembly leading to the arrest and detention of participants can only be justified on specific and stated substantive grounds, such as serious risks provided for by law and only after the participants have been given sufficient opportunity to manifest their views.[94] An assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic or occupying-style movements, may be dispersed, as a rule, only if the disruption is "serious and sustained".[95]

55. The proposed amendments would introduce the possibility of imposing from six months to two years of imprisonment without a requirement of intent to cause property or personal damages, in sum equating strict liability for simply taking part in a peaceful assembly, even though obstructing road traffic. Such sanctions *prima facie* appear disproportionate thereby constituting a potential violation of Article 21 of the ICCPR and Article 11 of the ECHR. Article 11 of the Bill also provides the possibility to potentially treat assemblies differently, depending on where they take place. It may also potentially have an indirect discriminatory impact since in practice, these types of assemblies or peaceful civil disobedience are more likely to be used by individuals or groups seeking to express political dissent or opposition of any kind, for instance peaceful environmental activists' protests, who may be more inclined to use such means to convey their message.[96]

56. In light of the foregoing, **increasing the severity of punishment appears to be disproportionate and may in addition have a chilling effect on the exercise of the right to freedom peaceful assembly, and should be reconsidered entirely**.

RECOMMENDATION E.

To reconsider the increase of the sanctions and criminalization of behaviour that are peaceful in nature though causing some disruption or obstruction of road traffic, ensuring that no penalty of imprisonment is provided for in such cases.

6. Conditions of Detention

6.1. Detention of Women Prisoners (Article 12)

57. Article 12 of the Bill amends Articles 146 and 147 of the Criminal Code which pertains to the deferral of the execution of a sentence of imprisonment of pregnant women or those with children under one year old. Specifically, deferral of a sentence involving a restriction of liberty for the women would become optional, as is currently the case for a

[93] See e.g., ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 146; and ECtHR, *Peradze and Others v. Georgia*, no. 5631/16, 15 December 2022, para. 35.

[94] See ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018. UN Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 39.

[95] See, General comment No. 37, "the right of peaceful assembly", United Nations, Human Rights Committee, 17 September 2020, para. 85.

[96] See e.g., Position Paper on State repression of environmental protest and civil disobedience: a major threat to human rights and democracy, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, February 2024.

mother of child older than one year and younger than three years old. A new paragraph is also added to Article 147 of the Criminal Code, which provides that there would no longer be a requirement to defer the execution of a sentence of imprisonment in the case of pregnant women and mothers of children up to one year old where this would result "*in a situation of danger, of exceptional relevance, of the commission of further crimes*". In such cases, the execution would then take place at a low-security institution for mother prisoners.

58. Article 3 of the UN Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions concerning children undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.[97] Furthermore, the *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules) set out a number of rules to accommodate the needs of women prisoners. This includes *inter alia* Rule 5 regarding the accommodation and personal hygiene of women prisoners, Rule 6 on medical screening on entry, Rule 10(1) on gender-specific healthcare, Rule 22 on discipline and punishment, Rule 34(3) on giving birth outside of a prison and Rule 41 on gender-sensitive risk assessment and classification of prisoners.[98] In addition, Rule 64 provides that "*non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered* ***when the offence is serious or violent or the woman represents a continuing danger****,* *and* ***after taking into account the best interests of the child or children****, while ensuring that appropriate provision has been made for the care of such children*". However, the proposed amendment would not make the deferral of a sentence dependent upon the nature of the offence (i.e., whether it is serious or violent) but only upon the danger of further crimes, whatever their nature, being committed. Furthermore, the CPT's statement about the same matter is also relevant, which notes that "*it is axiomatic that babies should not be born in prison, and the usual practice in Council of Europe member States seems to be, at an appropriate moment, to transfer pregnant women prisoners to outside hospitals*."[99] In line with the Bangkok Rules, the CPT also recommends that every effort should be made to meet the specific security needs of pregnant women prisoners, as certain treatment "*could certainly be qualified as inhuman and degrading treatment*".[100]

59. Moreover, given the enhanced risk of stillbirths and health risks for pregnant women who are imprisoned, it should be recalled that the positive obligations arising from the right to life and the prohibition of ill-treatment under Articles 6 and 7 of the ICCPR and Articles 2 and 3 of the ECHR could be engaged where no adequate assessment is made regarding the appropriateness of imprisonment for particular pregnant women given their medical condition[101] or where appropriate provision is not made to monitor their condition or to provide the medical care required.[102]

60. Although these considerations do not mean that the imprisonment of pregnant women is necessarily incompatible with international and regional human rights standards, the proposed Article does not specify the circumstances and factors to be taken into account

[97] See Convention on the Right of the Child, United Nations, General Assembly, resolution 44/25, adopted 20 November 1989, art. 3.1.
[98] See Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("the Bangkok Rules"), United Nations, General Assembly, 21 September 2010.
[99] See 10th General Report on the CPT's activities covering the period 1 January to 31 December 1999, Council of Europe, CPT, 18 August 2000, para. 27.
[100] *Ibid.,* para. 27 and 31.
[101] See ECtHR, *Wedler v, Poland*, no. 44115/08, 16 January 2007.
[102] See, as regards prisoners generally, ECtHR, *Magnitskiy and Others v. Russia*, no. 32631/09, 27 August 2019.

to determine whether to suspend the execution of a sentence of imprisonment or not. **It would, therefore, be recommended to specify these considerations, including the best interests of the child, women's medical condition, health risks and the ability of the detention facility to monitor their condition or to provide the medical care required, as a qualification on the possibility of not deferring the execution of the sentences of imprisonment imposed on pregnant women**. It is noted that **should the detention of pregnant women and those with children under one year old be retained, a number of specific rules and safeguards should apply to them and should be reflected in relevant regulatory texts and other guidance.** These include for instance Rule 22 of the Bangkok Rules, which specifies that *"[p]unishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison"* or Rule 48 which provides more guidance on the medical and nutritional needs of pregnant women, breastfeeding mothers and mothers with children in prison, or that pregnant women and girls should never be subjected to vaginal searches.[103]

RECOMMENDATION F.

To reconsider entirely the suppression of the mandatory deferral of the execution of a sentence of imprisonment for pregnant women or those with children under one year old, or at minimum, specify the considerations, beyond the seriousness or violent nature of the offence, to be taken into account, including the best interests of the child, women's medical condition, health risks and the ability of the detention facility to monitor their condition or to provide the medical care required, to determine whether or not to defer the execution of the prison sentence.

6.2. Aggravating Factors for Riots within Penitentiary Institutions and Detention and Reception Facilities for Migrants (Article 18)

61. Article 18 of the Bill proposes two main amendments to Article 415 of the Criminal Code. The Bill (a) adds an aggravating factor to the existing offense of inciting disobedience to laws in the Criminal Code, and (b) introduces a new provision (Article 415-bis) concerning riots within penitentiary institutions. It is stipulated that anyone who, inside a penitentiary institution, promotes, organizes, or directs a riot by means of acts of violence or threat, by resisting even passively the execution of orders given, or by attempting to escape, committed in three or more persons united, shall be punished by imprisonment from two to eight years. Mere participation in the riot is also punished with imprisonment from one to five years. Also classified as aggravating circumstances is the utilization of weapons during the commission of the act, which warrants imprisonment ranging from three to ten years. Furthermore, instances of bodily injury lead to an aggravated penalty as do injuries or fatalities that occur directly after the riot as a consequence thereof, while death results in imprisonment for ten to twenty years.

62. Similarly, Article 19 of the Bill, amending Article 14 of the Consolidated Text of Legislative Decree No. 286, introduces the same offense by holding migrants liable for

[103] Guidance Document on the Nelson Mandela Rules: Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners, OSCE/ODIHR and Penal Reform international, 2018, p. 63.

promoting, organizing, or directing a riot in detention and reception facilities for migrants, using passive resistance as a basis for prosecution. Specifically, the Bill prescribes imprisonment ranging from one to four years for participation in the riot. In cases involving the use of weapons, the penalty is increased to imprisonment for two to eight years. Additionally, the proposal mandates imprisonment for ten to twenty years if the riot results in death or serious bodily harm, including situations where such harm occurs immediately after the riot as a direct consequence thereof.

63. At the outset, it is noted that attempted escape is already punished by Article 385 of the Criminal Code, as is active resistance. The aggravating factor of incitement to disobedience to laws, either within a penitentiary institution or through writings or communications sent to detainees, warrants scrutiny. While considering certain conducts potentially involving incitement to commit prohibited acts, one should consider the broader context of the statement, the author's intent, the public interest, and any relevant factors, such as the potential justification for using provocative or exaggerated language and the likelihood that the statement actually triggered the violation. Failure to undertake this nuanced approach, as established by the ECtHR, risks violating the right to freedom of expression as protected under Article 19 of the ICCPR and Article 10 of the ECHR.[104]

64. In addition, the concern with the proposed new provisions centres on its treatment of "passive resistance", which seems to equate such resistance with actions of promoting, organizing, or directing a riot. As provided by the Joint ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, the term "peaceful" should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote, and even include conduct that temporarily hinders, impedes or obstructs the activities of third parties. Thus, assemblies involving purely passive resistance should be characterized as peaceful. Furthermore, in the course of an assembly, "*an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour*."[105] It is also worth recalling Rule 5 of the Nelson Mandela Rules, which provides that *"[t]he prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings."*[106] Moreover, *"[p]risoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges*" (Rule 41).

65. Furthermore, equating passive resistance with activity – namely, promoting, organizing or directing a riot – which would undoubtedly seem to require a specific intent to bring about that result is, similarly to the approach discussed above, akin to turning such resistance into an offence of strict liability. This would be a disproportionate response, especially where that resistance is a way of expressing disagreement with actions within the penitentiary institution.[107] Furthermore, given the formulation of the proposed amendment, it appears that prisoners engaging in passive resistance lack the opportunity to demonstrate their absence of intent to incite or promote a riot. This creates an

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[104] See e.g., ECtHR, *Tagiyev and Huseynov v. Azerbaijan*, no. 13274/08, 5 December 2019; and *Şener v. Turkey*, no. 26680/95, 18 July 2000.

[105] See Joint Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, 3rd edition, 2019, para 27. See also ECtHR, *Mrozowski v. Poland*, no. 9258/04, 12 May 2009, para. 37; *Habimi and Others v. Serbia*, no. 19072/08, 3 June 2014, para. 50 and *Skorupa v. Poland*, no. 44153/15, 16 June 2022, para. 137.

[106] See also Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly resolution 43/173.

[107] See ECtHR, *Yüksel Yalçınkaya v. Türkiye*, no. 15669/20, 26 September 2023.

irrebuttable presumption of their intent in this regard, which would be contrary to the fundamental principle of the presumption of innocence.[108] This can also serve as a tool for coercion, leveraging the threat of blackmail to enforce compliance and suppress any inclination towards dissent, protest, or defiance of prison regulations. Its implementation poses a grave risk of eroding the autonomy and dignity of prisoners, depriving them of any semblance of independent and accountable existence.

66. Lastly, foreign detainees are significantly more vulnerable to the implications of new provisions due to language and cultural considerations. Language barriers often impede effective communication between detainees and authorities, hindering their ability to understand their rights, navigate legal processes, or express concerns adequately, which could be interpreted as passive resistance. Moreover, cultural differences can exacerbate differences and potential vulnerability. Sensitivity to cultural nuances is crucial in ensuring fair treatment and access to justice for all detainees, regardless of their nationality, migration status or ethnic origin or background.[109] Failure to address these issues can lead to misunderstandings, marginalization, and further isolation of foreign detainees within the legal system. Therefore, it is imperative for authorities to implement measures that accommodate diverse linguistic and cultural needs, fostering a more equitable and just environment for all individuals in detention. In light of the above, **it is recommended to reconsider entirely this new provision, or at minimum, omit the reference to "passive resistance" from the proposed new Article 415-bis in the Criminal Code.**

7. Violence against the Police or Public Security Services (Article 14)

67. Article 14 of the Bill proposes amendments to Articles 336 and 337 of the Criminal Code addressing violence and threat against public officials. More specifically, an aggravating circumstance is introduced for those cases in which the conduct provided for in Article 336 (*Violence or threat to a public official*) and to Article 337 (*Resistance to a public official*) of the Criminal Code is carried out specifically against the police or law enforcement officers and agents. In such cases an increased penalty of one-third is provided. In both cases, the proposed amendments specify that mitigating circumstances, except for the one provided by Article 98 of the Criminal Code (i.e., for children between the ages of 14 and 18) shall not prevail over the aggravating circumstances.

68. Similar changes are made in Article 15 of the Bill, which amends Article 583 of the Criminal Code (judicial or public security police officer or agent). It provides that when a personal injury is "*caused to a judicial or public security police officer or agent in the act or due to the performance of their duties, a term of imprisonment of two to five years shall apply. In the case of severe or very severe injuries, the penalty shall be, respectively, imprisonment for a term of four to ten years and eight to sixteen years*."

69. According to the Explanatory Note, these amendments are aimed at strengthening the protection of public security or judicial police officers or agents, as well as public officials. Thus, the aggravating factor is being introduced specifically for those officials who may be using force as part of law enforcement activities, i.e., in the course of arrests and the policing of demonstrations. This is precisely the situation where the use of force

[108] See ECtHR, *G.I.E.M. S.R.L. and Others v. Italy* [GC], no. 1828/06, 28 June 2018, para. 243.

[109] See CoE Committee of Ministers Recommendation no. 12 concerning foreign prisoners, Council of Europe, 10 October 2012, which provides that "Persons who work with foreign prisoners shall be selected on criteria that include cultural sensitivity, interaction skills and linguistic abilities", para 38.

can give rise to violations of the right to life, and the prohibition of torture, or cruel, inhuman or degrading treatment or punishment protected under Articles 6 and 7 of the ICCPR and 2 and 3 of the ECHR on account of its excessive or otherwise unjustified nature.[110] This approach seems to go against the idea of having the police as the protector of the individual's fundamental rights and freedoms – particularly life – and as a service provider to the public. It also goes against the shift "from a control-oriented approach to a more service-oriented approach" characteristic of democratic and proximity policing.[111]

70. While unjustified use of force against public officials is entirely unacceptable and may warrant substantial penalties, the proposed amendments will considerably limit a judge's discretion to tailor the criminal sentence and/or its suspension on a case-by-case basis based on the individual circumstances. For instance, the judge will be limited in its consideration of mitigating circumstances provided in the Criminal Code, such as the one provided by Article 97 of the Criminal Code for children below the age of 14 or other cases of lack of criminal responsibility listed in Articles 88 to 97, or other general mitigating circumstances listed in Article 62, or force majeure (Article 45), error of fact (Article 47) or legitimate defense (Article 52). There is no clear justification for such limitation that *de facto* puts the police and other law enforcement officers in a much more favourable position procedurally when acts of violence or resistance are committed against them, and would in practice lead to harsher penalties being applied, which may potentially damage public confidence in the police.[112]

71. As also provided by the Venice Commission's Rule of Law Checklist, *"[t]he Rule of Law requires the universal subjection of all to the law. It implies that law should be equally applied, and consistently implemented. Equality is however not merely a formal criterion, but should result in substantively equal treatment. To reach that end, differentiations may have to be tolerated and may even be required*."[113]

72. When deciding on a penalty, all the mitigating circumstances should be taken into consideration, which are factors that work in the defendant's favor, as well as aggravating circumstances, which support a harsher penalty. Presently, the Bill lacks a mechanism for balancing the circumstances of the crime. This absence, coupled with the privileged status of aggravating factors, could unduly influence the final sentence. **It is recommended to remove the provision stating that mitigating circumstances cannot outweigh the aggravated circumstance.**

8. Provisions on Carrying and Possession of Weapons (Article 20)

73. Article 20 of the Bill proposes expanding the authorization for public security officers to carry weapons other than a service weapon, outside their official duties. The Explanatory Note argues that public safety officers, who can carry, without a license, only their service weapons, have often highlighted the need to be able to purchase, possess and carry, without a license, a private weapon in lieu of their service weapon when operating in plain clothes or off duty.

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[110] See ECtHR, *Solomou and Others v. Turkey*, no. 36832/97, 24 June 2008 and ECtHR *Laguna Guzman v. Spain*, no. 41462/17, 6 October 2020.

[111] See OSCE Guidebook on Democratic Policing (2008), para. 2.

[112] See the European Code of Police Ethics, Council of Europe, 19 September 2001. See also Recommendation Rec (2001)10 of the Committee of Ministers of Council of Europe to member states on the European Code of Police Ethics, Council of Europe, 19 September 2001, para.31.

[113] Rule of Law Checklist, Venice Commission, 18 March 2016, para. 73.

74. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) emphasize the imperative of restricting the use of force and firearms by law enforcement.[114] The rationale behind this imperative is straightforward: the deployment of firearms inherently elevates the risk of unnecessary lethal violence, not only for those directly involved in law enforcement operations but also for bystanders (para. 3). Consequently, the use of firearms should be considered as a last resort, employed only when all other means of safeguarding human life are exhausted (para. 4). It is incumbent upon police regulations governing the possession and deployment of firearms to adhere to these guiding principles (para. 11).

75. While officers already possess the authority to carry their service weapon off duty, the proposed amendment seeks to expand this privilege to include a broader array of firearms, ranging from revolvers to pistols of any size, in accordance with Article 42 of the Police Law. This expansion raises concerns regarding the potential escalation of lethal force without clear justification. Notably, the purpose for which a police officer may carry a weapon outside of duty, as outlined in Article 73 of Royal Decree No. 635 of 1940 and affirmed by the Council of State in its ruling 1405/2022, aligns with that of any ordinary citizen: self-defence. However, the Bill appears to introduce a broader mandate aimed at generalized police surveillance in civilian attire for the purpose of crime prevention and suppression. This expansion exposes both civilians and law enforcement personnel to increased risks of lethal violence.

76. Article 20 of the Bill also implicates the right to life as delineated in Article 6 of the ICCPR and Article 2 of the ECHR, which impose a positive obligation to establish a legal and administrative framework defining the limited circumstances under which law enforcement officials may utilize firearms. While the proposed Article 20 seeks to provide such a framework, as indicated in its second paragraph, it must be adapted to accommodate the authorization it would confer.[115] **Any legislative measures regarding the circulation of weapons should carefully consider the broader implications for public safety and the fundamental principles of proportionality and restraint in the use of force.**

77. In addition, as the availability of firearms increases, so too does the potential for errors or misuse. The legal drafters should **consider ensuring sufficient regulation and training concerning the circumstances in which weapons are carried while off-duty. Additionally, careful attention must be paid to controlling the selection of weapons (and accompanying ammunition), given the potential risks of excessive force being employed, which would contravene the right to life.**

9. Functions of the Italian Financial Police Carried Out at Sea and Amendments to Articles 1099 and 1100 of the Code of Navigation (Article 21)

78. Existing Law No. 1409 prescribes imprisonment sentences for the captain of a national ship which fails to obey the detention order from, or commits acts of resistance or violence against, a vessel of the Italian Financial Police (*Guardia di Finanza*) conducting maritime surveillance for the purpose of suppressing tobacco smuggling. Article 21 of

[114] See the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, United Nations, OHCHR, 7 September 1990.

[115] This provision provides that within one year of the effective date of this law, the necessary amendments shall be made to Article 73 of the regulations set forth in Royal Decree No. 635 of May 6, 1940, in order to bring the rules contained therein into line with the provisions of this article.

the Bill proposes to expand these prison sentences to apply whenever the Italian Financial Police is performing any of its functions, including preventing and combating illicit trafficking of migrants by sea and illegal migration. Additionally, it proposes amendments to the Code of Navigation to extend the imposition of prison sentences for disobeying the orders of a national warship to captains of *foreign* ships. The Explanatory Note argues that the contemplated expansion would ensure the Italian Financial Police "greater criminal protection against unlawful acts committed against them when engaged in their institutional activities".[116]

79. The UN Convention on the Law of the Sea (UNCLOS) establishes a fundamental duty to render assistance to persons in danger or distress at sea.[117] Under this Convention, "*every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him*". In addition, every coastal State must promote the establishment, operation and maintenance of an effective search and rescue service regarding safety on the sea (Article 98 UNCLOS).

80. Regarding the search and rescue operations of migrants at sea, four key requirements can be identified from relevant international instruments, notably the UNCLOS, the International Convention on Safety of Life at Sea,[118] the EU Directive 2009/16 on Port State Control,[119] and the caselaw of the Court of Justice of the European Union (CJEU). First, state authorities must impose the detention of a ship as a corrective measure only when they have demonstrated that the observed deficiencies pose a clear threat to the safety, health or environment.[120] Second, corrective measures must be provided by law, necessary to rectify the deficiencies that pose a clear threat to safety health or the environment, and proportionate to that end.[121] Third, state authorities can conduct an additional inspection on a ship that rescued persons at sea, to verify whether the rules on safety at sea have been complied with, once such a ship has disembarked those persons in a port and when state authorities can demonstrate that there are serious indications of a danger to health, safety, on-board working conditions or the environment.[122] And fourth, persons who are, as a result of a rescue operation at sea, on board a ship, must not be taken into account when verifying whether the rules on safety at sea have been complied with.[123] In that regard, the CJEU ruled in joined cases C-14/21 and C-15/21 that the number of persons on board a ship, including a ship operated by a humanitarian organization, even if greater than that which is authorized, cannot constitute a ground for an order of detention of the ship nor for control by state authorities.[124]

81. **In light of the foregoing, when carrying its functions, it must be reiterated that the Italian Financial Police, and other state authorities, shall comply with the above-mentioned international standards and safeguards. The proposed new prison**

[116] See Explanatory Note on Bill No. 1660 Amending Provisions on Public Security, protection of Personnel in Service, Victims of Usury and Prison Regulation, p.19.
[117] Convention on the Law of the Sea, United Nations, adopted by the Third United Nations Conference on the Law of the Sea on 10 December 1982, Article 98. Italy ratified this Convention on 13 January 1995.
[118] International Convention for the Safety of Life at Sea, United Nations, adopted by the Conference on Safety of Life at Sea organized by the Inter-Governmental Maritime Consultative Organization on 1 November 1974. Italy acceded to this Convention on 28 August 1980.
[119] Directive 2009/16/EC on Port State Control, European Parliament and Council of the European Parliament, 23 April 2009.
[120] Directive 2009/16/EC on Port State Control, European Parliament and Council of the European Parliament, 23 April 2009, Article 19.2.
[121] Judgement in Joined Cases C-14/21 and C-15/21, Court of Justice of the European Union, 1 August 2022, para. 153.
[122] Judgement in Joined Cases C-14/21 and C-15/21, Court of Justice of the European Union, 1 August 2022, para. 126.
[123] See International Convention for the Safety of Life at Sea, United Nations, adopted by the Conference on Safety of Life at Sea organized by the Inter-Governmental Maritime Consultative Organization on 1 November 1974, art. IV.(b).
[124] Judgement in Joined Cases C-14/21 and C-15/21, Court of Justice of the European Union, 1 August 2022, para. 108.

sanctions applicable to the captain of domestic ships in case of non-compliance with the Italian Financial Police's detention orders or acts of resistance, and expansion of criminal sanctions to captains of foreign ships for disobeying orders of national warships, also risks further unduly impacting the work of humanitarian organizations carrying out search and rescue operations of migrants at sea.

10. Recommendations Related to the Process of Preparing and Adopting the Bill

82. Traditionally, it was common for governments and their security agencies to exclusively or primarily focus on the security of the state. More recently, governments have increasingly widened the scope of their security policy to take all threats into account that could confront all individuals in their country, thus considering the rights and security and justice needs, concerns and expectations of all individuals, women, men, girls, boys and marginalized persons or groups across different parts of the community.[125] The ultimate aim is to provide better, more nuanced and effective responses to these needs.[126] It is key that such security needs be defined in an inclusive, gender-responsive manner,[127] ensuring that communities and individuals participate in articulating their own needs. This is likely to increase the local acceptance of justice and security actors, as well as giving such actors important insights as to how to improve in fulfilling their tasks.[128] The concept of good security sector governance is nowadays understood in a broader manner, using the security needs of humans as a starting point – an approach enshrined in the concept of "*human security*" adopted by *UN General Assembly Resolution 66/290* in 2012 and endorsed by OSCE participating States.

83. Many States have enshrined this principle in their security policies and national laws, requiring their intelligence/security services to fulfil their mandates in a manner that serves the interests of the State and society as a whole.[129] Especially, the *UN Security Council Resolution 1325 "Women, Peace and Security"* (2000) encourages the equal participation and full involvement of women in all efforts for the maintenance of peace and security.[130] OSCE *Decision No. 7/09 on Women's Participation in Political and Public Life* also calls upon OSCE participating States to introduce where necessary open and participatory processes that enhance participation of women and men in all phases of developing legislation, programmes and policies.

84. The Bill was introduced to the Chamber of Deputies on 22 January 2024 and subsequently referred to the Justice Committee on 9 February 2024. It is understood that some public hearings were organized in May 2024 although it is unclear to what extent the comments and feedbacks received on this occasion have been considered by the legal drafters and potentially reflected in the revised Bill, and if not, whether there was a proper feedback mechanism explaining the rationale for not doing so. As underlined in the ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024), when consulting

[125] See e.g., Policy Brief on Security Sector Governance Approach to Women, Peace and Security, DCAF-OSCE/ODIHR-UN Women, 2019; Report on Securing States and Societies: Strengthening the United Nations Comprehensive Support to Security Sector Reform, UN Secretary-General 13 August 2013, A/67/970–S/2013/480, par 61(a); and, Handbook on Security Sector Reform, OECD DAC, 2007.

[126] Gender and Security Toolkit, DCAF – OSCE/ODIHR and UN Women, 2019, page 5.

[127] *Ibid*.

[128] *Ibid*. page 27.

[129] See Compilation of Good Practices on Legal and Institutional Frameworks and Measures that Ensure Respect for Human Rights by Intelligence Agencies while Countering Terrorism, including on their Oversight, UN Special Rapporteur on the protection and promotion of human rights while countering terrorism, as mandated by the UN Human Rights Council, 2010 ("UN SRCT Compilation")

[130] Resolution 1325 "Women, Peace and Security", UN Security Council (2000), par 1. See also Security Sector Governance, Security Sector Reform and Gender, DCAF-OSCE/ODIHR-UN Women Tool, 2019, page 11.

the public, "*the initiating institution should provide meaningful and qualitative feedback in due time on the outcome of every public consultation, including giving clear justifications for including or not including certain proposals*".[131]

85. It is understood that the Chamber of Deputies is expected to discuss the Bill from 27 May 2024 onwards with a view to adopt it rapidly. It is important that sufficient time be allocated for each stage of the law-making process, including for parliamentary consideration, and important legislation that significantly impacts large parts of the population, or the human rights and fundamental freedoms of individuals, such as the one under review should be debated at length.[132]

86. **ODIHR calls upon the public authorities to ensure that the discussion on the Bill and the development of any legislative initiatives in this sphere, and more generally any pivotal changes to fundamental legal acts governing the country, is preceded by an in-depth regulatory impact assessment and is subject to open, inclusive, extensive and effective consultations, including with human rights organizations and the general public, including marginalized groups.**[133] According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before the Parliament. It is also fundamental that the implementation of the Bill once adopted be monitored and its effects/impact evaluated after some time.[134]

[END OF TEXT]

131 Guidelines on Democratic Lawmaking for Better Laws, OSCE/ODIHR, January 2024, Principle 7.
132 Guidelines on Democratic Lawmaking for Better Laws, OSCE/ODIHR, January 2024, para. 26.
133 See the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), OSCE, 29 June 1990, para. 5.8; the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow Document), OSCE, 1991, para.18.1; and Guidelines on Democratic Lawmaking for Better Laws, OSCE/ODIHR, Principle 7. See also Rule of Law Checklist, Venice Commission, 18 March 2016, Part II.A.5.
134 See Guidelines on Democratic Lawmaking for Better Laws, OSCE/ODIHR, January 2024, Principle 5. See also e.g., Better Regulation Practices Across the European Union, OECD, Chapter 4: Ex Post Review of Laws and Regulations Across the European Union.

ANNEX: BILL NO. 1660 CONTAINING PROVISIONS ON "PUBLIC SECURITY, PROTECTION OF PERSONNEL IN SERVICE, VICTIMS OF USURY AND PRISON REGULATIONS"

DRAFT LAW

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CHAPTER I
PROVISIONS FOR PREVENTING AND COMBATING TERRORISM AND ORGANISED CRIME AS WELL AS ON SEIZED AND CONFISCATED ASSETS AND POLICE CONTROLS

Art. 1.

(Introduction of Article 270-quinquies.3 and amendment to Article 435 of the Criminal Code concerning crimes with the aim of terrorism and against public safety)

1. The Criminal Code shall be amended as follows:

a) after Article 270-*quinquies*.2, the following shall be inserted:

« Article 270-*quinquies*.3 (*Holding material for terrorist purposes*) - Anyone who, other than in the cases referred to in Articles 270- bis and 270-*quinquies*, intentionally procures or possesses material containing instructions on the preparation or use of lethal war devices referred to in Article 1, first paragraph, of Law No. 110 of 18 April 1975, of firearms or other weapons or of harmful or dangerous chemical or bacteriological substances, as well as on any other technique or method for carrying out acts of violence or sabotage of essential public services for the purposes of terrorism, even if directed against a foreign country, an international institution or organisation, shall be punished with a term of imprisonment ranging from two to six years»;

b) in Article 435, the following paragraph shall be added at the end:

« Apart from cases of complicity in the offence referred to in the first paragraph, any person who, by any means, including by telematic means, distributes, discloses, disseminates or publicises material containing instructions on the preparation or use of the materials or substances referred to in the same paragraph, or on any other technique or method for the perpetration of any of the offences not covered by this Chapter punishable by a maximum term of imprisonment of at least five years, shall be punished with a term of imprisonment of between six months and four years».

Art. 2.

(Amendments to Article 17 of Decree-Law No. 113 of 4 October 2018, as converted, with amendments, by Law No. 132 of 1 December 2018, concerning the requirements for motor vehicle rental agreements for the purpose of preventing terrorism)

1. In Article 17 of Decree-Law No. 113 of 4 October 2018, as converted, with amendments, by Law No. 132 of 1 December 2018, the following amendments shall be made:

a) in paragraph 1:

1) in the first sentence, after the words:

«prevention of terrorism " the following shall be inserted: " as well as for the prevention of the offences referred to in Article 51, paragraph 3-bis, of the Code of Criminal Procedure »;

2) the following sentence shall be added after the third sentence: "The offender shall be punished with imprisonment of up to three months or a fine of up to Euro 206 ";

b) the heading shall be replaced by the following: 'Provisions concerning motor vehicle rental contracts for the prevention of particularly serious offences".

Art. 3.

(Amendments to Articles 85 and 94 of the Code referred to in Legislative Decree no. 159 of 6 September 2011, No. 159, concerning anti-mafia documentation)

1. The following amendments shall be made to the Code of Anti-Mafia Laws and Prevention Measures, referred to in Decree No. 159 of 6 September 2011:

a) in Article 85, paragraph 2:

1) in the line, the words: "consortia and temporary groupings of undertakings " are replaced by the following: "consortia, temporary groupings of undertakings and network contracts»;

2) the following point is inserted after point (h):

« *h-bis)* in the case of network contracts, to the undertakings which are party to the contract, in the manner indicated in the preceding points, and, where present, to the common body»;

b) in Article 94, the following paragraph shall be inserted after paragraph 1:

« *1-bis.* The restrictions referred to in paragraph 1 shall not apply not only in the cases referred to in Article 67(5), but also in the event that the Prefect, ex officio or at the request of a party, ascertains that the consequence of the aforesaid restrictions would be to deprive the person concerned and his/her family of the means of subsistence. In that case, the provisions of Article 94*bis* shall apply as appropriate.».

Art. 4.

(Amendments to Article 13 of Decree-Law No. 8 of 15 January 1991, as converted, with amendments, by Law No. 82 of 15 March 1991, and Article 5 of Law No. 6 of 11 January 2018, concerning special protection measures for justice collaborators and witnesses)

1. Article 13 of Decree-Law No. 8 of 15 January 1991, as converted, with amendments, into Law No. 82 of 15 March 1991, shall be amended as follows:

a) in paragraph 10, the following sentences shall be added at the end: "For the same purposes as those referred to in the first sentence, the use of the cover document may also be permitted to collaborators and their respective family members who are subject to the precautionary measure of house arrest referred to in Article 284 of the Code of Criminal Procedure or who benefit from home detention pursuant to Article 16-*nonies* of this Decree. Whenever it becomes necessary, within the scope of the tasks entrusted to the Central Protection Service pursuant to Article 14 of the present Decree, to perform particular acts or carry out specific activities of a confidential nature, for the pursuit of the purposes referred to in the first sentence and for the functionality, confidentiality and security of the application of the special protection measures, the aforesaid Central Protection Service is allowed to use cover documents as well as to create tax cover identities, also of a corporate nature. For the use of the documents and the creation of tax identities referred to in the third sentence, the Central Protection Service shall be assisted by the competent authorities and other entities»;

b) Paragraph 11:

1) the following sentence shall be inserted after the first sentence: "The authorisation for the creation of tax cover identities, including those of a corporate nature, referred to in paragraph 10 shall be given by the Chief of Police - Director General of Public Security, with the power to delegate to one of the deputy directors general of the Department of Public Security of the Ministry of the Interior, and shall be directed to the authorities and other competent entities, who may not refuse to arrange the documents, make the registrations and perform any necessary action »;

2) the third sentence shall be replaced by the following: "A confidential register shall be kept at the Central Protection Service, stating the times, procedures and reasons for authorising the issue of the document, and any other documentation relating to the creation of tax cover identities, including those of a corporate nature ».

2. In Article 5(1)(f), of Law No. 6 of 11 January 2018, the following words shall be added at the end: "as well as the creation of tax cover identities, including of a corporate type, necessary to ensure the achievement of the purposes referred to in the introductory paragraph and to ensure the functionality, confidentiality and security of the application of the special protection measures».

Art. 5.

(Amendments to the code referred to in Legislative Decree No. 159 of 6 September 2011 regarding the administration of seized and confiscated assets)

1. The following amendments are made to the Code of Anti-Mafia Laws and Prevention Measures, referred to in Legislative Decree No. 159 of 6 September 2011:

a) in Article 36:

1) the following subparagraph shall be inserted after paragraph 2:

« *2-bis*. In the report referred to in paragraph 1, the judicial administrator shall also illustrate in detail the technical and urban characteristics of the real estate assets, highlighting, in particular, the presence of any abuses as well as the possible uses of the assets in relation to the general urban planning instruments in force, also for the purposes of the evaluations aimed at the destination of the assets. To this end, the judicial administrator shall submit, if necessary, a specific request to the competent municipal offices, which shall examine it within forty-five days from the request, informing them of the possible existence of abuses and their nature. Should the verification be particularly complex or should it be necessary to involve other administrations or third parties, the competent municipal offices shall provide the judicial administrator, within the aforementioned term of forty-five days, with the results of the first investigations and information on the further activities undertaken and, subsequently, they are required to communicate the results of the procedure»;

2) in paragraph 3, the following sentence shall be inserted after the first sentence: "The judicial administrator, continuing, if necessary, the dialogue with the competent municipal offices until the end of the verification procedure referred to in paragraph 2-bis, shall in any case ensure the completion of the technical and town-planning verifications also after the filing of the report, and shall communicate the relevant results";

b) in Article 38, the following paragraph shall be inserted after paragraph 3:

« *3-bis.* By decree of the Minister of the Interior, in agreement with the Ministers of Economy and Finance and of Justice, a regulation shall be adopted, pursuant to Article 17, paragraph 3, of Law No. 400 of 23 August 1988, laying down provisions on the methods for calculating and settling the fees of the Agency's assistants »;

c) in Article 40, the following shall be inserted after paragraph 1:

« *1-bis.* If, in the framework of the technical and town-planning assessment referred to in Article 36, paragraph 2-*bis*, the presence of irregularities that cannot be remedied is ascertained, the delegated judge, by means of the confiscation measure, shall order their demolition to the detriment of the person to whom the measure is addressed and the property shall not be acquired by the Treasury. The site area is assigned to the unavailable heritage of the municipality with territorial jurisdiction. The provisions of the Consolidated Text of the legislative and regulatory provisions on building matters, pursuant to Presidential Decree no. 380 of 6 June 2001, concerning unauthorised works carried out on State-owned land or land belonging to public bodies, shall apply»;

d) in Article 41:

1) the following paragraph shall be inserted after paragraph 1-*octies*:

« *1-novies.* In cases of approval of the continuation programme pursuant to paragraph 1-*sexies*, the court shall verify at least once a year the continuation of the prospects referred to in the second sentence of the same paragraph *1-sexies*»;

2) the following paragraph shall be inserted after paragraph 5:

« *5-bis*. In cases where undertakings have no real possibility of continuing or resuming their activity and have no liquidable assets, the court shall notify the office of the registrar of companies, which shall order their cancellation within sixty days of such notification»;

e) in Article 44 the following paragraph is added after paragraph 2-*bis*:

« *2-ter.* The Agency, following the decree of confiscation of the Court of Appeal, shall provide for the communication referred to in Article 41, paragraph 5-bis, subject to the authorisation of the delegated judge»;

f) in Article 45-bis, the following paragraph shall be added after paragraph 1:

« *1-bis.* Following the effectiveness of the confiscation order, persons who are relatives, spouses, relatives-in-law or cohabitants of the confiscated enterprise, or persons who have been convicted, even with a non-final sentence, of the crime referred to in Article 416-bis of the

Criminal Code, shall not be allowed to work in the confiscated enterprise. The relevant contracts shall be terminated by law»;

g) In Article 48, the following paragraph shall be inserted after paragraph 15-*quater*:
« *15-quater.1* If during the course of the procedure aimed at the assignment of the property the existence of irregularities that cannot be remedied is ascertained, the Agency shall initiate an enforcement action, pursuant to Article 666 of the Code of Criminal Procedure, before the competent delegated judge, who shall initiate the proceedings referred to in Article 40, paragraph 1-bis, of this Code»;
h) in Article 51-*bis*:
1) in paragraph 1, the words: "to the submission to the registry" shall be replaced by the words: "to their execution"»;
2) the following paragraph shall be added after paragraph 1:
«*1-bis.* The Court or the Agency shall enter in the Register of Enterprises, free of charge, any change concerning the seized and confiscated enterprises resulting from their administration pursuant to this Code, including those concerning their intended use»;
in Article 54, paragraph 2, third sentence, after the word "available" the following words shall be inserted: "in the corporate assets».

Art. 6.
(Amendment to Article 2 of Legislative Decree No. 123 of 29 July 2015 implementing Directive 2013/29/EU on the harmonisation of the laws of the Member States regarding the availability on the market of pyrotechnic items)
In Article 2(1)(a) of the Legislative Decree No. 123 of 29 July 2015, the word: "destined (feminine plural) " shall be replaced by the following: " destined (masculine singular) ».

Art. 7.
(Amendments to Article 10-bis of Law No. 91 of 5 February 1992 on the revocation of citizenship)
1. In Article 10-bis, paragraph 1 of Law No. 91 of 5 February 1992 shall be amended as follows:

in the first sentence, after the words: "of the Criminal Code " the following shall be added: " provided that the person concerned possesses or may acquire another nationality»;
a) in the second sentence, the word: "three" shall be replaced by the following: "ten».

CHAPTER II
PROVISIONS ON URBAN SECURITY

Art. 8.
(Amendments to the Criminal Code and the Code of Criminal Procedure to contrast the arbitrary occupation of property intended as someone else's domicile)
1. The following shall be inserted after Article 634 of the Criminal Code:
« Article 634-*bis*. - *(Arbitrary occupation of property intended as someone else's domicile)* –
Anyone who, by means of violence or threats, occupies or holds without title a property intended as a domicile for others, or prevents the owner or the person legitimately holding it from re-entering the same property, shall be punished with a term of imprisonment ranging from two to seven years. The same punishment shall apply to anyone who takes possession of another person's property by means of deception or fraud or transfers the occupied property to another person.
Apart from cases of participation in the offence, anyone who interferes or cooperates in the occupation of the property, or receives or pays money or other benefits for the occupation of the property, shall be liable to the punishment provided for in subsection 1.
An occupier who co-operates in the ascertainment of the facts and voluntarily complies with the order to release the property shall not be punishable.
The offence shall be punishable on complaint by the victim».

2. In Article 639-bis of the Criminal Code, after the word: " 633 " the following is inserted: " , 634-*bis* ».

3. The following shall be inserted after Article 321 of the Code of Criminal Procedure:

« Art. 321-*bis. - (Reinstatement of possession of the property*) - 1. Upon request of the public prosecutor, the competent judge shall order, by means of a motivated decree, the reinstatement of possession of the property subject to arbitrary occupation pursuant to Article 634-*bis* of the Criminal Code. Prior to the exercise of criminal prosecution, the judge for preliminary investigations shall decide.

2. In cases where the occupied property is the only actual dwelling of the complainant, the officers of the Judicial Police who receive a report of the offence referred to in Article 634-*bis* of the Penal Code, having carried out the initial investigations aimed at verifying the existence of the arbitrary occupation, shall go without delay to the property of which the complainant claims to have been dispossessed, in order to carry out the activities referred to in Article 55.

3. The judicial police officers, should there be good reason to believe that the occupation is arbitrary, shall order the occupier to immediately release the property and at the same time reinstate the complainant in possession of the property.
4. In the event of refusal of access, resistance, refusal to comply with the release order or absence of the occupier, if there exist good reasons to believe that the occupation is arbitrary, the judicial police officers shall order the compulsory release of the property and reinstate the complainant in possession of the property, subject to the authorisation of the public prosecutor, either in writing or orally and in writing, or by telematic means.
5. The judicial police officers shall draw up a report on the activities carried out, stating the reasons for the order to release the property. A copy of the report shall be given to the person to whom the release order is addressed.
6. Within the following forty-eight hours the judicial police officers shall transmit the report to the public prosecutor competent for the place where the reinstatement of possession took place; the latter, if he/she does not order the release of the property to the person to whom the release order is addressed, shall request the judge to validate and issue a decree of reinstatement of possession within forty-eight hours of receipt of the report.
7. The reinstatement of possession shall lose its effectiveness if the time limits provided for in paragraph 6 are not observed or if the judge does not issue the validation order within ten days of receipt of the request referred to in the same paragraph 6. A copy of the order and of the decree referred to in subsection 6 shall be notified immediately to the occupier».

Art. 9.

(Amendments to the Criminal Code and the Code of Criminal Procedure with regard to fraud)

1. Article 640 of the Criminal Code shall be amended as follows:

a) in the second paragraph, number 2-*bis* shall be deleted;

b) the following paragraph shall be inserted after the second paragraph:

« When the circumstance referred to in Article 61, number 5) occurs, the penalty shall be imprisonment for a term of between two and six years and a fine of Euro 700 to Euro 3,000 »;

c) in the third paragraph, the words: "by the preceding paragraph" shall be replaced by the following: "by the second and third paragraphs».

2. In paragraph 2 of Article 380 of the Code of Criminal Procedure, after subparagraph f) the following is inserted:

« *f.1)* the crime of fraud, when the aggravating circumstance provided for in Article 640, third paragraph, of the criminal code applies ».

Art. 10.

(Amendments to Article 10 of Decree-Law No. 14 of 20 February 2017, converted, with amendments, by Law No. 48 of 18 April 2017, regarding the prohibition of access to areas of transport infrastructure and their appurtenances, as well as to Article 165 of the Criminal Code regarding suspended sentences)

1. Article 10 of Decree-Law No. 14 of 20 February 2017, converted, with amendments, by Law No. 48 of 18 April 2017, shall be amended as follows:

a) in paragraph 2, the following sentence shall be inserted after the first sentence: 'The Chief of Police may order the prohibition of access referred to in the first sentence also against those who have been reported or convicted, even with a non-final sentence, during the previous five years, for any offence against persons or against property, referred to in Book Two, Chapters XII and XIII, of the Criminal Code, committed in one of the places indicated in Article 9, paragraph 1»;

b) paragraph 5 shall be repealed.

2. The following paragraph shall be added at the end of Article 165 of the Criminal Code:

« In cases of conviction for offences against persons or property committed in the areas of fixed and mobile railway, airport, maritime and local, urban and suburban public transport infrastructures and their appurtenances, suspended sentence is in any event subject to compliance with the prohibition, imposed by the court, of access to places or areas specifically identified».

Art. 11.

(Amendments to Article 1-bis of Legislative Decree No. 66 of 22 January 1948 on impeding free circulation on the road)

1. Article 1-*bis*, paragraph 1, of Legislative Decree No. 66 of 22 January 1948 shall be amended as follows:

a) in the first sentence, after the word: "ordinary " the following shall be inserted: "or track " and the words: " with an administrative sanction for payment of a sum from 1,000 to 4,000 Euros" shall be replaced by the following: " with a term of imprisonment of up to one month or a fine of up to 300 Euros »;

b) the second sentence shall be replaced by the following: 'The sentence shall be imprisonment for a term of between six months and two years if the act is committed by several persons together».

Art. 12.

(Amendments to Articles 146 and 147 of the Criminal Code on the subject of criminal prosecution in the event of an exceptionally serious danger of committing further offences)

1. The following amendments shall be made to the Criminal Code:

a) in Article 146, numbers (1) and (2) of the first paragraph and the second paragraph shall be repealed;

b) in Article 147:

1) in the first paragraph:

1.1) number 3) shall be replaced by the following:

« 3. if a penalty involving restriction of liberty is to be enforced against a pregnant woman or a mother of children under one year of age»;

after number 3) the following shall be added:

« 3-*bis*. if a penalty involving restriction of liberty is to be enforced against a mother of children aged more than one year and less than three years »;

2) in the third paragraph:

2.1) the words: 'In the case indicated in number 3)' shall be replaced by the following: 'In the cases indicated in numbers 3 and 3-*bis* »;

2.2) the words: "or entrusted to others than the mother" shall be replaced by the following: "or entrusted to others than the mother, or when the latter, during the period of deferral, behaves in a manner that is seriously detrimental to the child's development»;

3) after the fourth paragraph the following shall be added:

« In the cases referred to in numbers 3 and 3-bis of subsection 1, enforcement of the sentence shall not be deferred if deferral would result in a situation of exceptional danger of further offences being committed. In this case, in the circumstances referred to in paragraph 3-bis, enforcement may take place in a low-security institution for mother prisoners where

exceptionally significant circumstances so permit; in the circumstances referred to in paragraph 3, enforcement must in any event take place in a low-security institution for mother prisoners».

Art. 13.
(Amendments to Article 600-octies of the Criminal Code on begging)

1. Article 600-*octies* of the Criminal Code shall be amended as follows:
a) in the first paragraph, the word: "fourteen" shall be replaced by the following: "sixteen" and the words: "up to three years" shall be replaced by the following: "from one to five years»;
b) the second paragraph shall be replaced by the following:
« Whosoever causes a third party to engage in begging, organises the begging of others, avails themselves thereof or otherwise favours it for profit, shall be punished with imprisonment of two to six years. The term of imprisonment shall be increased by between one third and one half if the offence is committed with violence or threat or against a person under the age of sixteen years or in any case not chargeable»;
c) the heading shall be replaced by the following: 'Use of minors in begging. Organisation of and aiding and abetting begging. Incitement and coercion to begging».

CAPO III
MEASURES CONCERNING THE PROTECTION OF THE STAFF OF THE POLICE FORCE, THE ARMED FORCES AND THE NATIONAL FIRE BRIGADE, AS WELL AS THE BODIES REFERRED TO IN LAW NO. 124 OF 3 AUGUST 2007

Art. 14.
(Amendments to Articles 336 and 337 of the Criminal Code on violence or threatening a public officer and resisting a public officer)

1. The following amendments shall be made to the Criminal Code:
a) in Article 336, the following paragraphs shall be added at the end:
« In the cases referred to in the first and second paragraphs, if the offence is committed against a judicial police or public security officer or agent, the penalty shall be increased by one third.
Mitigating circumstances, other than that provided for in Article 98, which are concurrent with the aggravating circumstance referred to in the third paragraph of this Article, shall not be deemed to prevail over the latter»;

b) the following paragraphs shall be added at the end of Article 337:
« If the violence or threat is committed to oppose an officer or agent of the judicial police or public security while he or she is performing an official act, the penalty shall be increased by one third.
Mitigating circumstances, other than that provided for in Article 98, which are concurrent with the aggravating circumstance referred to in the second paragraph of this Article, shall not be deemed to prevail over the latter».

Art. 15.
*(Amendments to Article 583-*quater *of the Criminal Code on personal injury to an officer or agent of the judicial police or public security in the act or due to the performance of duties or service)*

1. Article 583-*quater* of the Criminal Code shall be amended as follows:
a) the first paragraph shall be replaced by the following:

«In the case of personal injury caused to a judicial or public security police officer or agent in the act or due to the performance of his/her duties, a term of imprisonment of two to five years shall apply. In the case of severe or very severe injuries, the penalty shall be, respectively, imprisonment for a term of four to ten years and eight to sixteen years»;

b) in the second paragraph, the following words shall be added at the end: '. , second sentence»;

c) the heading shall be replaced by the following: 'Personal injury to an officer or agent of the judicial police or public security in the act of or in connection with the performance of his or her duties, as well as to persons exercising a medical or public health profession and to any person performing ancillary activities to such profession».

Art. 16.

(Amendments to Article 639 of the Criminal Code for the protection of movable and immovable property used in the exercise of public functions)

1. Article 639 of the Criminal Code shall be amended as follows:

in the second paragraph, the following sentence shall be added at the end: 'If the act is committed on movable or immovable property used for the exercise of public functions, with the aim of offending the honour, prestige or dignity of the institution to which the property belongs, the penalty shall be imprisonment from six months to one year and six months and a fine from 1,000 to 3,000 Euro »;

a) in the third paragraph, after the words: "referred to in the second paragraph" the following shall be inserted: "first and second sentences, " and the following sentence shall be added at the end:

« In cases of recidivism for the offence referred to in the second paragraph, third sentence, a term of imprisonment of six months to three years and a fine of up to 12,000 Euro shall be applied ».

Art. 17.

(Amendments to the Traffic Code, referred to in Legislative Decree No. 285 of 30 April 1992, on the subject of non-compliance with prescriptions issued by personnel carrying out traffic police services)

1. The following amendments shall be made to the Traffic Code, as per Legislative Decree No. 285 of 30 April 1992:

a) in Article 192:

1) paragraph 6 shall be replaced by the following:

« *6.* Anyone violating the obligations set forth in paragraphs 2, 3 and 5 shall be subject to an administrative sanction involving the payment of a sum from Euro 100 to Euro 400»;

2) the following paragraph shall be inserted after paragraph 6:

« *6-bis.* Whoever infringes the provisions set out in paragraph 1, if the offence is not a criminal offence, shall be liable to the administrative penalty consisting in the payment of a sum of between Euro 200 and Euro 600. In the event of a repeat offence within a two-year period, the additional administrative sanction consisting in the temporary suspension of the driving licence for up to one month shall also apply»;

3) Paragraph 7 shall be replaced by the following:

« *7.* Whoever infringes the provisions set out in paragraph 4, if the offence is not a criminal offence, shall be liable to an administrative penalty consisting in the payment of a sum of between Euro 1,500 to Euro 6,000. The ascertainment of the infringement shall be followed by the accessory administrative sanction of the suspension of the driving licence from three months to one year»;

b) in the table of scores provided for in Article 126-bis, Article 192 shall be replaced by the following:

«

Art. 192.	Paragraph 6	3
	Paragraph 6-*bis*, first sentence	5
	Paragraph 6-*bis*, second sentence	10
	Paragraph 7	10

Art. 18.

(Amendment to Article 415 and introduction of Article 415-bis of the Criminal Code to strengthen security in penal institutions)

1. The following amendments shall be made to the Criminal Code:

a) in Article 415, the following paragraph shall be added at the end:

« The penalty shall be increased if the act is committed within a penal institution or by means of writings or communications addressed to prisoners »;

b) the following paragraph shall be inserted after Article 415:

« Article 415-*bis.* *(Revolt within a penal institution)* - Anyone who, within a penal institution, by means of acts of violence or threat, by resisting, even passively, the execution of orders given or by attempting to escape, committed by three or more persons united, promotes, organises or directs a revolt, shall be punished for a term of imprisonment ranging from two to eight years.

For the mere fact of participating in the riot, the punishment shall be imprisonment of one to five years.

If the offence is committed with the use of weapons, the penalty is imprisonment for a term of three to ten years.

If the riot results in bodily injury, the penalty is increased; if death occurs, the penalty is ten to twenty years' imprisonment.

The penalties referred to in the fourth paragraph shall also apply if the personal injury or death occur immediately after the riot and as a consequence thereof ».

Art. 19.

(Amendments to Article 14 of the Consolidated Text of Legislative Decree No. 286 of 25 July 1998 to strengthen the security of detention and reception facilities for migrants)

In Article 14 of the Consolidated Text on provisions governing immigration and the status of foreigners, referred to in Legislative Decree No. 286 of 25 July 1998, the following amendments shall be made:

a) the following shall be inserted after paragraph 7:

« *7.1.* Whoever, during the stay in one of the structures referred to in Article 10-*ter* or in one of the centres referred to in Articles 9 and 11 of Legislative Decree no. 142 of 18 August 2015, or in one of the structures referred to in Article 1-*sexies* of Decree-Law No. 416 of 30 December 1989, converted, with amendments, by Law No. 39 of 28 February 1990, by means of acts of violence or threats or by means of acts of resistance, including passive resistance to the execution of orders given, carried out by three or more persons united, promotes, organises or leads a riot, shall be punished with imprisonment from one to six years. For the mere fact of participating in the riot, the punishment shall be imprisonment of one to four years. If the offence is committed with the use of weapons, the punishment shall be imprisonment of two to eight years. If anyone is killed or suffers serious or very serious bodily harm in the riot, the punishment shall be imprisonment of ten to twenty years. The penalties referred to in the fourth sentence shall also apply if the personal injury or death occur immediately after the riot and as a consequence thereof»;

b) in paragraph 7-*bis,* the words: 'referred to in Article 10-ter or in one of the centres referred to in Articles 9 and 11 of Legislative Decree No. 142 of 18 August 2015, or in one of the structures referred to in Article 1-*sexies* of Decree-Law No. 416 of 30 December 1989, converted, with amendments, by Law No. 39 of 28 February 1990' shall be replaced by the following: 'referred to in the first sentence of paragraph 7.1 ».

Art. 20.

(Provisions on the licensing, carrying and possession of weapons for public security officers)

1. The public security officers referred to in Articles 17 and 18 of the Consolidated Law on Public Security Officers and Agents, referred to in Royal Decree No. 690 of 31 August 1907, are authorised to carry the weapons provided for in Article 42 of the Consolidated Law on Public Security, referred to in Royal Decree No. 773 of 18 June 1931, without a licence, when they are not on duty.

2. By a regulation adopted pursuant to Article 17(2) of Law No. 400 of 23 August 1988,

within one year from the date of entry into force of this Law, Article 73 of the regulation referred to in Royal Decree No. 635 of 6 May 1940 shall be amended in order to adapt the rules contained therein to the provisions of paragraph 1 of this Article.

Art. 21.

(Provisions for the protection of the institutional functions of the Italian Financial Police carried out at sea and amendments to Articles 1099 and 1100 of the Code of Navigation)

1. The provisions of Articles 5 and 6 of Law No. 1409 of 13 December 1956 shall also apply when the vessels referred to therein are engaged in the performance of the institutional functions assigned to them by the legislation in force. The provisions referred to in the first sentence shall also be applied, in compliance with international rules, when the acts are performed by the master of a foreign ship.
2. The following amendments shall be made to the Code of Navigation:

a) in Article 1099, the following paragraph shall be added at the end:

« The same punishment shall be imposed on the master of a foreign ship who does not obey the order of a national warship when, in cases permitted by international regulations, the latter proceeds to visit and inspect the charts and documents on board»;

b) in Article 1100, first paragraph, the following sentence shall be added at the end: 'The provision referred to in the first sentence shall also apply to foreign ships in respect of acts committed against a national warship engaged in the performance of its duties in accordance with international rules ».

Art. 22.

(Amendment to Article 19(3) of Law No. 145 of 21 July 2016 for the protection of Armed Forces personnel participating in international missions)

1. In Article 19, paragraph 3, of Law No. 145 of 21 July 2016, after the words: "of force or other means of physical coercion," the following shall be inserted: "or of equipment, devices, programmes, apparatus, IT tools or other means suitable for committing any of the offences referred to in Sections IV and V of Chapter III of Title XII of the Second Book of the Criminal Code ».

Art. 23.

(Provisions for the enhancement of intelligence activity for security)

1. Law No. 124 of 3 August 2007 shall be amended as follows:

a) In Article 13:

1) paragraph 1 shall be replaced by the following:

« *1.* Public administrations, publicly owned or publicly controlled companies and entities providing, under authorisation, concession or agreement, public utility services, are obliged to provide the DIS (Security Intelligence Department), the AISE (External Intelligence and Security Agency) and the AISI (Internal information and Security Agency) with the requested cooperation and assistance, including technical and logistical assistance, necessary for the protection of national security. The DIS, the AISE and the AISI may enter into agreements with the aforementioned entities, as well as with universities and research bodies, for the definition of the modalities of the aforementioned cooperation and assistance. The agreements may provide for the communication of information to the above-mentioned bodies even in derogation of the sectoral regulations on confidentiality »

2) The heading shall be replaced by the following: 'Cooperation of public administrations, publicly owned or publicly controlled companies and utilities»;

b) Article 17(4) shall be replaced by the following:

« *4.* Conduct envisaged by law as a crime for which State secrecy cannot be enforced in accordance with Article 39, paragraph 11, cannot be authorised pursuant to Article 18, with the exception of the offences referred to in Articles 270, paragraph 2, 270-bis, paragraph 1, as regards assumptions of association management and organisation, and 270-*ter*, 270-*quater*,

270-*quater.1*, 270-*quinquies*, 270-*quinquies.1*, 270-*quinquies.3*, 302, 306, second paragraph, 414, fourth paragraph, 416-bis, first paragraph, and 435 of the Criminal Code».

2. Article 8 of Decree-Law No. 7 of 18 February 2015, converted, with amendments, by Law No. 43 of 17 April 2015, shall be amended as follows:

a) the following shall be inserted after paragraph 1:

« *1-bis.* In the manner referred to in Article 23, paragraph 2, of Law No. 124 of 3 August 2007, the title of public security officer, with preventive police function, may also be attributed to personnel of the Armed Forces, who do not already possess it, who are assigned, pursuant to Article 12 of the same Law No. 124 of 2007, to assist in the protection of the structures and personnel of the Security Intelligence Department (DIS) or the security intelligence services.

1-ter. Cover identities, as referred to in Article 24(1) of Law No. 124 of 3 August 2007, may be used in the criminal proceedings referred to in Article 19 of the same Law No. 124 of 2007, by giving notice thereof in a confidential manner to the prosecuting judicial authority at the same time as the objection of the cause of justification.

1-quater. Without prejudice to what is provided by Article 497, paragraph 2-bis, of the Code of Criminal Procedure, the judicial authority, at the request of the Director General of the DIS or the Directors of the External Intelligence and Security Agency (AISE) or of the Internal Information and Security Agency (AISI), when necessary to keep their real identity secret in the interest of the security of the Republic or to protect their safety, shall authorize the employees of the DIS, the AISE and the AISI to testify at any stage and level of the proceedings with a covert identity»;

b) Paragraph 2 shall be repealed.

3. Article 4 of Decree-Law No. 144 of 27 July 2005, converted, with amendments, into Law No. 155 of 31 July 2005, shall be amended as follows:

a) in paragraph 2-*bis*, the words: 'Until 31 January 2024, the " shall be replaced by the following: " The " »;

b) in paragraph 2-*quater*, the words: "within the time limit referred to in paragraph 3 of Article 226 of Legislative Decree No. 271 of 28 July 1989" shall be replaced by the following: "within five days of the conclusion of the interview»;

c) in paragraph 2-*quinquies*, the words:

«referred to in paragraph 5 of Article 226 of Legislative Decree No. 271 of 28 July 1989" shall be replaced by the following: "referred to in paragraph 5 of Article 4-bis of this Decree».

4. Article 14 of Legislative Decree No. 186 of 8 November 2021 shall be amended as follows:

a) the following shall be added after paragraph 1:

« *1-bis.* For the purposes of the prevention of any form of terrorist aggression of an international nature, the security intelligence services referred to in Articles 6 and 7 of Law No. 124 of 3 August 2007, may request from the competent authorities referred to in Article 5 of this Decree, in accordance with terms defined by agreement, financial information and financial analysis related to terrorism»;

b) in the heading the following words are added at the end: 'and information exchange with the security intelligence services ».

CHAPTER IV

PROVISIONS ON VICTIMS OF USURY

Art. 24.

(Introduction of Article 14-bis of Law No. 108 of 7 March 1996 on support to businesses that are victims of usury)

1. The following shall be inserted after Article 14 of Law No. 108 of 7 March 1996:

« Art. 14-*bis*. – *1.* In order to ensure an effective support to the beneficiary subject, to guarantee his/her re-launch through an efficient use of the economic resources allocated and the re-entry into the legal economic system, the victims of the crime of usury referred to in Article 14, to whom the loans provided by the same Article are granted, shall avail themselves of an expert, with advisory and assistance functions, registered, upon request, in the register referred to in paragraph 2 of the present Article.

2. For the purposes of paragraph 1, a register, kept by the Office of the Special Commissioner for the coordination of the anti-racket and anti-usury initiatives, of individuals in possession of specific professional expertise is established; persons enrolled in the register of statutory auditors pursuant to Legislative Decree no. 39 of 27 January 2010, or in the Order of Chartered Accountants and Accounting Experts, as well as persons who, due to their specific professional activity, are in possession of particular expertise in the economic activity carried out by the victim of the crime of usury and in the management of enterprises, may apply for enrolment in the register.

3. For the purposes of registration in the register referred to in paragraph 2, the persons must declare that the causes of prohibition, suspension or revocation referred to in Article 67 of the Code of anti-mafia laws and prevention measures, as per Legislative Decree no. 159 of 6 September 2011, do not apply to them. The declaration shall be signed in accordance with the procedures laid down in Article 38 of the Consolidated Text of the legislative and regulatory provisions on the subject of administrative documentation, referred to in Presidential Decree No. 445 of 28 December 2000.

4. The position of expert referred to in subsection 1 shall be conferred by the Prefect of the province in which the judicial office prosecuting the usury offence is located, or of the province where the beneficiary has his/her registered office or residence.

5. The appointment referred to in paragraph 4 shall be communicated to the company CONSAP - Concessionaria servizi assicurativi pubblici Spa, concession holder for the management of the Fund referred to in Article 14 of this Law, pursuant to Article 6 of the Regulation referred to in Presidential Decree no. 60 of 19 February 2014, for the ensuing fulfilments.

6. The sums allocated under Article 14, at the time of the appointment referred to in Paragraph 4 of this Article, shall become part of an autonomous and separate asset exclusively aimed at relaunching the activity of the business operator victim of the crime of usury, in accordance with the procedures set out in the aforesaid Article 14.

7. The measures for the allocation of the benefits referred to in Article 14 may be revoked, and the sums disbursed recovered, if, also following a report by the expert referred to in paragraph 1 of the present Article, the activity carried out with the use of the allocated resources does not achieve the purposes of reintegration referred to in Article 14, paragraph 5.

8. The expert as per paragraph 1, at the time of appointment pursuant to paragraph 4, must certify that he/she is not in a situation of incompatibility or conflict of interest, under penalty of forfeiture, and shall diligently perform the following duties:

a) Provide suitable support in the presentation of capitalisation projects as well as in the preparation and implementation of any activity related to the management of the loan granted under Article 14, in accordance with the purposes envisaged by this Law;

b) Support the victim of the crime of usury in any action aimed at resuming the normal economic activity carried out or to be carried out;

c) Submit an account of his/her management activities periodically and when requested by the Prefect;

d) Submit an annual report on his/her activities to the Prefect who appointed him/her, as well as to the office of the Special Commissioner for the coordination of anti-racket and anti-usury initiatives and to CONSAP Spa, providing, if requested, the relevant documentation;

e) Ask the Prefect who conferred the task to be authorised, when necessary, to receive assistance, under his/her own responsibility, from other qualified persons, in relation to the need for further support, thus allowing the victim of the crime of usury to resume economic activity.

9. The reasons for incompatibility set forth in the first paragraph of Article 2399 of the Civil Code shall apply to the expert referred to in paragraph 1.

10. The expert referred to in paragraph 1 shall be held accountable for the truthfulness of the annual report referred to in paragraph 8, letter d), and shall perform his/her duties with the

diligence of an agent, pursuant to Article 1710 of the Civil Code, maintaining the confidentiality of the facts and documents of which he/she becomes knowledgeable by reason of his/her duties.

11. The expert's mandate referred to in paragraph 1 shall last five years and may be renewed once, without prejudice to the possibility of voluntary resignation, to be communicated to the Prefect and to CONSAP Spa with at least forty-five days' notice.

12. In case of particularly serious and urgent situations, of non-compliance with the commitments undertaken with the investment plan or of disagreement between the beneficiary and the expert, the two parties, also separately, may ask to be heard by the Prefect or his/her delegate.

13. The appointment of the expert referred to in paragraph 1 may be revoked, in accordance with article 1723, first paragraph, of the Civil Code as well as, by a justified act of the Prefect, if actions or omissions contrary to the proper performance of the duties referred to in paragraph 8, letters a), b), c) and d), of this article are ascertained. In the event the actions or omissions referred to in the first sentence are ascertained, the expert shall be removed from the register referred to in paragraph 2 and the Prefect, also in order to guarantee continuity in the performance of the tasks referred to in paragraph 8, shall appoint another expert in accordance with the procedures provided for by the regulation referred to in paragraph 16.

14. Should CONSAP Spa become aware of the infringements referred to in paragraph 13, it shall promptly report them to the Prefect and to the Order of Chartered Accountants and Accounting Experts or to the other professional orders to which the responsible person referred to in the first sentence of paragraph 2 may be registered.

15. The expert referred to in Paragraph 1 shall be entitled to a fee to be paid annually, upon submission of the report referred to in Paragraph 8, letter d), from the Fund referred to in Article 11, Paragraph 4, of Law No. 4 of 11 January 2018, not to be deducted from the total sum paid to the victim of the crime of usury.

16. By means of a regulation adopted, in accordance with Article 17, paragraph 3, of Law No. 400 of 23 August 1988, with a decree of the Minister of the Interior, in agreement with the Ministers of Justice and of Economy and Finance, within sixty days from the date of entry into force of this provision, the requirements for registration in the register referred to in paragraph 2 of this Article, the total number of assignments that may be performed, the way the mandate is assigned and the relevant transparency criteria, which ensure the rotation of assignments, the procedures for maintaining and managing the register, and the cases referred to in paragraph 12 shall be established. The same regulation shall also determine the minimum remuneration due to the expert referred to in paragraph 1, with a provision setting the maximum compensation limits, depending on the total amount of the allowance granted under Article 14, to be updated every three years».

RULES ON THE PRISON SYSTEM

Art. 25.

(Amendments to Law No. 354 of 26 July 1975 concerning the granting of benefits to prisoners and internees)

1. The following amendments shall be made to Law No. 354 of 26 July 1975:

a) in Article 4-*bis*, paragraph 1-ter, after the words: "for the offences referred to in Articles ", the following shall be inserted: " 415 and 415-*bis*, »;

b) in Article 20, paragraph 8, the following sentence shall be inserted after the fifth sentence: "Within sixty days from the receipt of the proposal of agreement the prison administration shall express its opinion on the merits, immediately indicating any conditions and prescriptions necessary for the approval of the proposal».

Art. 26.

(Amendments to Article 2 of Law No. 193 of 22 June 2000 on the employment of inmates)

1. In Article 2(1) of Law No 193 of 22 June 2000, after the words: "inside prison establishments", the following words shall be inserted: "or outside" and after the words:

"detained or interned persons", the following words shall be inserted: "also authorised to work outside».

The implementation of the provisions set forth in paragraph 1 shall be carried out by means of the resources available under the current legislation as per Article 6, paragraph 1, of Law No. 193 of 22 June 2000.

Art. 27.

(Amendment to Article 47 of Legislative Decree No. 81 of 15 June 2015 on professional apprenticeships)

1. In Article 47, paragraph 4, first period, of Legislative Decree No. 81 of 15 June 2015, the following words shall be added at the end: " , convicts and internees admitted to alternative measures to detention and inmates assigned to outside work pursuant to Article 21 of Law No. 354 of 26 July 1975 ».

2. The costs arising from paragraph 1, estimated at 0.2 million euros for the year 2024, 0.6 million euros for the year 2025, 1.1 million euros for the year 2026, 1.5 million euros for the year 2027, 1.9 million euros for the year 2028, 2.2 million euros for each of the years 2029 and 2030, 2.3 million euros for each of the years 2031 and 2032 and 2.4 million euros annually as from the year 2033, shall be covered, as to 0.1 million euros for the year 2025, 0.2 million euros for the year 2026, 0.3 million euros for the year 2027, 0.4 million euros for the year 2028, 0.5 million euros for the year 2029, 0.6 million euros for the year 2030, 0.5 million euros per year as from the year 2031, by means of the increased revenues deriving from the implementation of the provisions referred to in paragraph 1 and, as to 0.2 million euros for the year 2024, 0.5 million euros for the year 2025, 0.9 million euros for the year 2026, 1.2 million euros for the year 2027, 1.5 million euros for the year 2028, 1.7 million euros for the year 2029, 1.6 million euros for the year 2030, 1.8 million euros for each of the years 2031 and 2032 and 1.9 million euros per year starting from the year 2033, by means of a corresponding reduction of the expenditure authorisation pursuant to Article 6, paragraph 1, of Law no. 193.

Art. 28.

(Amendments to the regulation referred to in Presidential Decree No 230 of 30 June 2000 on the organisation of the work of persons subject to detention)

1. Within twelve months from the date of entry into force of this Law, by means of a regulation adopted pursuant to Article 17(1) of Law No. 400 of 23 August 1988, amendments shall be made to the rules governing the organisation of the work of persons subject to detention, contained in the regulation referred to in Presidential Decree No. 230 of 30 June 2000, on the basis of the following criteria:

a) enhance, also in the context of criminal enforcement, the principle of horizontal subsidiarity, by implementing initiatives aimed at promoting the employment of persons subject to detention and encouraging interaction with private enterprises, including non-profit organisations that pursue social aims on terms of equal treatment, in an effective and transparent manner and on the basis of the performance principle;

b) simplify relations between businesses and prison facilities in order, wherever possible, to foster interaction between private employers and prison management;

c) provide, in implementing the principles of social solidarity and horizontal subsidiarity, for the prison administration to have the possibility of setting up, in relation to activities with a considerable social value, co-management organisational models, without any synallagmatic relations;

d) recognise work performed by inmates or internees for curricular and vocational training purposes;

e) encourage the acceptance of work orders coming from private subjects;

f) enhance the collaboration with the National Council of Chartered Accountants and Accounting Experts, the National Council of Labour Consultants, the National Council of the Forensic Sciences, the National Council of Economy and Labour and the National Guarantor of the Rights of Persons Deprived of their Liberty, with the aim of disseminating the knowledge

of legislative and administrative initiatives designed to encourage the work reintegration of persons detained in prison.

CHAPTER VI FINANCIAL PROVISIONS

Art. 29.

(Financial Invariance Clause)

1. Without prejudice to the provisions of Article 27, the implementation of this Law shall not entail new or greater burdens for the public finance. The competent public administrations shall implement the provisions of this law with the human, instrumental and financial resources available under the legislation in force.