

November 2008

www.coe.int/gmt

NATIONAL POLICY

Italy has always been actively committed to the fight against terrorism. Even before the serious attacks in the United States, several investigations confirmed the presence of international terrorist groups in Italy suspected of planning criminal actions in foreign countries. The new scenario arising after 9/11 led the Italian Authorities to take important legislative measures¹.

Thanks to the experience gained from the second half of the 1970's in the fight against terrorism, Italy was able to promptly modify its legislation on the matter, adjusting the counteractive measures to the increasing threat from international terrorism.

In 2005, the legislation was further developed due to the issuance of law no. 155 ("Urgent measures to fight international terrorism") which improved the instruments to fight the threat of terrorist organizations.

Furthermore, as this phenomenon assumed a transnational dimension, Italy aimed at enacting the most appropriate legislation to assure the highest level of coordination at the international level. In this respect, Italy focused most of its efforts in complying with the international instruments aimed at strengthening police and judicial co-operation on a multilateral basis.

Italy firmly believes that a successful policy against terrorism cannot be achieved without the utmost respect for the necessary individual guarantees. The protection of basic human rights always represents the standard for all the initiatives put in place.

LEGAL FRAMEWORK

General information

The development of legislation over the years has led to a composite structure of laws on the subject. This affected in particular:

¹ In particular, Decree-law no. 369 dated Oct. 12, 2001, converted with amendments into **Law no. 431 of Dec. 14, 2001**: "Urgent measures to fight the financing of international terrorism" and Decree-law no. 347 dated Oct. 18, 2001, converted with amendments into **Law no. 438 of Dec. 2001**: "Urgent measures to fight international terrorism"

- a) **the Criminal Code**. In this context, two basic guidelines were followed. The first resulted in the inclusion of new types of offences and strengthening of sanctions for specific offences; the second, of a more innovative character, resulted in the importance attributed to the repentance of the offender, if combined with "active collaboration", with subsequent reductions of sentences or, for some offences, exemption from punishment;
- b) **the Code of Criminal Procedure**, for which the legislative intervention, in relation to specific categories or types, of offences, aimed at enhancing the effectiveness of procedural instruments and at modifying the regulations on the personal liberty of the accused, intervening for example on the maximum time-limits of preventive custody, conditional release, regulations on orders or warrants of arrest;
- c) several **supplemental laws** on public order and security, judicial and prison systems, competence and prerogatives of law enforcement officers, control of suspicious financial transactions.

Criminal law

The laws on terrorism currently in force, from a substantive criminal law perspective, envisaged a definition of acts committed for terrorist purposes and punishes terrorist conduct both in the form of individual acts and organizational offences.

The definition of acts committed for terrorist purposes

Article 270 *sexies* of the Criminal Code introduced by **Law no. 155/2005**. The provision defines *the acts committed for terrorist purposes* as "acts which, by nature or because of their context, can cause serious harm to a country or international organization and are committed in order to intimidate people or coerce public authorities or an international organization to perform, or refrain from performing, any act or to destabilize or destroy the fundamental political, constitutional, economic and social structures of a country or international organization, as well as the other types of terrorist

conduct or carried out for terrorist purposes as provided for by conventions or other international laws binding on Italy”.

Individual terrorist acts

In this regard, the Italian legal system is twofold. The **Criminal Code** punishes specific types of terrorist offences; apart from these provisions, **article 1 Law no L. 15/1980** provides for aggravating circumstances in cases where a crime is carried out for the purposes of terrorism.

Specific types of offences provided for by the Criminal Code:

Article 270 ter of the Criminal Code, introduced by Law no. 438/ 2001, punishes, to a lesser extent, *“anyone who, apart from cases of complicity in the crime or aiding and abetting, gives shelter, food, hospitality, means of transport or communication” to participants in the associations mentioned under Articles 270 and 270 bis*”. The aim was to punish those forms of “solidarity” which are in practice a “logistic support” for the so-called “operational elements” of terrorist organizations.

Article 270 quater of the Criminal Code (Recruiting for terrorist ends, including international terrorism) introduced by **Law no. 155/2005**. The provision punishes the conduct of *“anyone who, except for the cases mentioned under Article 270 bis, trains or otherwise gives instructions on how to prepare or use explosive materials, firearms, or other weapons, harmful or hazardous chemical or bacteriological substances, and all other techniques or methods to commit acts of violence or sabotage of essential public services for the purposes of terrorism, even if directed against a foreign State, an international institution or organization”*.

Article 270 quinquies of the Criminal Code (training for acts of terrorism, including international terrorism) introduced by **Law no. 155/2005**. The provision punishes the conduct of *“anyone who, except for the cases mentioned under Article 270 bis, trains or otherwise gives instructions on how to prepare or use explosive materials, firearms, or other weapons, harmful or hazardous chemical or bacteriological substances, and all other techniques or methods to commit acts of violence or sabotage of essential public services for the purposes of terrorism, even if directed against a foreign State, an international institution or organization”*. Punishment of the trainee is also provided for.

Article 414 of the Criminal Code explicitly punishes the instigation of and incitement to commit terrorist crimes.

Article 497 bis of the Code of Criminal procedure introduced by **Law no. 155/2005**. The provision deals with the offence of **possession and making of false ID documents**.

Article 280 of the Criminal Code deals with an independent offence: *“attacks for terrorist or subversive purposes”* upon *“a persons life or integrity”*, the punishment varies depending on the effects (death, very serious injury or serious injury) and the conduct directed against *“persons exercising functions in the judicial or prison field or exercising law enforcement functions”* is considered as an aggravating circumstance.

Article 289 bis of the Criminal Code deals with the offence of kidnapping for purposes of terrorism or for subversion of the democratic order, differentiating this offence from the “ordinary” offence of kidnapping for ransom. It was added by Decree-law no.59 dated March 21, 1978, converted into law no. 191 of March 18, 1978, issued after the kidnapping and subsequent murder of an important Italian politician committed by a subversive group. Although this type of offence is not frequent anymore in Italy, it deserves to be mentioned because it introduced in the Criminal Code the word “terrorism” and the first reward measure [*misura premiale*] consisting in a reduction of sentence for those who, having participated in the offence, dissociated themselves from the other offenders, helping to facilitate the release of the kidnapped person. This precedent was the starting point of a criminal policy strategy, based on the granting of benefits to those who renounced terrorism.

Article 1 of Law no 15/1980 provides for an increase of punishment by half for all the offences committed for terrorist purposes. This aggravating circumstance may in principle be applied to all the offences established by the legislator except when the circumstance is the constituent element of the offence (as is the case of the specific offences mentioned in the Criminal Code and specified below)

Organizational offence

Article 270 bis of the Criminal Code, modified by **law no. 438/2001**, punishes anyone who *“promotes, sets up, organizes, manages or finances” associations whose purpose is to commit acts of violence for **terrorist ends** or for subversion of the democratic order*”. Obviously, criminal responsibility of those who simply “participate” in those associations is also provided for.

Responsibility of legal persons

It is also relevant to note that under Article 25 quater of **the Law 231/2001** a form of

responsibility of legal persons for all the crimes committed with terrorism purposes was introduced as envisaged by the Criminal Code and the supplemental laws.

Jurisdiction

This issue is regulated by Article 6 et seq., of the **Criminal Code**. Italy exercises jurisdiction when a crime has been committed - even partially - in the territory of the State (Article 6 of the Criminal Code). Regarding the crimes committed outside the territory of the country the exercise of Jurisdiction is still possible:

- when the crime has been committed against Italy (Article 7 of the Criminal Code);
- when the crime has been committed by a citizen and is punished with the minimum of three years of jail or in case of request by the Ministry of Justice (Article 9 of the Criminal Code);
- when the crime has been committed by a non national against a national and is punished with the minimum of one year of jail;
- in all the other cases, only if there is a request by the Ministry of Justice and: (i) the non national has been found in Italy and (ii) the crime is punished with the minimum of three years of jail and (iii) the extradition has not been accepted by the requesting State or has not been authorized.

Confiscation and forfeiture

Under Article 240 of the Criminal Code, after a conviction, a Judge may confiscate everything that was used in order to commit the crime punished, the same happens for the profits of a crime. Under the same provision a Judge is obliged to confiscate things, the manufacture, use, sale or possession of which constitutes a crime.

Furthermore, in order to implement Resolution 1373, the power of preventive seizure and confiscation of mafia assets was extended to persons suspected of national and international terrorism and therefore allows for confiscation to be ordered outside of criminal proceedings. Assets are withheld until evidence is provided that they have a licit origin and are definitively forfeited within one year.

Procedural Rules

Under the Italian law, persons suspected of terrorist crimes enjoy the same rule of procedure and the same procedural guarantees as for other common crimes. Furthermore, considering the particular nature of the crime, Italy enacted mainly preventive legislation with more invasive investigative methods

analogous to those put in place in the fight against *mafia* and other forms of organized crimes.

The **Code of Criminal Procedure** provides that (Article 380) **arrest in *flagrante delicto*** is mandatory for *offences committed for purposes of terrorism or subversion of the democratic order, which are punished with a term of imprisonment of 5 to 10 years*".

Article 13 of the **Law no. 155/2005** introduced ***new provisions on arrest and police detention*** (.). It provides for discretionary arrest in *flagrante delicto* (Article 381 of the Code of Criminal Procedure) for the offence set out in Article 497 *bis* (making, possessing or using a false ID document and detention of a person suspected of having committed an offence - (article 384 of the Code of Criminal Procedure), *committed for purposes of domestic or international terrorism, or subversion of the democratic order*. Criminal investigation police shall proceed to detain a person when, because of specific elements such as possession of false ID documents, there is a well-founded risk of flight of the suspect, and it is not possible, in urgent cases, to wait for the order from the Public Prosecutor.

Article 4 para. 3 of the **Law no. 438/ 2001** empowers the Prosecutor or the Police to delay the pretrial custody ordered by the judge for preliminary investigation.

Lastly, **Law no. 438/2001** is also important because it sets up the office of the Anti-terrorism district Prosecutor and the relevant district judge for preliminary investigation [G.I.P.] and the judge for a preliminary hearing [G.U.P.].

Reward legislation [legislazione premiale]

As to the already mentioned "**reward**" **legislation [legislazione premiale]**, reference should also be made to the Decree-law no. 625, dated Dec. 15, 1979, converted into **Law no. 15 of Feb. 6, 1980**, which provides for:

- a reduction of punishment for the so-called "**active repentance**" in cases where the person responsible for "*offences committed for purposes of terrorism or subversion of the democratic order, without prejudice to what is set out in Art. 289-bis of the Criminal Code* ", "*dissociating himself from the others*", "*endeavours to prevent additional consequences of the criminal activity, or concretely helps the judicial and police authorities gather decisive evidence to find or arrest accomplices*" (Article 4);

- exemption from punishment of the "*culprit for an offence committed for purposes of terrorism or subversion of the democratic order, who voluntarily prevents the event and gives decisive evidence for the precise reconstruction of the fact and the location of possible accomplices*" (Article 5).

The same approach is also followed by other provisions, such as:

- 1) **Law no. 304 of May 29, 1982**, which provides for:
 - exemption from punishment for those who, having committed only offences related to their belonging to a criminal organization [*reati associativi*], withdraw from the agreement, or withdraw from the organization or from the terrorist group or determine the dissolution of the organization or group;
 - punishability in the case of attacks and attempted attacks, if the perpetrators behave in such a manner as to prevent the event or supply evidence necessary for the exact reconstruction of the facts and to identify any accomplice;
 - the granting of extenuating circumstances to persons charged with terrorist crimes who, before the conviction, not only withdraw from the subversive organizations, but make a full confession of the offences committed and effectively cooperate to annul or mitigate the consequences deriving from such crimes, or to prevent the perpetration of other related types of criminal conduct;
 - the granting of extenuating circumstances to persons charged with terrorist crimes who, besides having dissociated themselves from the criminal association and confessed the offences committed, effectively cooperate with the judicial authorities in gathering decisive evidence to identify and apprehend the perpetrators of terrorist acts, or to find elements useful for the reconstruction of the facts and to identify the persons responsible for such facts;

2) **Law no. 34/1987**, which provides for a reduction of penalty for terrorist crimes or the subversion of the constitutional order for those who, having been charged with, or sentenced for, offences committed for purposes of terrorism or subversion of the constitutional order, have once and for all abandoned the organization or the terrorist or subversive movement they belonged to.

3) Article 2 of the **Law no 155/2005** provided for the possibility to issue "**permits for investigation purposes**" (Article 2) when, "*in the course of police operations, investigations or proceedings relating to crimes committed for purposes of terrorism, including international terrorism, or subversion of the democratic order, it is necessary to ensure the foreigner's permanence on the territory of the State*" for his "cooperation" with the investigators.

Investigative methods

Among counteractive measures, which proved to be effective in the fight against terrorism, there are also specific investigation measures to combat this phenomenon.

Article 4 of the **Law no. 152 dated May 22, 1975**, empowers "*Criminal investigation police and law enforcement officers to immediately carry out searches **on the spot**, in exceptionally urgent and necessary cases, when the judicial authority has not enough time to issue a measure, only in order to ascertain the possible possession of arms, explosives and tools for burglary, on persons whose attitude and presence don't seem to be justifiable in relation to specific and factual circumstances of time and place*". The search may be carried out also on the means of transport used by the suspects.

Article 11 of the **Law no. 191/1978 "Police detention for identification purposes"**, empowers "*police officers and agents*" to "*accompany to their premises those who, upon request, refuse to give their identification data and hold them there for the time necessary for their identification, and, in any case, for a period not exceeding 24 hours*". The same provision is applicable "*when there are sufficient elements to think the personal details or the identification papers given are false*".

Article 12 of the **Law no. 191/1978** the so-called "**notice of transfer of buildings**", aims at making it difficult for members of terrorist organizations to obtain safe "hideouts". It provides that "*those who transfer ownership or possession of property, or in any other way allow others to use a building, or a part of it, for a period of time exceeding one month, must inform the police local authority, within 48*

hours of the passing of the property, of its precise location, as well as of the personal details of the buyer, the tenant or of the person who is going to use the property and the details of the ID document to be asked to the person concerned'.

Article 25 of the **Law no. 356 dated Aug. 7, 1992**, provides that Criminal investigation police officers *"may locally search buildings or blocks of buildings if they have good grounds for believing that there are arms, ammunition, or explosives or that a fugitive from justice or an escapee hides there"* in relation to serious offences among which is *"offences for purposes of terrorism"*.

Article 3 of **Law no. 438/ 2001** grants the possibility of wiretapping even when there are only sufficient investigating leads, differently from the normal procedure where the threshold for the authorization is the presence of serious investigating leads.

Article 25 bis of **Law no. 356/1992**, modified by law no. 438/ 2001, authorizes police to conduct searches in a whole building or a block of buildings.

Article 9 of **Law no. 146/2006**, provides for the possibility of carrying out **undercover activities** *"during specific police operations and, in any case, only in order to get evidence concerning the offences committed for terrorist purposes"* with the support of auxiliaries.

Article 18-bis of **Law no. 354/1975**, as modified by Article 1 of Law no. 155/2005, provides for the possibility of conducting **"interviews for investigation purposes to combat terrorism"** *in order to get from prisoners "useful information for prevention and suppression of offences committed for purposes of terrorism, including international terrorism"*. In particular urgent cases, certified by a measure taken by the Minister of the Interior (or delegated by him, the Chief of Police) it is possible to conduct the interview without prior authorization of the Minister of Justice (for prisoners, sentenced or accused persons) or that of the Public Prosecutor (for persons under investigation).

As to **personal identification, Article 349 of the Code of Criminal Procedure**, as modified by Article 10 of Law no 155/2005² provides for the possibility of taking, even coercively, biological samples (saliva or hair) from the person under investigation, after obtaining authorization from the Public Prosecutor.

[As to wiretapping, the legislation applicable to terrorist offences is particularly composite]

Article 6 of **law no. 438/ 2001** authorizes the use of electronic surveillance [intercettazioni ambientali] in order to seek out fugitives.

Article 266 of the implementing rules of the **Code of Criminal Procedure** deals with **"wiretapping and preventive communications surveillance"**, as modified by **Law no. 438/ 2001**. *"The Minister of the Interior or, delegated by him, the heads of the central services mentioned in Article 12 of Law no. 203 dated July 12, 1991, as well as the Chief of Police or the provincial Commander of the Carabinieri or of the Financial Police shall request the State Prosecutor at the court of the chief town of the district where the person to be put under surveillance lives or, if it cannot be ascertained, of the district where preventive needs have emerged, authorization to wiretap communications or conversations, also by means of telematic systems, as well as to wiretap communications or conversations occurring among the persons present, even if these occur in places set out in Article 614 of the Criminal Code, when this is necessary to gather information for the prevention of offences under Article 407, para. II, subpara. a) nos. 4 and 51 para. 3 bis of the Code"*. The Minister of the Interior may also delegate the Director of the Antimafia Investigation Department for the offences under the latter article. *"The State Prosecutor, whenever there are elements in the investigation that justify the preventive activity, and if he/she deems it necessary, shall authorize wiretapping for a maximum period of 40 days, which may be extended for additional periods of 20 days where the legal premises are still present. The Public prosecutor shall give the authorization to go on with the operations by a motivated decree in which the reasons which made the continuation of operations necessary must be clearly explained"*. *"The elements gathered through the preventive activities cannot be used in criminal proceedings , except for investigation purposes. In any case, the above-mentioned preventive wiretapping activities, and the information gathered through these activities cannot be mentioned in investigation reports or be the subject of testimony, nor otherwise disclosed"*. Moreover, it must be said that these investigation activities, and the same rules of procedure, also apply to every *"useful piece of information of telecommunications operators"* (reference to the acquisition of printouts and tracing of communications).

Article 4 of **Law no. 155/05** provides that the Prime Minister may delegate Information Services to request the authorization to carry out **"preventive phone wiretapping"** whenever they are deemed

² Artiche 10 of Law no. 155/2005

to be necessary to prevent terrorist activities or subversion of the constitutional order.

Finally, **Law no. 155 of 2005** provides for:

- the possibility, for the Minister of the Interior, to set up ad hoc "*Counter-Terrorism Units*"; that is to say joint investigation units to carry out Criminal Police Investigation following particularly serious terrorist offences (Article 5);
- the increase in the time-limits concerning the storage of data relating to telephone and telematic traffic for companies providing the relevant services (Article 6) (24 months for telephone traffic data and 6 months for telematic traffic data).

OTHER RELEVANT LEGISLATION

Escort to the border [Espulsione amministrativa]

Another important innovation introduced by Law 155 is the one relating to integrations to the rules on the ***escort to the border [espulsione amministrativa]*** of a foreigner, generally regulated by paragraph 1 of Article 13 of Legislative Decree no. 286/98 which provides for the deportation of a foreigner on grounds of public order and security.

This measure is adopted by the Home Affairs Minister, after informing the Prime Minister, by means of a grounded order, adequately substantiating the "dangerousness" of the person being expelled in relation to the "security of the State", for example, a person involved in espionage or terrorist activities. In such a case deportation shall be immediately enforceable.

This measure is particularly effective because it is addressed to foreigners having a regular stay permit in our country, and therefore, establishing their nationality would not be a problem.

Obviously, targeted and thorough gathering of information by the Police Forces and Information Services is fundamental to the issuance of the said provision, so as to support and appropriately substantiate the deportation proposal.

Law decree 144/05, converted into Law 155/05, brought about changes to such law provision by means of some adjustments.

According to Article 3 of Law 155/05 deportation may be ordered also by the *Prefetto*, delegated by the Home Affairs Minister, against the foreigner for whom there are grounded reasons to believe that his/her stay in Italy may in any way

whatsoever facilitate terrorist organizations or activities, even at an international level.

In any case, this new law reaffirms some cases in which this provision shall not be applied:

- when the foreigner is under 18, except for the right to follow his/her parent or foster parent who is being expelled;
- when the foreigner has a regular stay permit;
- when the foreigner lives with a relative within the fourth degree or his/her spouse of Italian nationality;
- when the foreigner is pregnant or during the 6 months following the birth of the child under the foreigner's care (an interpreting judgment of the Constitutional Court extended the case as to include also the spouse).

In no case shall deportation be enforced when in the country of destination the foreigner may be persecuted on grounds of race, sex, language, nationality, religion, political opinions, personal or social conditions, or may risk being sent to another State in which he/she is not protected from such persecutions.

One of the most important innovations introduced by Law 155 of 2005 was the one on the immediate and unlimited enforcement of the deportation order, according to which the Head of Police, who materially enforced the provision, did not have to:

- request the authorization of the Judicial Authority when there were criminal proceedings pending against a foreigner;
- request the Justice of the Peace to validate the provision to escort the foreigner being expelled to the border;
- wait for the issuance of a decision of the Regional Administrative Court [T.A.R.], before which both measures may be challenged by the party concerned. Indeed, an application submitted before the aforesaid Regional Court did not suspend the enforcement of the measure.

The new provisions, introduced by **Decree-law no. 249 of December 2007**, although establishing that the deportation order is immediately enforceable, even though it is appealed

against or challenged by the concerned party provides that the provision be submitted to a single judge Court for approval.

Compensation of victims

Benefits are provided for victims of terrorism and organized crime. They are not only financial in nature (there are, for example, health and welfare benefits, procedural benefits, etc.). Victims of terrorism and of organized crime of the mafia-type are those (Italian citizens, foreign citizens or stateless persons) who died or have suffered permanent invalidity as a result of wounds or injuries caused by those acts.

Prevention of financing terrorism

Italy being a member of the European Union, the framework for implementation of the UN Resolutions on the financing of terrorism has been elaborated:

- a) by EC Regulation 881/2002 of May 27, 2002 with regard to the implementation of United Nations Security Council Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1452 (2002), 1455(2003), 1526 (2004) and 1617(2005) targeting specifically Al Qaeda and the Taliban, and
- b) by the position 931/2001 and EC Regulation 2580/2001 for the implementation of UN Security Council Resolution 1373 (2001).

In case of violation of freezing measures established by EC Regulations, administrative sanctions can be applied ³.

Italy requested the UN 1267 Committee to list 70 suspected terrorists and 15 entities.

In the framework of EC Regulation 2580/2001, Italy requested the listing of one terrorist association and 17 suspected terrorists.

In addition to the current framework, Italy is setting up additional measures to improve the system of freezing economic resources, by conferring on a public institution the power to manage frozen assets other than bank or financial accounts. Such an institution would be in charge of the management and conservation of the assets until they are released and would designate an administrator to manage the property.

³ Article 2 of Decree Law 369/2001 converted into Law No. 431/2001

INSTITUTIONAL FRAMEWORK

The Ministries of Interior, Justice, Treasury and Foreign Affairs lead most of the activity of prevention of terrorist acts by coordinating the police efforts and financial supervision. Concerning the other relevant judicial activities they are carried out by Prosecutors and Judges which are both independent from the Government.

The Financial Security Committee (FSC)

In particular, regarding the Ministry of Treasury, following September 11, 2001, Italy established a Financial Security Committee (FSC)⁴.

The Financial Security Committee (FSC) is the lead authority in the fight against terrorism financing. The Committee, chaired by the Director General of the Treasury, includes representatives of ministries, law-enforcement bodies and agencies, including the Financial Intelligence Unit (*Ufficio Italiano dei Cambi*).

The FSC has the following remit:

- co-ordinates the action of the authorities involved in the fight against terrorism financing;
- decides the names of suspected terrorists to be submitted to the EU and the UN, collecting also all necessary information to update the lists. It can also propose to the UN Security Council the delisting when appropriate;
- acts upon requests by owners of frozen assets to use frozen funds "for fundamental human needs" and
- sets up relationships with foreign correspondent units, also in order to co-ordinate the freezing mechanisms with other jurisdictions.

INTERNATIONAL CO-OPERATION

Mutual assistance and extradition

Italy is party to several multilateral or bilateral conventions related to judicial cooperation and extradition, *inter alia*, the European Convention on the Suppression of Terrorism. Italy has also implemented the European arrest warrant.

Measures at international level

United Nations

⁴ Decree Law No. 369/2001, converted into Law No. 431/2001 and recently amended by the Law No. 155 of 31 July, 2005.

Italy has ratified the twelve international Conventions against terrorism, including the International Convention for the Suppression of the Financing of Terrorism⁵.

Italy actively supported and complied with Security Council Resolution 1373 (2001) that imposed on states positive obligations on the present subject.

Financial Action Task Force on Money Laundering (FATF-GAFI)

Italy is a member of the FATF-GAFI (*Financial Action Task Force on Money-Laundering, Groupe d'Action Financière Internationale sur le Blanchiment de Capitaux*), the inter-governmental body established in 1989 whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF has published a set of international standards (The Forty Recommendations against money laundering and the Nine Special Recommendations against terrorism financing) - Italy is committed to their full endorsement and actively seeks worldwide compliance.

Measures in the EU framework

Italy implements Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism and always complies with the obligations derived from the regulations related to the suppression of terrorism financing.

Council of Europe

Italy is party to the European Convention on the Suppression of Terrorism and has signed the Council of Europe Convention on the Prevention of Terrorism.

OBSERVATIONS ON THE DOCUMENT "NATIONAL BEST PRACTICES ON THE FIGHT AGAINST TERRORISM"

Given the legislative framework described above, it is apparent that the Italian legislation is on the cutting edge in this field.

In particular, the national legislation already provides for:

- punishability – except for the cases of actual aiding and abetting - of the logistic supporting behaviour to the so-called operative members of the terrorist group in addition to the criminal relevance of the "mere participation" in a terrorist

organization (Arts. 270 *bis* and *ter* of the Criminal Code);

- punishability of the instigation of and incitement to terrorist crimes or crimes against humanity (paragraph 4 of Art. 414 of the Criminal Code);
- "attack for purposes of terrorism and subversion" as an independent type of offence [*fattispecie di reato autonoma*] (Art. 280 of the Criminal Code);
- offences of recruitment and training (Art. 270 *quater* and *quinquies* of the Criminal Code);
- recognition of the importance of "dissociation" and above all of "active cooperation", with the consequent granting

of extenuating circumstances, reduction of penalties and the possibility to obtain a stay permit for purposes of investigation (Article 2 of Law 155/2005);

- the possibility to adopt preventive measures, which in the past were limited to combating mafia (oral warning, special surveillance, prohibition of stay or obligation of domicile), was expressly provided for in Law 238/2001 also with regard to persons "operating in groups or alone" who "set up preparatory acts objectively relevant, aimed at subverting the legal system of the State [...] by committing crimes for purposes of terrorism, including international terrorism".

⁵ Law No. 7 of 14 January 2003.

Relevant Council of Europe conventions – Bosnia and Herzegovina	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	27/01/1977	28/02/1986
Amending Protocol (ETS 190)	15/05/2003	-
European Convention on Extradition (ETS 24)	13/12/1957	06/08/1963
First Additional Protocol (ETS 86)	-	-
Second Additional Protocol (ETS 98)	23/04/1980	23/01/1985
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	20/04/1959	23/08/1961
First Additional Protocol (ETS 99)	30/10/1980	26/11/1985
Second Additional Protocol (ETS 182)	-	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	26/05/2000	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08/11/1990	20/01/1994
Convention on Cybercrime (ETS 185)	23/11/2001	05/06/2008
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	-	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	08/06/2005	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	08/05/2005	-

* Signature without reservation as to ratification