

The Italian (In)Security Package

Security vs. Rule of Law and Fundamental Rights in the EU

Massimo Merlino

Abstract

The 2008 Italian security package has triggered various concerns and criticism in Italy and across Europe. This working paper aims at analysing the nature, scope and implications of some of the legislative measures and practices constituting the package. In particular, it is argued that they are incompatible with the relevant provisions and principles of EU law – namely non-discrimination and free movement of persons – as well as international human rights standards. The paper also evaluates the impact that laws of exception and practices of derogation facilitated by the Italian measures may have on basic principles laying at the heart of the EU's foundations (respect for human rights and fundamental freedoms, and the rule of law) and shows how fundamental rights cannot be taken for granted in the EU.

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THE ITALIAN (IN)SECURITY PACKAGE

SECURITY VS. RULE OF LAW AND FUNDAMENTAL RIGHTS IN THE EU

MASSIMO MERLINO*

Introduction

The Italian general elections of March 2008 brought to power the right-wing coalition led by Silvio Berlusconi. Since then the new government has lost no time in tackling one of the central issues upon which it based its pre-election campaign: the claim that Italy is facing an exceptional ‘national security emergency’, largely caused by irregular immigrants. This government, which is already the fourth one led by Berlusconi, gained the parliament’s confidence on 15 May 2008. Five days later, the Italian cabinet agreed on the adoption of a complex set of legislative measures that are referred to as the ‘security package’. This package is composed of a series of laws broadly covering those categorised as EU citizens, third-country nationals (TCNs),¹ and most particularly, Roma.

The main legislative acts that have been adopted allow, inter alia, for facilitated expulsions, the transformation of irregular immigration into a crime and an extension of the period of detention for irregular immigrants. Moreover, the government has declared a “state of emergency” in relation to the settlements of nomadic communities in Campania, Latium and Lombardy. This last measure has been followed by the adoption of three emergency ordinances suspending the ordinary legislation and conferring new and increased police-related powers to the prefects of the regions concerned. The prefects, which are now operating as ‘special commissioners’ for the emergency, have been given the competence to conduct a census of Roma and Sinti communities. In Naples, the census was implemented – at least during its initial phase – through a collection of fingerprints, which those of included minors. The state of emergency has been successively extended to the entire Italian territory based on what the government defines as “a persistent and extraordinary influx of non-EU citizens”. This set of emergency measures, which has legitimised far-reaching derogations and exceptions to the standard national and EU legislation, has been accompanied by the decision to use military force for police operations within the country. As shown in this paper, a certain tension arises when putting in place these exceptions in relation to the rule of law and fundamental rights as recognised in the EU legal system.

Although the Italian measures adopted in the course of 2008 have been subject to criticism in Italy and abroad, it is striking to see that they are still in force and that no real action has actually been taken to correct them. In addition, the Senate has recently approved a few amendments proposed by the Northern League to the governmental draft law (*Disegno di Legge*) on provisions in the field of public security. The amendments, inter alia, demand that doctors report ‘illegal’ immigrants to national authorities, set the tax for being granted a residence permit at €80–200 and authorise so-called ‘citizen patrols’ (*ronde padane*) “to co-

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¹ By third-country nationals, we refer those not holding the nationality of an EU member state, and therefore not falling within the status of European citizens as defined in Art. 17(1) of the EC Treaty.

operate in the undertaking of territorial defence activities”.² The degree of exceptionalism emerging from the current Italian status quo is therefore expanding as time passes. Instead of stepping back in respect of some of these practices or adopting decisions that are more moderate, the Italian authorities are rather consolidating and developing their (in)security strategies even further. As a consequence, claims that these last normative and discursive developments are ‘illiberal’ and that they go beyond any acceptable benchmark for a democratic society governed by the rule of law and human rights are becoming increasingly prominent and relevant.

The aim of this working paper is to assess the nature and implications of the Italian security package and shed some light as regards its compatibility with EU law. The new Italian legislation is analysed against the EU obligations and commitments that bind every EU member state to those general principles upon which the EU legal regime has been constructed and articulated, i.e. the rule of law and fundamental rights. This latter aspect, we argue, is of profound importance, taking into account that most of the domains affected by the security package have been subject to the process of Europeanization and are therefore no longer under the exclusive national competence of EU member states. Our focus centres on the following main research questions: Are the national legal provisions that address EU citizens compatible with Council Directive 2004/38/EC on EU citizens’ freedom of movement and residence? Are the measures that address Roma minorities compatible with EU law and with the principles of equality and non-discrimination? Are the responses adopted based on the state of emergency, implying the use of the army for internal security matters, compatible with the rule of law?

The paper is divided into six sections. The first offers a description of the current government composition and provides a synthesised background of the migration-related normative measures that had already been adopted by Berlusconi’s previous government (2001–05), and which have provided the roots and inspiration of the new legal instruments. This allows a comparison that enables us to understand the nature and significance of the new security package. In the second section, the most relevant elements of this package are outlined and synthesised. We analyse the set of legislative instruments that have been adopted by the Italian government intending to face what it has called a ‘state of emergency’ caused by nomadic communities and influxes of irregular migrants. The third section presents an overview of the main reactions to the package by institutional and non-institutional actors at the EU and national levels. In the fourth section, we consider some specific provisions of the Italian legislative package in relation to relevant provisions and principles of EU law and international human rights law. After having analysed the possible tensions that the Italian legislation may provoke, namely with EU law, the fifth section evaluates the legitimacy of the policies and the practices of the Italian government. In particular, we assess the impact that the practices of derogation and the laws of exception may have on liberty and the rule of law, and more broadly on the general principles of liberal democracies upon which the EU is founded. Finally, in the last section, together with the conclusions, a set of policy recommendations addressed to both the Italian authorities and the EU institutions are presented.

² At the time of writing (February 2009), these most recent measures still have to be scrutinised by the Chamber of Deputies in order to become law. See the article, “‘Illegals’ to be reported by doctors – The criticised norm approved by the Senate”, on the Statewatch website (derived from the *Repubblica* newspaper) (retrieved from <http://www.statewatch.org/news/2009/feb/02italy-illegals-doctors.htm>).

1. The March 2008 general elections in Italy: The new centre-right government and its previous immigration policy

Silvio Berlusconi's 'People of Freedom' (Popolo della Libertà) alliance, which includes the post-fascist National Alliance (Alleanza Nazionale) together with the Northern League (Lega Nord) won the Italian general elections in March 2008, acquiring a substantial parliamentary majority.³ One of the most prominent winners of the elections was the Northern League, whose statutory aim is the independence of the 'Padania' (the north of Italy). Notwithstanding its strong regionalist orientation, the Northern League obtained 8.3% of the votes at the national level. It therefore doubled its presence in the parliament – emerging as the third largest force – and secured four ministers in the cabinet.⁴ According to academic commentators, the Northern League based its electoral campaign on the criminalisation and 'insecuritisation' of the phenomenon of immigration (Palidda, 2009).

Another surprising result of the March 2008 general elections was the disappearance of representatives from the Italian parliament of communist and socialist parties, which had been present in the parliament since the Italian Republic had been formed in 1946. The left alliance, called the Rainbow Left (Sinistra Arcobaleno), which included the two Italian communist parties⁵ along with the Green (Verdi) party and the Democratic Left (Sinistra Democratica),⁶ obtained only 3.1% of the votes. The Rainbow Left therefore failed to gain any seats in the parliament because it did not reach the required threshold of 4%. This result represented a dramatic drop of the political consensus for the left coalition. This is particularly the case if we take into account that in the preceding general elections in 2006, its three main parties⁷ together had won 10.2% of the votes.

The Italian left parties have traditionally shown pro-migrant positions. The fact that they are no longer in the parliament and the consequent shift of political power from a centre-left majority to a solid centre-right one has not been without socio-political implications. The return to power of the coalition led by Berlusconi has marked a clear turn (or 'coming back') towards exclusionary policies in the fields of human mobility and diversity. The 'fight against illegal immigration' represented the common ground upon which the Alleanza Nazionale and the Lega Nord found an ideological consensus.

The restrictive nature inherent to the rationale and driving logic of the security package is not at all new. When in 2001 the centre-right coalition came to power, Gianfranco Fini (leader of the National Alliance) and Umberto Bossi (leader of the Northern League leader) facilitated the passage of Law No. 189/02.⁸ This law, known as the Bossi-Fini law, included drastic

³ The right-wing coalition obtained 168 of the 315 seats in the Senate and 340 of the 630 seats in the Chamber (data from the interior ministry).

⁴ The cabinet is composed of 12 full ministers and 9 ministers without a portfolio. See the government composition details on its website (retrieved from http://www.governo.it/Governo/Ministeri/ministri_gov.html).

⁵ These are the Rifondazione Comunista and the Partito dei Comunisti Italiani.

⁶ The Sinistra Democratica represented the left part of the Democratici di Sinistra. They did not join the Partito Democratico of Walter Veltroni and ran for the 2008 elections as part of the Rainbow Left coalition.

⁷ These are the Rifondazione Comunista, Partito dei Comunisti Italiani and Verdi.

⁸ See Legge 189/02, Modifica alla normativa in materia di immigrazione e di asilo, 30 luglio 2002, *Gazzetta Ufficiale* no. 139, 26.8.2002.

amendments to the previous Single Act on the provisions concerning immigration and the regulations on conditions pertaining to foreign citizens,⁹ as outlined below.

First, the Bossi-Fini law made ‘entry for employment’ conditional on a job offer. It abolished permits for the purpose of seeking employment. By linking the residence permit to the working contract, only those who have a labour contract can legally reside in the country. Legal TCN workers who become unemployed have six months to obtain another working contract. If this does not occur, their residence permit will expire and they will fall automatically into illegality (Caritas/Migrantes, 2003, p. 158; Gibney and Hansen, 2005, p. 340).

Second, the Bossi-Fini law expanded the cases justifying expulsion. It introduced the possibility to carry out TCN expulsions by administrative decision, even if an appeal has been lodged.¹⁰ The expulsions decided by the *questore* [a public security authority at the provincial level], with escort by the police to the border, have become the rule rather than the exception, unlike under the previous law (Caritas/Migrantes, 2003, p. 159).

Third, the law doubled to 30 days (extendable to 60) the maximum period of detention of undocumented TCNs in ‘Temporary Detention Centres’ (Centri di Permanenza Temporanea e Assistenza or CTPs)¹¹ where they are brought for identification.¹² When identification does not occur within the limit of 60 days or it is not possible to hold the TCN in the CTP, the individual is obliged to leave the country within 5 days.¹³ Those who do not comply with the expulsion order – as well as those expelled who re-enter the Italian territory before the expiration of 12 years – are subject to imprisonment for 1 to 4 years.¹⁴

When the Bossi-Fini law was passed, the Berlusconi government included two Christian Democratic parties (the Centro Cristiano Democratico and the Unione dei Democratici Cristiani).¹⁵ These parties are traditionally linked to the Catholic church and characterised by moderate positions towards immigrants. Notwithstanding the opposition that they brought from within the ‘House of Freedoms’ coalition,¹⁶ the government managed to pass the law (Giugni and Passy, 2006, p. 180).

It is illustrative of the current political spectacle in Italy that in contrast to the preceding case, the (in)security package was unanimously adopted. The immigration policy of the new centre-right coalition, on the one hand, is no longer conditional on the moderate positions of the Catholic parties, while on the other hand, it does not face opposition from the Rainbow Left. Furthermore, the main changes introduced by the 2002 Bossi-Fini law represented the point of departure in the development of an even more restrictive immigration policy in Italy. The sudden fall of the Prodi government (2006–08) stopped the parliamentary procedure to convert the Amato-Ferrero bill¹⁷ into law, which would have amended the most controversial aspect of the Bossi-Fini law.

⁹ See Legge 286/98, Testo Unico (known as the Turco-Napolitano law), *Gazzetta Ufficiale* no. 191, 18.8.1998.

¹⁰ See Art. 12 of the Bossi-Fini law.

¹¹ These have since been renamed Centres of Identification and Expulsion.

¹² See Art. 13(a) of the Bossi-Fini law.

¹³ See Art. 13(b) of the Bossi-Fini law.

¹⁴ See Arts. 12(g) and Art. 13(a) of the Bossi-Fini law.

¹⁵ After the breach in spring 2008, these parties are no longer part of the government coalition.

¹⁶ This was the name of the Berlusconi coalition that won the elections in 2001.

¹⁷ See Law Proposal C 2976 (Proposta di legge Amato-Ferrero), Delega al Governo per la modifica della disciplina dell’immigrazione e delle norme sulla condizione dello straniero.

Following the above brief discussion on the political context that has emerged from the March 2008 general elections and the background synthesis of the guiding principles and tone of the amendments introduced by the Berlusconi government concerning immigration by 2002, the next section provides an analysis of the nature and main features of the 2008 (in)security package.

2. The new (in)security package: An overview

The (in)security package was adopted on 21 May 2008.¹⁸ This package of legislative measures proposed by Interior Minister Roberto Maroni (of the Northern League) includes

- 1) Law Decree (*Decreto Legge*)¹⁹ No. 92 on “Urgent measures in the field of public security”, which was amended and converted into law by Law No. 125 of 24 July 2008;²⁰
- 2) three legislative decrees (*Decreti Legislativi*)²¹ that amend the national legislation transposing Council Directive 2004/38/EC²² on EU citizens’ freedom of movement and residence, Directive 2003/86/EC²³ on the right to family reunification and Directive 2005/85/EC²⁴ on refugees’ status recognition procedures;²⁵
- 3) a governmental draft law²⁶ on “Provisions in the field of public security” (Act of Senate No. 733);²⁷ and
- 4) a decree of the president of the Council of Ministers – a declaration of the state of emergency in relation to the settlements of nomadic communities in the regions of Campania, Latium and Lombardy.²⁸

¹⁸ See the article, “The Security Package”, on the website of the Ministry of the Interior (retrieved from http://www.governo.it/GovernoInforma/Dossier/pacchetto_sicurezza/index.html).

¹⁹ The law decree is a temporary law that has the immediate force of law (once it is published in the official journal). It needs to be converted into law by the parliament within 60 days from its adoption.

²⁰ See Legge 125/2008, Conversione in legge, con modificazioni, del decreto-legge 23 maggio 2008, no. 92, recante misure urgenti in materia di sicurezza pubblica, 24 luglio 2008, *Gazzetta Ufficiale* no. 153, 25.7.2008.

²¹ A legislative decree is a law adopted by the government on a mandate by the parliament, which defines the principles and limits to be followed. It needs to be signed by the president of the republic.

²² See Council of the European Union, Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, of 29 April 2004, OJ L 158/77, 30.4.2004.

²³ See Council of the European Union, Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3 October 2003.

²⁴ See Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13, 13 December 2005.

²⁵ See Decreto legislativo in materia di libera circolazione dei cittadini comunitari; Decreto legislativo ricongiungimenti familiari dei cittadini stranieri; and Decreto legislativo riconoscimento e revoca dello Status di rifugiato. These decrees are available on the Italian government’s website (retrieved from http://www.governo.it/GovernoInforma/Dossier/pacchetto_sicurezza/index210508.html).

²⁶ A governmental draft law is a law proposed by the government, requiring parliament’s approval.

²⁷ See the document Legislatura 16 – Disegno di legge no. 733 (retrieved from <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Ddlpres&leg=16&id=302495>).

²⁸ See Decreto del Presidente del Consiglio dei ministri 21 maggio 2008; Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia, *Gazzetta Ufficiale* no. 122, 26.5.2008.

2.1 Coordinated text of Law Decree No. 92 on “urgent measures” for public security

The coordinated text of Law Decree No. 92 has introduced, inter alia, the immigration and public security provisions below.

First, non-EU citizens will be expelled and EU citizens removed from Italian territory by court decision if sentenced to more than two year’s imprisonment. According to Art. 1(a) of Law Decree No. 92, which modifies Art. 235 of the Italian penal code, “[t]he judge orders the expulsion of non-EU citizens,²⁹ or the removal of EU citizens,³⁰ from the national territory, in those situations – other than the ones stipulated expressly in the law – where they have been sentenced to more than 2 year’s time of imprisonment”. Before the introduction of this amendment, the former version of Art. 235 of the Italian penal code provided solely for the expulsion of TCNs – and not of citizens of other EU member states – who had been sentenced to *more than 10 year’s imprisonment*. Moreover, Art. 1 of the new law decree has established that an individual “who doesn’t conform to the expulsion order issued by the judge is liable to one to four years of imprisonment”.³¹

Second, the status of irregular immigrant has become an ‘aggravating circumstance’ in Italian criminal law. Art. 1(f) of Law Decree No. 92 has added to the list of aggravating circumstances stipulated by Art. 61 of the Italian penal code the following new one: “the circumstance of being a subject who is residing illegally on the Italian territory aggravates the offence”. It follows that an individual who has been convicted for having committed a crime and whose administrative status of stay in the country is irregular will now face jail sentences that are a third longer than are those applicable to Italians.

Third, tougher sanctions have been introduced against landlords who have rented a property to an irregular TCN. Art. 5(1) of Law Decree No. 92 – amending Art. 12 of Legislative Decree No. 286/1998 (*Testo Unico Immigrazione*) – makes clear that “whoever let out an accommodation to a foreign citizen illegally residing in the Italian territory is subject to a sentence ranging from 6 months to 3 year’s imprisonment”. The sentence, which has an irrevocable character, also implies the confiscation of the property. As further specified by Art. 5, “the money [that is] recovered from the sale of the confiscated properties will be used to strengthen the activities aimed at the prevention and repression of the offences related to illegal immigration”.

Fourth, mayors have been conferred new powers in the field of public security. As set out in Art. 6, which amends Legislative Decree No. 267/2000 (*Testo Unico Enti Locali*), the mayors will now have the competence to adopt “urgent regulations for security reasons”. Mayors will also participate in facilitating cooperation between the national and municipal police, in the framework of the ministry of interior’s directives. In addition, Art. 7 specifies that the municipal police will have access to the databases of the ministry of interior.

²⁹ Art. 13(4) of Legislative Decree 286/1998 establishes that the expulsion of a non-EU citizen is implemented by the *questore* through the use of the police.

³⁰ Art. 20 of Legislative Decree 30/2007 establishes that normally the removal of an EU citizen should occur through a notification ordering the individual to leave the country. The period stipulated to leave the country cannot be less than one month unless there are “imperative reasons of state or public security”.

³¹ Decreto-legge no. 92, Art. 1, paragraph (a):

Il giudice ordina l’espulsione dello straniero ovvero l’allontanamento dal territorio dello Stato del cittadino appartenente ad uno Stato membro dell’Unione europea, oltre che nei casi espressamente previsti dalla legge, quando lo straniero sia condannato alla reclusione per un tempo superiore ai due anni. Il trasgressore dell’ordine di espulsione od allontanamento pronunciato dal giudice e’ punito con la reclusione da uno a quattro anni.

Fifth, on 29 July 2008 the minister of interior and the minister of defence agreed to deploy 3,000 soldiers in cities across Italy during a period of at least six months. This measure was adopted in accordance with Art. 7 on “participation of the Army in territorial control”, which states that

[f]or exceptional and specific reasons of criminality prevention...use of the army [can be allowed] in areas requiring an increasing level of control. The army would operate under the control of Prefects of metropolitan areas. The army will have duties of surveillance of sensitive sites and targets and of patrolling together with the police. This plan can be authorised for a maximum period of six months, which can be renewed only once. The plan cannot involve more the 3,000 soldiers.³²

This plan foresees the use of 1,000 soldiers for the surveillance of the Centres of Identification and Expulsion.³³ It also provides for 1,000 personnel specifically for the surveillance of sites and sensitive targets (such as embassies and institutional buildings) in Milan, Rome and Naples, along with 1,000 soldiers, under the prefects’ control, with duties of patrol and surveillance that are to be made available for the prefects of Bari, Catania, Milan, Naples, Padua, Palermo, Rome, Turin and Verona.³⁴

2.2 Legislative decrees amending the national legislation to transpose Directives 2004/38/EC, 2003/86/EC and 2005/85/EC

The legislative decrees³⁵ included in the security package are the following:

- 1) the legislative decree scheme³⁶ concerning “amendments and integrations to the Legislative Decree No. 5/2007” (which transposed Directive 2003/86/EC on the right to family reunification). Art. 1 establishes that a TCN may exercise the right to family reunification for a spouse who is not legally separate and not younger than 18 years, minor children, adult children who are objectively in need of assistance for total invalidity and parents over age 65. In addition, the second paragraph of Art. 1 states that TCNs seeking to reunite with their relatives may be required to pass a DNA test at their expense;

³² See Testo del decreto-legge coordinato con la legge di conversione pubblicato nella *Gazzetta Ufficiale* no. 173, 25.7.2008; Art. 7 (bis) (Concorso delle Forze armate nel controllo del territorio):

1. Per specifiche ed eccezionali esigenze di prevenzione della criminalità, ove risulti opportuno un accresciuto controllo del territorio, può essere autorizzato un piano di impiego di un contingente di personale militare appartenente alle Forze armate, preferibilmente carabinieri impiegati in compiti militari o comunque volontari delle stesse Forze armate specificatamente addestrati per i compiti da svolgere. Detto personale e' posto a disposizione dei prefetti delle province comprendenti aree metropolitane e comunque aree densamente popolate, ai sensi dell'articolo 13 della legge 1° aprile 1981, no. 121, per servizi di vigilanza a siti e obiettivi sensibili, nonché di perlustrazione e pattuglia in concorso e congiuntamente alle Forze di polizia. Il piano può essere autorizzato per un periodo di sei mesi, rinnovabile per una volta, per un contingente non superiore a 3.000 unità.

³³ Art. 9 changed the name of the CTPs to Centres of Identification and Expulsion.

³⁴ See Ministry of the Interior website article, “Varato il Piano per l’impiego delle Forze armate nel controllo del territorio”. Maroni: ‘Sarà utile per aumentare la sicurezza nelle città’, Ministry of the Interior, Rome, 29 July 2008 (retrieved from http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stamp/parole/2100_500_ministro/0755_2008_07_29_Maroni_La_Russa_firma_decreto_impiego_Forze_armate.html).

³⁵ See Directive 2004/38/EC (Council of the European Union, 2004, *supra*, footnote 22).

³⁶ See the Decreto legislativo concernente modifiche e integrazioni al decreto legislativo 8 gennaio 2007, no. 5, recante disposizioni di attuazione della direttiva 2003/86/CE, relativa al diritto al ricongiungimento familiare (retrieved from <http://www.camera.it/dati/leg16/lavori/AttiDelGoverno/pdf/0003.pdf>).

- 2) the legislative decree scheme³⁷ concerning “amendments and integrations to the Legislative Decree No. 25/2008” (which transposed Directive 2005/85/EC on minimum standards for procedures in member states for granting and withdrawing refugee status). This decree introduces restrictions to the right of free movement on Italian soil for asylum seekers. Moreover, if asylum seekers are issued with an expulsion order owing to irregular entry or stay in Italy prior to filing their asylum application, they will no longer be hosted in open reception centres but will be held in the identification and expulsion centres for a period extendable up to 18 months; and
- 3) the legislative decree scheme³⁸ concerning “further amendments and integrations to the Legislative Decree No. 30/2007” (which transposed Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states). The main amendments and integration introduced by this legislative decree are
- first, EU citizens wishing to reside in Italy for more than three months will have to prove that they have sufficient economic resources, coming from legal activities, to sustain themselves and their families in order not to become a burden for the social system of the state;³⁹
 - second, EU citizens wishing to reside in Italy for more than three months have the obligation, for reasons of public order and public security, to register with the competent authorities within 10 days after the three-month period;⁴⁰ and
 - third, the right of entry and residence of EU citizens and their family members, according to Art. 20 of Legislative Decree No. 30/2007 as modified by the legislative decree scheme, “may be only limited for reasons of state security, peremptory reasons of public security and for other reasons of public order and public security”.

Yet it is further specified that “the imperative reasons of security always subsist when the EU citizens or their family members have not respectively registered or requested the residence permit”. The legislative decree scheme adds that “imperative reasons of

³⁷ See the Schema di decreto legislativo concernente modifiche e integrazioni al decreto legislativo 28 gennaio 2008, No. 25, recante attuazione della direttiva 2005/85/CE, relativa alle norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato (retrieved from http://www.camera.it/_dati/leg16/lavori/AttiDelGoverno/pdf/0004.pdf).

³⁸ See the Schema di decreto legislativo recante ulteriori modifiche e integrazioni al decreto legislativo 6 febbraio 2007, no. 30, di attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell’Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri (retrieved from http://www.camera.it/_dati/leg16/lavori/AttiDelGoverno/pdf/0005.pdf).

³⁹ Art. 7 (Diritto di soggiorno per un periodo superiore a tre mesi): “1. Il cittadino dell’Unione ha diritto di soggiornare nel territorio nazionale per un periodo superiore a tre mesi quando: [...] b) dispone per sé stesso ed i propri familiari di risorse economiche sufficienti, derivanti da attività dimostrabili come lecite, per non diventare un onere a carico dell’assistenza sociale dello Stato durante il periodo di soggiorno” (emphasis added).

⁴⁰ Art. 9 (Formalità amministrative per i cittadini dell’Unione ed i loro familiari):

2: Fermo quanto previsto dal comma 1, il cittadino dell’Unione che intende soggiornare per un periodo superiore a tre mesi ha l’obbligo, per ragioni di tutela dell’ordine pubblico o della pubblica sicurezza, di richiedere l’iscrizione entro i dieci giorni successivi al decorso dei tre mesi dall’ingresso. L’ufficio competente rilascia immediatamente una attestazione contenente l’indicazione del nome e della dimora del richiedente, nonché la data della richiesta (emphasis added).

security” always exist when the person to be removed has demonstrated behaviour that constitutes a concrete, effective and grave threat to fundamental human rights, public safety and public morality.⁴¹

In relation to the provisions on issues that are covered by Directive 2004/38/EC, it is important to mention a plan recently announced by Maroni. Although not yet part of any legislative instrument, the plan aims at expelling those EU citizens who do not have a sufficient income level, namely those living in camps of nomads. According to the interior minister, once the census of those living in the camps is finished, all such individuals (including Romanian Roma) who do not have the minimum income (€5,061 per capita, €10,123 for a family of up to three persons and €15,185 for families composed of four or more members)⁴² and the minimum standard of housing conditions will be expelled.⁴³

2.3 Governmental draft law on provisions in the field of public security (Act of Senate No. 733)

This draft law, currently the Act of Senate No. 733, has already been approved by the Chamber of Deputies and is at present under discussion in the Senate. It is strictly related to Law Decree (*Decreto Legge*) No. 92. Among its 20 articles, the following can be highlighted as the most relevant for the scope of our research:

- Art. 3 amending Law No. 91/1992 on citizenship increases from six months to two years the period of legal residence in Italian territory that is required to obtain Italian citizenship by marriage.
- Art. 8 on “Counteracting the use of minors for begging” establishes that those who use minors to beg will incur prison sentences of up to three years. In cases where the perpetrators are the parents, they will lose their parental authority.
- Art. 9 on “Illegal entrance in the Italian territory” introduces the crime of “illegal immigration”, which is punished by a prison sentence for six months to four years. The second paragraph of this article establishes the obligation to arrest the perpetrator of the crime (i.e. the irregular immigrant) and foresees the application of an accelerated trial.

⁴¹ Art. 20 (Limitazioni al diritto di ingresso e di soggiorno):

1. [...] il diritto di ingresso e soggiorno dei cittadini dell'Unione o dei loro familiari, qualsiasi sia la loro cittadinanza, può essere limitato con apposito provvedimento solo per: motivi di sicurezza dello Stato; motivi imperativi di pubblica sicurezza; altri motivi di ordine pubblico o di pubblica sicurezza. 3. I motivi imperativi di pubblica sicurezza sussistono in ogni caso se la persona da allontanare non abbia provveduto alla richiesta di iscrizione di cui all'articolo 9, comma 2, o alla richiesta della carta di soggiorno di cui all'articolo 10, comma 1, ovvero abbia tenuto comportamenti che costituiscono una minaccia concreta, effettiva e grave ai diritti fondamentali della persona ovvero all'incolumità pubblica o alla moralità pubblica e il buon costume, rendendo urgente l'allontanamento perché la sua ulteriore permanenza sul territorio è incompatibile con la civile e sicura convivenza.

⁴² These minimum income thresholds refer to 2008. The 2009 minimum income thresholds are available from the website of the Istituto Nazionale Previdenza Sociale (retrieved from http://www.inps.it/bussola/visualizzadoc.aspx?sVirtualURL=/Doc/TuttoInps/Pensioni/Le_pensioni/L_assegno_sociale/index.htm&iDDalPortale=4715&bLight=true#N65565). See also the new requirements to obtain the ‘social allowance’ (*assegno sociale*) stated in the Istituto Nazionale Previdenza Sociale Circolare No. 105, 2 December 2008 (retrieved from <http://www.inps.it/Home/default.asp?sID=%3B0%3B&iMenu=1&NEWSID=TUTTI>).

⁴³ This declaration was made available by the news agency ASCA, Rome, 22 September 2009 (retrieved from <http://www.asca.it/moddettnews.php?idnews=779285&canale=ORA&articolo=ROM:1204c2b.html>).

- Art. 17 establishes that money transfer agencies will have a duty to obtain a copy of the residence permit of TCNs.
- Art. 18 (1)(b) on “Permanence to 18 months” extends the length of detention in a retention centre of those irregular immigrants waiting to be deported from 60 days to 18 months. This provision anticipates the provision established in Directive 2008/115/EC on common standards and procedures in member states for returning illegally staying TCNs.⁴⁴

2.4 Decree of the president of the Council of Ministers declaring a “state of emergency”

2.4.1 “Emergency” owing to the presence of nomadic communities in Milan, Rome and Naples

During the Italian Council of Ministers meeting in Naples on 21 May 2008, a Council of Ministers’ decree was passed declaring a “state of emergency in relation to the settlements of nomad communities in the territory of the regions of Campania, Latium and Lombardy”.⁴⁵ In the Italian legal system, the possibility to declare a state of emergency is established by Art. 5 of Law No. 225/92.⁴⁶ Art. 5, “State of emergency and power of ordinance” (*Stato di emergenza e potere di ordinanza*), states “[i]n case of natural calamities, catastrophes or other events that according to their intensity and reach need to be faced by extraordinary powers and means, the Council of Ministers rules on the state of emergency, establishing its temporal and territorial extension”. This provision states that the government can implement the emergency measures through ‘ordinances’ (*ordinanze*), which may derogate any legislative provision currently in force (within the limits of the general principles of the legal order, i.e. the rule of law). It is also established that in order to implement the emergency measures the president of the Council of Ministers can make use of ‘commissioners’.

On the basis of Art. 5 of Law No. 225/92, the decree of 21 May 2008 conferred the functions of ‘special commissioners’ to the prefects, who are the representatives of the government at the local level.⁴⁷ Their main competences in this new context were specified by three ‘emergency ordinances’ (*Ordinanze del Presidente del Consiglio dei Ministri*) concerning the regions of Latium, Lombardy and Campania.⁴⁸ The preamble of each emergency ordinance justifies the

⁴⁴ See Council of the European Union, Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348/98, 24.12.2008. Art. 15(5) establishes that “[e]ach Member State shall set a limited period of detention, which may not exceed *six months*” (emphasis added). Paragraph 6 states that “Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further *twelve months*” (emphasis added).

⁴⁵ See Decreto del Presidente del Consiglio dei Ministri del 21 maggio 2008, Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunita’ nomadi nel territorio delle regioni Campania, Lazio e Lombardia, *Gazzetta Ufficiale* no. 122, 26.5. 2008.

⁴⁶ See Legge 225/92 Istituzione del servizio nazionale della protezione civile, 24 febbraio 1992, *Suppl. Ordinario alla Gazzetta Ufficiale*, no. 64, 17.3.1992.

⁴⁷ Prefects are present in every province and come under the competence of the interior minister.

⁴⁸ See the Ordinanza del Presidente del Consiglio dei Ministri, 30 maggio 2008, no. 3676, Lazio (retrieved from http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/protezione_civile/0987_2008_06_03_OPCM_30_05_08.html); see also the Ordinanza del Presidente del Consiglio dei Ministri, 30 maggio 2008, no. 3677, Lombardia (retrieved from http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/protezione_civile/0986_2008_06_03_OPCM_30_05_08.html) and also the Ordinanza del Presidente del Consiglio dei Ministri,

extraordinary competences attributed to the commissioners in light of “the extremely critical situation generated by the presence of numerous irregular and nomad foreigners who are permanently installed in the urban areas”. The government holds that “the precariousness of those camps has caused situations of serious social alarm [among] the local populations”.

Art. 1 of each ordinance states that the prefects – acting in their roles of special commissioners – are authorised “to derogate the legislation concerning environment[al], sanitary–hygienic measures, territorial planning, local police”. Among other functions, it is stated that the prefects are to have the power to define the programmes required to overcome the emergency, more specifically: to monitor and authorise settlements; to identify and carry out a census of persons living in the camps (*including children*); to adopt the necessary measures, *even through the use of the police*, against those persons who are or who can be subject to administrative or judicial orders of expulsion or removal; to adopt measures for eviction; to identify areas where new settlements may be built; and to adopt measures aimed at fostering social cohesion, including schooling.⁴⁹ In addition, Art. 2(3) of each ordinance establishes that the commissioner may also use *military personnel* to implement some of the initiatives deriving from his/her newly attributed duties.

2.4.2 “Emergency” brought about by the influx of non-EU citizens

During the Italian Council of Ministers meeting of 25 July 2008, the government passed yet another decree⁵⁰ that prorogues – and extends to the entire Italian territory – the state of emergency.⁵¹ The government maintains that this measure was justified by “the persistent and extraordinary influx of non-EU citizens” and aims at “strengthening the activities of fighting and management of the phenomena”. Notably, this measure was adopted under the civil protection mechanism (Art. 5, Law No. 125/1992).

3. Reactions from international bodies and civil society to the Italian (in)security package

The legal measures adopted by the Italian government as presented in the previous sections of this paper have generated widespread concern among institutional and civil society actors at the national, European and international levels. In particular, the measures addressing nomadic communities are those that have raised most of the criticism.

3.1 EU level

The European Parliament was one of the first EU institutional actors to react to the Italian events. In a Resolution adopted on 10 July 2008,⁵² the European Parliament urged Italian

30 maggio 2008, no. 3678, Campania (retrieved from http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/protezione_civile/0985_2008_06_03_OPCM_30_05_08.html).

⁴⁹ See Art. 1 of the Ordinanza del Presidente del Consiglio dei Ministri, 30 maggio 2008, no. 3676, Lazio. The same text has been used for Art. 1 of Ordinanza no. 3677 (Lombardia) and Art. 1 of Ordinanza no. 3678 (Campania).

⁵⁰ See the Decreto del Presidente del Consiglio dei ministri 25 luglio 2008; Proroga dello stato di emergenza per proseguire le attività di contrasto all’eccezionale afflusso di cittadini extracomunitari (retrieved from http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/immigrazione/0975_2008_07_28_proroga_stato_emergenza_immigrati.html).

⁵¹ Ibid.

⁵² See the European Parliament Resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy, P6_TA-PROV(2008)0361, Strasbourg. The Motion for a Resolution (on the census of

authorities to refrain from collecting fingerprints of the Roma – including children – and from using those already collected. The Resolution states that the collection of fingerprints “would clearly constitute an act of *direct discrimination based on race and ethnic origin* prohibited by Art. 14 of the ECHR [European Convention for the Protection of Human Rights and Fundamental Freedoms] and furthermore an act of discrimination *between EU citizens* of Roma origin and other citizens, who are not required to undergo such procedures” (emphasis added). The European Parliament also expressed concern about the government declaration, which asserts that the presence of Roma camps around large cities constitutes (in itself) “a situation of serious social alarm [among] the local populations” whose repercussions for public order and security justify a 12-month state of emergency. The state of emergency, in the view of MEPs, “is not appropriate or proportionate to this specific case”. Moreover, on the data collection conducted in Naples enquiring about religious and ethnic identity, MEP Livia Jaroka stressed the importance of ascertaining “whether the Italian authorities will investigate who is responsible for the infringement of rights and impeach the discharger of the registration form”.⁵³

The European Commission – in a letter to the Italian government from Jonathan Faull, director-general of the European Commission’s DG for Justice, Freedom and Security – initially posed a number of open questions about the census of Roma communities. The letter requested detailed information about the purposes for which fingerprints were collected and processed, and the legal basis for doing so; the modalities for storing fingerprint data and the related time span; and the existence of any written information provided to individuals prior to the collection of the fingerprints, along with confirmation that in the case of minors under age 14 fingerprints were taken only when specifically authorised by a judge and for the purpose of establishing their identity.⁵⁴ Afterwards, based on the response sent by the Italian authorities providing explanations for the fingerprinting measures, it was reported in the media that the Commission did not consider the Italian measures discriminatory or in breach of EU standards.⁵⁵ The Commission’s supposed ‘green light’ given to the census of nomadic communities in Italy was based on the assurances given by the Italian authorities. Among the latter are that no sensitive data such as *ethnicity* or *religion* can be collected; fingerprints can be taken only to identify persons who cannot be identified in any other way (the same rule applies to minors aged 14 to 18); in the case of minors (aged 6 to 14), fingerprints can only be taken when their legal guardians apply for a residence permit on their behalf; as far as minors under age 6 are concerned, fingerprints can only be taken by the judicial police (*polizia giudiziaria*) – together with the public prosecutor officer at the Tribunal for Minors (*Procura della Repubblica presso il Tribunale dei minori*) – and only in exceptional cases.

Although on the one hand, the Commission backed the measures concerning the census of persons living in nomadic communities, on the other hand it underlined the legal incompatibilities with EU law of several provisions that are included in the security package. In

the Roma on the basis of ethnicity in Italy) was presented on 7 July 2008 by the PSE Group, the ALDE Group, the Verts/ALE Group and the GUE/NGL Group.

⁵³ Reported by European Roma information office, *e-news*, 17.07.2008 (retrieved from <http://erionet.org/site/upload/publications/enews/e-news,%2017%20July%202008.pdf>).

⁵⁴ See the letter from Jonathan Faull, director-general, DG Justice, Freedom and Security, to the Italian government permanent representative in Brussels, on the Statewatch website (retrieved from <http://www.statewatch.org/news/2008/jul/eu-comm-italy-roma-faull-letter.pdf>).

⁵⁵ See L. Kubosova, “EU gives blessing for Italy’s Roma fingerprint scheme”, *EUobserver.com*, 5 September 2008 (retrieved from <http://euobserver.com/9/26691>). At the time of writing (February 2009), the report sent by the Italian authorities to the Commission has not been made available to the public.

its reply⁵⁶ to the oral question by MEP Guisto Catania⁵⁷ concerning the introduction of automatic expulsions for sentences exceeding two years handed down to TCNs and EU citizens, the Commission stated that “according to Directive 2004/38/EC, measures taken on grounds of public policy or public security must be based exclusively *on the personal conduct* of the individual concerned, which must represent a *genuine, present and sufficiently serious threat* affecting one of the fundamental interests of society” (emphasis added). The Commission also recalled that the Directive states, “previous criminal convictions could not in themselves constitute grounds for taking such measures” and it goes on to specify that “the existence of a criminal conviction can be successfully argued only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy”. Taking into account the jurisprudence of the European Court of Justice (ECJ), the Commission further acknowledged that Community law also precludes provisions of national law based on a presumption that nationals of other member states who have received a particular sentence for specific offences must be expelled. With regard to the new application of the aggravating circumstance to offences committed by non-national EU citizens, the Commission stated that it would be incompatible with the principles of proportionality and non-discrimination on the basis of nationality.

Similar doubts were raised – on the bases of the draft decrees submitted by Maroni – by Jacques Barrot, vice-president of the European Commission, responsible for Justice, Freedom and Security. He stated that “the draft decree on the implementation of the free movement Directive (2004/38) poses problems of compatibility with Community law”. Barrot also referred to the tensions that the rules on the automatic expulsion of EU citizens – established by Law Decree No. 92 – raise in relation to EU law. He finally admonished Italian authorities by adding that if a “solution in conformity with Community law” is not reached within “a very short timeframe...the Commission would launch infringement proceedings, as provided for by the EC Treaty”.⁵⁸

3.2 International actors

At the international level, significant criticism of the some of the measures included in the security package have come from the Council of Europe. Thomas Hammarberg, the commissioner for human rights of the Council of Europe, has in particular expressed a series of concerns about the measures pertaining to immigration and the Roma. The Council of Europe memorandum, which is based on the commissioner’s special visit to Rome of 19–20 June, asserted that “security cannot be the only basis for immigration policy” and pointed out that the legislative measures recently adopted by the Italian government “lack human rights and humanitarian principles and may spur further xenophobia” (Council of Europe, 2008). The commissioner also criticised the criminalisation of migrants’ entry and irregular stay. In his view, these measures may make it more difficult for refugees to ask for asylum and are likely to result in a further “social stigmatisation and marginalisation of all migrants – including Roma”.

⁵⁶ This reply was given on 19 June 2008, prior to the Commission being notified about the security package; see European Parliament, Debates, “Annex (Written answers) – Questions to the Commission, Question no. 51 by Guisto Catania (H-0397/08)”, Strasbourg, 19 June 2008 (retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20080619&secondRef=ANN-01&language=EN&detail=H-2008-0397&query=QUESTION>).

⁵⁷ See European Parliament, Oral Question H-0397/08 by Guisto Catania on the conformity of the ‘security decree’ with Community law, 3 June 2008 (retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?type=QT&reference=H-2008-0397&language=EN>).

⁵⁸ See the “Declaration of VP Barrot on the ‘Italian Security Package’”, European Commission, 23.09.2008 (retrieved from http://ec.europa.eu/commission_barroso/barrot/news/archives_2008_en.htm).

Furthermore, the memorandum noted that the frequent adoption of emergency laws is indicative of a “serious weakness of the state mechanism...to deal effectively with social problems”, which should be dealt with by means of ordinary, and not exceptional, legislation. In addition, in relation to the evictions implemented by the Italian authorities in the ‘unauthorised’ nomadic settlements, Hammarberg stressed the principle that “eviction should never take place if the authorities are not in a position to make available alternative, adequate accommodation”. Finally, he emphasised the need to give special attention to the effective protection of the human rights of Roma and Sinti children, as enshrined in the UN Convention of the Rights of the Child.

Besides the Council of Europe, many other international actors have reacted to the Italian government’s measures addressed at the Roma community. To mention a few examples, on 21 July 2008 the Organisation for Security and Cooperation in Europe (OSCE) sent a delegation of experts to Italy to assess the human rights situation of the Roma and Sinti population.⁵⁹ The United Nations Children’s Fund (UNICEF) manifested its concerns through a spokesman who said that UNICEF was “shocked and deeply worried by the plans”.⁶⁰ The European Union Fundamental Rights Agency (FRA) published a report that brings together the facts on the anti-Roma events that occurred in Italy during May–June 2008 and then describes the responses of the Italian authorities in the form of legal measures.⁶¹

3.3 Civil society

At the civil society level, the EU Roma Policy Coalition (ERPC) – which is an informal gathering of non-governmental organisations (NGOs)⁶² operating at the EU level in the broader areas of human rights, anti-discrimination, anti-racism, social inclusion and Roma and travellers’ rights – asked the Commission to clarify its position on the Italian government’s policies in relation to the Roma and to render all relevant documents public. In particular, the ERPC called on the Commission to “clarify if the response to Maroni’s report implies a ‘green light’ to the action and measures being implemented, namely forced evictions, attacks on Roma camps and derogatory or racist declarations by officials” and to “address Roma issues based on social inclusion policies, not on security concerns”.⁶³

In response to political and legal developments and the recent wave of racism and xenophobia against the Roma in Italy, another coalition of organisations – including the Open Society Institute, the Center on Housing Rights and Evictions, the European Roma Rights Centre, Romani CRISS and the Roma Civic Alliance – published a report based on interviews with

⁵⁹ See OSCE, “OSCE experts in Italy to assess situation of Roma and Sinti”, Press Release, OSCE, Vienna, 21 July 2008 (retrieved from <http://www.osce.org/item/32261.html>).

⁶⁰ See M. Moore, “Italy to fingerprint all Roma gypsy children”, *Telegraph.co.uk*, 26 June 2008 (retrieved from <http://www.telegraph.co.uk/news/worldnews/europe/italy/2200020/Italy-to-fingerprint-all-Roma-gypsy-children.html>).

⁶¹ See European Union Fundamental Rights Agency (FRA), *Incident Report: Violent attacks against Roma in the Ponticelli district of Naples, Italy*, FRA, Vienna, 2008 (retrieved from http://fra.europa.eu/fra/material/pub/ROMA/Incid-Report-Italy-08_en.pdf).

⁶² The member organisations are Amnesty International, European Network Against Racism, European Roma Grassroots Organisation, European Roma Information Office, European Roma Rights Centre, Minority Rights Group International, the Open Society Institute, the Spolu International Foundation, Roma Education Fund and the Fundacion Secretariado Gitano. See the EU Roma Policy Coalition (ERPC) report, *Towards a European Policy on Roma Inclusion*, ERPC, 2008(a) (retrieved from <http://roma.wieni.be/files/Towards%20an%20EU%20Roma%20Policy.pdf>).

⁶³ See ERPC, “NGOs call on Commission to clarify position on Italian Roma policies and make response public”, ERPC, 9 September 2008(b) (retrieved from <http://www.amnesty.org/en/library/asset/EUR30/009/2008/en/0970632d-80bc-11dd-8e5e-43ea85d15a69/eur300092008en.pdf>).

Romani individuals living in the camps in Italy.⁶⁴ The report highlighted “increased levels of police abuse and ill-treatment of Roma and the failure of the Italian government to condemn and prosecute extreme acts of violence and discrimination against Roma by non-state actors”. Concerning the census undertaken by the Italian government, the report considered it “extremely alarming in the absence of any information on the legal basis for such or on any measures put in place to prevent abuse of the protected data collected”. According to Amnesty International and the Anti-Defamation League, the census measures pertaining to nomadic communities are aimed at scaring them into leaving major cities and creating the conditions for “mass deportations”.⁶⁵

3.4 Reactions in Italy

Before the interior ministry issued its guidelines on the implementation of the ordinances of 30 May 2008 (Nos. 3676, 3677 and 3678), the Italian data protection authority expressed concerns about the possibility of fingerprinting the Roma, including minors. Fearing that this could entail discrimination that might also affect personal dignity (notably that of minors), the authority requested information from the prefects of Rome, Milan and Naples.⁶⁶

At the civil society level, many NGOs that work with immigrants in Italy have expressed their concerns about the measures of the security package. Among these NGOs, Medici Senza Frontiere has criticised the extension of migrants’ detention at the Centres of Identification and Expulsion to 18 months.⁶⁷ Marco De Ponte from ActionAid Italia deemed the measures of the security package ineffective and against the principle of equality before the law.⁶⁸ Damiano Rizzi, the president of Soletterre, considered the repressive approach to immigration “counterproductive” and Carlo Garbagnati, the vice-president of Emergency, considered “alarming” the criminalisation of nomads.⁶⁹ In addition, a network against the security package (*Rete contro il pacchetto sicurezza*) has been set up, which has been organising a number of information and protest initiatives.⁷⁰

⁶⁴ See European Roma Rights Centre (ERRC), Roma Centre for Social Intervention and Studies (Romani CRISS), Roma Civic Alliance (RCR), Centre for Housing Rights and Evictions (COHRE) and Open Society Institute, *Security a la Italiana: Fingerprinting, extreme violence and harassment of Roma in Italy*, ERRC, Budapest, 2008 (retrieved from <http://www.errc.org/db/03/2A/m0000032A.pdf>).

⁶⁵ See the article “Council of Europe blasts Italy over Roma fingerprinting”, *EurActiv*, 30 June 2008 (retrieved from <http://www.euractiv.com/en/mobility/council-europe-blasts-italy-roma-fingerprinting/article-173775?Ref=RSS>).

⁶⁶ See the press release, “Garante privacy su censimento nomadi” of 26 June 2008, available from Italian data protection authority’s website (at <http://www.garanteprivacy.it/garante/navig/jsp/index.jsp?folderpath=Comunicati+stampa%2F2008>).

⁶⁷ See Medici Senza Frontiere (MSF), “Dichiarazione di Loris de Filippi, responsabile dei progetti di MSF Italia”, Press Release, MSF, Rome, 23 May 2008 (retrieved from http://www.medicisenzafrontiere.it/msfinforma/audio_video.asp?id=1710). On the condition of detention in the centres of identification and expulsion, see Medici Senza Frontiere, *Centri di permanenza temporanea e assistenza – Anatomia di un fallimento*, Roma: Sinnos Editrice and Bologna: Dehoniana Libri, 2005.

⁶⁸ See C. Ciavoni, “Solo repressione contro i disperati’ Ong bocciano il pacchetto sicurezza”, *La Repubblica.it*, 23 May 2008 (retrieved from <http://www.repubblica.it/2008/05/sezioni/cronaca/sicurezza-politica-5/ong-contrarie/ong-contrarie.html>).

⁶⁹ Ibid.

⁷⁰ See the network’s blog at <http://nopacchettosicurezza.noblogs.org/>.

In Italy, the harsher criticism has come from Catholic church groups, rather than from the centre-left opposition parties.⁷¹ The Pope appeared to back warnings about the new racist wave by saying that “[o]ne of humanity’s great conquests is the overcoming of racism. Unfortunately, however, there are new and worrying examples of this in various countries, often linked to social and economic problems that nonetheless can never justify contempt or racial discrimination.”⁷² Italy’s top Catholic weekly, *Famiglia Cristiana*, called the government plan to fingerprint Roma children “indecent” and warned of the danger of a new wave of fascism in Italy.⁷³

4. Analysis of the (in)security package measures in light of EU and international law

After having illustrated the main legislative measures of the (in)security package and the reactions at the EU level, this section provides an overview of the EU obligations – resulting from the treaties, the directives and the jurisprudence of the ECJ – that bind Italy on those issues covered by the new national legislation encapsulated in the security package. In this context, we identify the key issues that arise as points of conflict. Reference is also made to the obligations that derive from the ratification of international treaties. This section does not cover the conformity of the Italian draft decree on asylum procedures, which has already been exhaustively assessed in a note from the Italian Association for Juridical Studies on Immigration (ASGI) and the Italian Council for Refugees (CIR).⁷⁴

4.1 Expulsion of EU and non-EU citizens

As discussed in section 2.1, Art. 1(a) of Law Decree No. 92 introduces the possibility to expel TCNs and to ‘move off’ EU citizens sentenced to more than two year’s imprisonment. In this sub-section, we outline some provisions of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states that are endangered by the decree.⁷⁵

The right to free movement is one of the most highly valued rights of EU citizens, but it is not absolute. According to Art. 27 of Directive 2004/38/EC, the right to free movement can be

⁷¹ The centre-left coalition had similar – although not so radical – electoral programmes to those of the centre-right as far as the security issue is concerned. See “Pacchetto sicurezza – Il commento di Giuseppe Mosconi e Claudio Sarzotti”, *Melting Pot Europa*, 3 July 2008 (retrieved from <http://www.meltingpot.org/articolo12981.html>).

⁷² See J. Hooper, “Italy: Silvio Berlusconi under fire as Pope appears to back warning about fascism”, *Guardian*, 19 August 2008 (retrieved from <http://www.guardian.co.uk/world/2008/aug/19/race.catholicism>).

⁷³ See “L’Italia corre il rischio fascismo’ Scontro Famiglia Cristiana-Governo”, *Corriere Della Sera*, 13 August 2008 (retrieved from http://www.corriere.it/politica/08_agosto_13/famiglia_cristiana_governo_berlusconi_fascismo_9b25f67c-6933-11dd-87db-00144f02aabc.shtml).

⁷⁴ See Associazione Studi Giuridici sull’Immigrazione (ASGI) and Consiglio Italiano per i Rifugiati (CIR), “Note on the conformity of the Italian draft decree on asylum procedures with Community legislation”, ASGI and CIR, Turin and Rome, 17 September 2008 (retrieved from <http://www.asgi.it/content/documents/dl08091901.note.asgi.cir.eu.comm.doc>).

⁷⁵ For an overall assessment of the most relevant deficits in the transposition of Directive 2004/38/EC in the 11 EU member states (including Italy) see S. Carrera and A. Faure Atger, *Dilemmas in the implementation of Directive 2004/38 on the right of citizens and their family members to move and reside freely in the EU*, Briefing Paper submitted to European Parliament Committee on Civil Liberties, Justice and Home Affairs, CEPS, Brussels, February 2009.

subject to limitations on the grounds of public policy, public security and public health. Yet, this same provision limits the discretion in the hands of member states by adding that “[m]easures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned”. As pointed out by Guild (2001, p. 66), derogations on the grounds of public policy or public security “must be interpreted restrictively and its scope cannot be determined unilaterally by each member state without being subject to control by the institutions of the Community”. Guild et al. (2007, p. 26) note that first, “member states in the exercise of their duties to secure public policy, public security and public health must respect the priority of the right of free movement”; second, “the exceptions are exactly that”; third, “their use must be justified by the member states when seeking to rely on them and the measures taken must be proportionate to the legitimate interest protected”. Furthermore, the ECJ has recognised that even though Community law does not provide for a uniform scale of values to assess what conduct can be considered contrary to public policy, the conduct may not be considered “sufficiently serious” to justify restrictions when the authorities do not apply to their own nationals repressive measures aimed at combating such conduct (ibid.).

The Italian decree does not comply with these principles. It sets a general threshold of a two-year jail sentence, independent of the kinds of offences involved, which leads to automatic expulsions. In this way, it also includes less severe offences, to which an order of expulsion is disproportionate. Moreover, by establishing that non-EU citizens and EU citizens with a criminal conviction and prison sentence longer than two years are liable to expulsion, Art 1(a) of the decree infringes Art. 27 of the Directive, which clearly states that “[p]revious criminal convictions shall not in themselves constitute grounds for taking such measures”.

This principle has also been reaffirmed by the ECJ, which has many times exercised its competence to examine national rules concerning the expulsion of EU nationals from the territory of member states. For instance, in 1977, in *Regina v. Bouchereau*,⁷⁶ the ECJ ruled that

previous criminal convictions do not in themselves constitute grounds for the imposition of restrictions on the free movement authorised by Art. 48 of the treaty on grounds of public security...criminal convictions are relevant only in so far as the circumstances which gave rise to them are evidence of personal conduct constituting a present threat to the requirement of public policy.

It should also be pointed out that the decree lacks a provision implementing Art. 33(2) of Directive 2004/38/EC. It states that in the case of an expulsion order that has to be enforced two years after it was issued, “the member state shall check that the individual concerned is *currently* and *genuinely* a threat to public policy or public security and shall assess whether there has been any *material change* in the circumstances since the expulsion order was issued” (emphasis added).

Alongside the tensions that Art. 1(a) of Law Decree No. 92 raises with respect to EU law, problems arise when the personal scope of the law concerns TCNs. Law Decree No. 92 actually does not establish any exception to expulsions for those cases that involve the foreigner’s fundamental rights: rights of family life, rights to health and asylum, etc. This omission therefore does not comply with international norms on fundamental rights. General Recommendation No. 30 on discrimination against non-citizens,⁷⁷ which was adopted in 2004

⁷⁶ See Case 30/77, *Regina v. Pierre Bouchereau* [1977] ECR, 1999.

⁷⁷ See Office of the United Nations High Commissioner for Human Rights (UNHCHR), General Recommendation No. 30: Discrimination against non-Citizens, UN Committee on the Elimination of Racial Discrimination, UNHCHR, Geneva, 1 October 2004 (retrieved from <http://www.unhchr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d?Opendocument>).

by the UN Committee on the Elimination of Racial Discrimination, calls on state parties to the International Convention on the Elimination of All Forms of Racial Discrimination⁷⁸ to

[e]nsure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment; and, avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.⁷⁹

An interference that is in violation of the alien's private and family life – as established in the first paragraph of Art. 8 ECHR – can be justified only if it is “in accordance with the law and is necessary in a democratic society”.⁸⁰ Building on the well-established case law of *Handyside v. United Kingdom*,⁸¹ Van Dijk (2001) reasoned that “the authorities of the State of residence have to demonstrate that there is a pressing social need for that State to expel that alien”. In order to do so, the “pressing social need” and the “proportionality” must be evident. The state cannot rely on its “concern to maintain public order, in particular in exercising their right to control entry, residence and expulsion of aliens” (ibid., p. 26).

4.2 Expulsion of EU citizens because of failure to comply with registration requirements

As pointed out in section 2.2 (point 3), the legislative decree has introduced the rule according to which EU citizens and their family members may be moved off on grounds of public security if they do not register with the competent authorities within 10 days after the established three-month period. These provisions, which modify the national law implementing Directive 2004/38/EC, conflict with the provisions of the Directive.

First, as already recalled in the European Parliament Resolution of November 2007 on the application of Directive 2004/38/EC, the Directive circumscribes member states' expulsion of EU citizens to “within clearly defined limits intended to safeguard fundamental freedoms”.⁸²

Second, in the interpretation of the derogations to freedom the ECJ has always applied “a strong and intense proportionality test over the alleged member states' limitations or barriers to the full operability of the freedom of movement” (Carrera, 2008, p. 281). In referring to a number of ECJ rulings such as those in the cases of *Orfanopoulos, Oliveri and Calfa*,⁸³ Carrera has emphasised that the national authorities must always opt for the administrative measures and

⁷⁸ See the International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969.

⁷⁹ See General Recommendation No. 30 (UNHCHR, 2004).

⁸⁰ See paragraph 2 of Art. 8 ECHR.

⁸¹ See *Handyside v. United Kingdom*, European Court of Human Rights Decision of 7 December 1976, Series A, No. 24, pp. 22-23, paras 48-49. The Court of Strasbourg explained that necessary requirements means there has to be a “pressing social need” for the interference, which “must be proportionate to the legitimate aim pursued”.

⁸² See European Parliament, Resolution of 15 November 2007 on the application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States, P6_TA(2007)0534, Strasbourg (retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0534&language=EN>).

⁸³ See Joined Cases C-482/01 and C-493/01, *Georgios Orfanopoulos and Others v. Land Baden-Württemberg* and *Raffaele Oliveri v. Land Baden-Württemberg* [2004] ECR I-5257. See also Case C-348/96, Criminal proceedings against Donatella Calfa [1999] ECR I-11.

procedures that are the least restrictive possible to fundamental freedoms, and in particular the freedom to move (*ibid.*, p. 282).

Third, as far as administrative requirements are concerned, on behalf of the Commission in its reply to the oral question by Catania,⁸⁴ Barrot has recalled that EU citizens' right to reside in the territory of the Union derives directly from the Treaty. It follows that the right cannot be made conditional to the fulfilment of administrative procedures. Barrot concluded by saying that the failure to obtain a registration certificate "may under no circumstances constitute a reason for expulsion on grounds of public policy or public security". Art. 8(2) of Directive 2004/38/EC, concerning the administrative formalities for Union citizens, states that "failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions". The same rule applies to family members who are not nationals of a member state. Art. 9(3) of Directive 2004/38/EC stipulates that "failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory sanctions".

In this regard, the ECJ has also strictly limited the possibility for the member states to expel citizens of the Union exercising their right of free movement (Guild et al., 2007, p. 53). In the case of *Oulane*,⁸⁵ the ECJ ruled that "detention and deportation based solely on the failure of the person concerned to comply with legal formalities concerning the monitoring of aliens *impair* the very substance of the right of residence *directly* conferred by Community law and are *manifestly disproportionate* to the seriousness of the infringement" (emphasis added). It follows that deportation orders should be issued only for the most serious offences.

Taking into account that the failure to comply with administrative requirements cannot be equated to a serious offence, Art. 20 of Legislative Decree No. 30/2007 – as modified by the new legislative decree scheme – cannot be considered either proportionate or equitable.

Additionally, it has to be stressed that as far as EU citizens are concerned, Art. 28(1) of Directive 2004/38/EC requires member states – before taking an expulsion decision on grounds of public policy or public security – to consider "how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member state and the extent of his/her links with the country of origin".

Finally, it is important to note that Art. 31 of Directive 2004/38/EC establishes 'procedural safeguards' for the individuals subject to expulsion orders. It states that "the persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host member state to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health".

4.3 'Illegal' immigration as an aggravating circumstance

As analysed in section 2.1, Art. 1(1)(f) of Law Decree No. 92 states that "the circumstance of being a subject who is residing illegally on the Italian territory aggravates the offence". As highlighted in a communication from the Italian High Council of Judiciary (Consiglio Superiore della Magistratura), this new aggravating circumstance has a general character. This means that it is applicable to every kind of offence committed by every individual who is illegally in Italy.

⁸⁴ See European Parliament, Debates, "Annex (Written answers) – Questions to the Commission, Question no. 51 by Giusto Catania (H-0397/08)", Strasbourg, 19 June 2008 (retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20080619+ANN-01+DOC+XML+V0//EN&query=QUESTION&detail=H-2008-0397>).

⁸⁵ See Case C-215/03, *Oulane v. Minister voor Vreemdelingenzaken en Integratie* [2005] ECR I-1215.

The amendment brought by Law Decree No. 92 is based on the assumption of dangerousness, which automatically stems from the status of simple administrative irregularity.⁸⁶

On this point, the Italian Constitutional Court has stated in its Ruling No. 22/2007 that “the condition of being [an] irregular non-national cannot be linked to the assumption of dangerousness”. The Italian High Council of Judiciary has also underlined that the “aggravation” has the further effect of making inapplicable the possibility of punishment suspension that is provided for by Art. 656(5) of the penal procedural code.

Art. 1(1)(f) of Law Decree No. 92 does not specify the personal scope of the law. It is therefore not clear whether the aggravating circumstance in criminal law also concerns EU citizens who are not regularly registered. According to Maroni, “for Italian authorities it was clear that the ‘*aggravante*’ was to be applied only to non-EU citizens”.⁸⁷ Nevertheless, that Maroni prefers to resolve the problems of conformity with EC law through an ‘authentic interpretation’ rather than a formal amendment of the law leaves margins of discretion to the Italian authorities. The text thus remains ambiguous and does not exclude the possibility of applying the aggravating circumstance to offences committed by EU citizens.

This provision is contrary to the principle of proportionality because it would impose on EU citizens penalties that are a third greater in comparison with the penalties imposed on national citizens. It is also contrary to the principle of non-discrimination on the grounds of nationality, as provided for in Art. 12 EC Treaty.⁸⁸

Finally, as far as TCNs are concerned, this provision infringes the principle of equality before the law and protection against discrimination for all persons. This is a universal right, which is recognised by the Universal Declaration of Human Rights and by the ECHR,⁸⁹ to which all member states are signatories.

4.4 EU citizens’ right of residence and ‘minimum income requirements’

One of the major weaknesses of Directive 2004/38/EC is that it has not overcome the limits of a freedom to move that remain dependent on a degree of financial self-sufficiency of the person moving (Carrera, 2005). Those EU citizens who – according to Art. 14(4) – do not belong to the categories of workers, the self-employed or job seekers, need to be financially self-sufficient. This weakness offers grounds to national authorities to justify measures that are restrictive of EU citizens’ rights to move and reside within the EU.

In this regard, it has to be recalled that the plan put forward by Maroni (outlined at the end of section 2.2) provides for the expulsion of EU citizens for not having a ‘minimum income’. This

⁸⁶ See Consiglio Superiore della Magistratura (CSM), Nota in data 29 maggio 2008 del Segretario generale f.f. del C.S.M. relativa alla richiesta di parere, con delibera del Comitato di Presidenza in pari data, sulla normativa inerente la sicurezza pubblica contenuta nel decreto legge n. 92 del 23 maggio 2008, concernente Misure urgenti in materia di sicurezza pubblica, CSM, Rome (retrieved from http://www.astrid-online.it/Sicurezza-Dossier--s1/CSM_Delib_Misure_Sicurezza_01_07_08.pdf).

⁸⁷ See European Parliament, *Draft report on the LIBE delegation to Italy on 18th/19th September (nomads camps emergency)*, Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Gérard Deprez, 2008(a) (retrieved from <http://www.statewatch.org/news/2008/nov/ep-libe-visit-to-italy-report.pdf>).

⁸⁸ Art. 12 EC Treaty states that “[w]ithin the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”.

⁸⁹ See the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, with Protocol Nos. 1, 4, 6, 7, 12 and 13 (retrieved from <http://www.echr.coe.int/r/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>).

plan raises concerns because it ties ‘the completeness’ of citizenship to the income of the individual concerned. It therefore establishes a sort of unacceptable ‘census citizenship’, according to which an individual who does not have enough income is not a full European citizen.⁹⁰

The measure announced by Maroni seems to be grounded on the ambiguity of Art. 14(1), which gives EU citizens and their family members (with the exceptions of the categories established by Art. 14(4)) the right of residence for up to three months “as long as they do not become an unreasonable burden on the social assistance system of the host member state”. This concept is also specified in Art. 7(1)(b): all union citizens shall have “sufficient resources for themselves and their family members” and comprehensive sickness insurance cover so as “not to become a burden on the social assistance system of the host member state”.

That notwithstanding, as emphasised by Minderhoud (2009), the lack of a minimum income per se cannot in any case justify the expulsion of EU citizens and their family members. Indeed, the provisions of Arts. 14 and 7 of Directive 2004/38/EC should be read in light of Recital 16 of its preamble: “As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host member state they should not be expelled.”

Consistent with Recital 16, even the recourse of an inactive person⁹¹ to the social assistance system of the host member state cannot lead automatically to an expulsion order (Minderhoud, 2009). The host member state, while assessing whether an EU citizen has become an unreasonable burden on its social assistance system “should examine whether it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted” before proceeding with expulsion.

Finally, Art. 8(4) forbids member states from laying down a fixed amount that they regard as “sufficient resources”.⁹² It follows that the interior minister’s plan to expel persons living in nomads’ camps (including EU citizens) who do not attain a minimum income (€5,061 per capita) is contrary to the nature of Directive 2004/38/EC. It is established that the member state must take into account the personal situation of the individual concerned, rather than set minimum incomes in relation to expulsions.

5. State of emergency vs. fundamental rights and the rule of law?

After having analysed the main points of conflict between the measures of the security package and the specific provisions enshrined in EU law (in particular with Directive 2004/38/EC), in this section we give a more general assessment of the laws and practices that the Italian government has recently been implementing.

As expressed in the memorandum presented by a coalition of NGOs⁹³ to Barrot and the LIBE European Parliament Committee Delegation to Italy, “the present Italian government has imported explicit racism directly into its programs and legislative work”.⁹⁴ The memorandum

⁹⁰ See M. Revelli, “Decree Law on deportation and the ‘war against the last’”, M. Revelli interviewed by *Melting Pot Europa*, 2008 (retrieved from <http://www.meltingpot.org/articolo12116.html>).

⁹¹ More specifically, this refers to those who are not workers, self-employed persons or job seekers.

⁹² On this point see section 2.2 of this paper and footnote 40.

⁹³ These are the Centre on Housing Rights and Evictions, the European Grassroots Organisation, OsservAzione and the Policy Center for Roma and Minorities.

⁹⁴ See the Centre on Housing Rights and Evictions (COHRE), European Roma Grassroots Organisation (ERGO), OsservAzione and Policy Center for Roma and Minorities (PCRM), “Memorandum Concerning

emphasises how this tendency has created a rupture in the previously existing “European consensus”, according to which “explicit racial discrimination and racist incitement has no place in the European legal and governmental order”.⁹⁵

In particular, the measures adopted by the government under the state of emergency – which create derogations to the rule of law, enable a merging of the role of the military and the police, and target specific ethnic groups – need to be carefully evaluated.

As Guild (2007) pointed out, “the legality of derogation by a member state to rights under the ECHR is not a decision which is purely internal to the State”. On the contrary, “it is subject to supranational scrutiny by the European Court of Human Rights if challenged by another member state or an individual” (ibid., p. 31).

Moreover, Art. 6 of the Treaty on the European Union (TEU) holds that “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms”. In addition, Art. 7 provides for sanctions against a member state – including the suspension of its voting right in the Council – if it has determined “the existence of a serious and persistent breach” of the principles upon which the Union is based.

5.1 The state of emergency and settlements of nomadic communities

After the latest enlargement (1 January 2007), citizens from Romania and Bulgaria and their family members acquired the right to move and reside freely within the territory of member states. This has generated a conspicuous increase of Romanians, who have become the largest immigrant group in Italy. According to data presented in a Caritas report, at the beginning of 2007 there were 556,000 ‘regular’ Romanians in Italy.⁹⁶ At the start of 2008, the report estimated that the number of Romanians residing in Italy was between 850,000 and 1 million. These data show that in one year the Romanian population residing in Italy almost doubled. Among an Italian population of 59,619,290, the Romanian segment rose from 0.9% to 1.6%.

This increase has been used by politicians and the media to relate ‘the security issue’ to the presence of Romanians. Although official statistics show that reported crimes have fallen since the 1990s (Republic of Italy, Ministry of the Interior, 2007, p. 301), the security package has been supported by the widespread perception – fuelled by politicians and the media – that crime rates are out of control and that they are directly linked to ‘illegal’ immigration. In particular, after the murder of an Italian woman by a Roma of Romanian nationality in Rome in November 2007, the Roma have become the focus of Italian concern about crime committed by immigrants (FRA, 2008, p. 9). As Palidda (2009) pointed out, the then mayor of Rome, Walter Veltroni (now leader of the Democratic Party) declared that Italy could no longer accept tens of thousands of Romanians easily travelling to Italy and committing crimes. All the leading political figures “called for an urgent measure to enable the expulsion of around 200,000 Romanians”, which finally did not take place because of pressures from the Romanian government and the European Community (ibid.).

the Necessity to Apply Treaty Measures in the Matter of the Italy Emergency, for the LIBE European Parliament Delegation to Italy”, COHRE, Geneva, 7 October 2008 (retrieved from http://www.libertysecurity.org/IMG/pdf/Memorandum_Treaty_Article_7_Italy_September_2008_LIBE.pdf).

⁹⁵ Ibid.

⁹⁶ See Caritas Italiana, “Romania. Immigrazione e lavoro in Italia. Statistiche, problemi e prospettive, Edizioni Idos, giugno 2008”, Presentazione del 12 giugno 2008, Caritas Italiana, Rome, 2008, p. 3 (retrieved from http://s2ew.caritasitaliana.it/caritasitaliana/pdf/notizie/immigrazioneromana/scheda_sintesi_romania.pdf).

The data concerning the Roma in Italy differ greatly. Caritas maintains that there are 140,000, among whom 60% are permanent inhabitants, while of those remaining half are semi-nomadic and the rest are made up of Sinti (artists who travel permanently, taking their shows with them).⁹⁷ The Council of Europe estimates the number of Roma and Sinti in Italy at 160,000, more than half of whom would not be Italian, coming mainly from former Yugoslavia, Romania and Bulgaria.

In the view of Fernando Capuano, president of the Red Cross in Rome, the estimations provided by the municipality of Rome in June had indicated about 12,000 persons in the area, while the real number could not be more than 7,000 Roma.⁹⁸ Similar situations concerning overestimations of the persons living in camps have also been reported in Milan and Naples.⁹⁹ The discrepancy between the previous estimations and the actual numbers can be explained in two (not necessarily alternative) ways: first, the numbers concerning the presence of the Roma living in the ‘nomad camps’ in Rome, Milan and Naples were inflated by the Italian authorities in order to create an alarming sense of a ‘Roma emergency’, which in reality did not exist; second, the legislative measures and police actions addressing the Roma community resulted de facto in mass expulsions. This last argument would also be indirectly corroborated by a recent declaration of the Italian interior minister, who stated that the Roma living in Italy turned out to be less than the number (around 120,000) initially estimated by the government, because “many of them have spontaneously left Italy, in order to go to the more permissive Spain”.¹⁰⁰

The decree establishing the state of emergency in relation to the settlements of the nomadic communities in the regions of Campania, Latium and Lombardy is built on Law No. 225/92.¹⁰¹ As highlighted in section 2.4.1, this law allows public authorities to derogate from practically every provision of law and other regulations that apply under normal conditions. These derogatory powers can be justified solely on the bases of emergencies that result from “natural calamities, disasters and other catastrophic events”. The decree identifies the mere presence of nomadic communities as a situation of emergency. Since the presence of nomadic communities per se cannot be considered a “disaster” or “catastrophic event” capable of legitimising emergency measures, it follows that the decree is not based on lawful grounds.

In addition, the ordinances adopted by the president of the Council of Ministers on 30 May 2008, as previously analysed in section 2.4.1, attribute to the prefects discretionary powers that are too broad. They may in fact adopt “all the necessary measures”, even through “the use of the police”, against those persons “who are to or could be expelled by virtue of an administrative or judicial measure”. Although the ordinances state in Art. 3(1) that “derogations to the current legislation have to comply with the general principles established in the Italian legislative system and by the Community directives”, this did not occur.

⁹⁷ See Caritas/Migrantes, *Immigration in Italy: Recent Findings*, Dossier Statistico Immigrazione, Caritas/Migrantes, Rome, 2007 (English version retrieved from <http://www.dossierimmigrazione.it/schede/pres2007--schedainglese.pdf>).

⁹⁸ See the article published in *Il Giornale*, “Ecco l’effetto Maroni Dopo i controlli la grande fuga dei rom”, 19 September 2008 (retrieved from <http://www.ilgiornale.it/a.pic1?ID=291537>).

⁹⁹ Ibid.

¹⁰⁰ See article published in *L’Espresso*, “Dio perdona Maroni no” by G. Riva, 2 October 2008 (retrieved from <http://espresso.repubblica.it/dettaglio/Dio-perdona-Maroni-no/2043238/2>).

¹⁰¹ See Legge 225/92, Istituzione del servizio nazionale della protezione civile, 24 febbraio 1992, *Suppl. Ordinario alla Gazzetta Ufficiale*, no. 64, 17.3.1992).

The forms initially used for the census of the nomadic communities in Naples included, besides fingerprints, sensitive data such as ethnicity and religion.¹⁰² Therefore, this measure infringed the provisions of Council Directive 95/46/EC.¹⁰³ As Art. 8(1) concerning the processing of special categories of data clearly stipulates, “member states shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life”. Following the (negative) opinions from both the Italian and EU data protection authorities, the ministry of the interior issued an official document establishing the guidelines for the implementation of the ordinances regarding settlements of nomadic communities in the regions of Campania, Latium and Lombardy.¹⁰⁴ In the guidelines it is stated that

[t]he implementation of the ordinances must be carried out in the full respect of fundamental rights and human dignity, in conformity to the general principles of the legal order and European Union directives...In this sense, the operations entrusted by the Commissaries should not concern specific groups, subjects, or ethnicities but all of them located in the settlements, authorized or unauthorized, whichever is the nationality or the faith.

The Italian data protection authority then requested that data illegally collected be destroyed, that no database be created and that controls be put in place for the correct implementation of the guidelines.¹⁰⁵

Furthermore, from a more general perspective, the measures of the Italian government that address specific ethnic groups can be considered discriminatory in nature. A certain tension arises when comparing them with some of the provisions of Council Directive 2000/43/EC, which implements the principle of equal treatment between persons irrespective of racial or ethnic origin.¹⁰⁶ As an illustration, Art. 2(1) of the Directive establishes that “the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin”.

Along with the fact that the measures aimed at taking a census of the Roma constitute an act of discrimination between EU citizens of Roma origin and nationals or other EU citizens – who are not required to undergo such procedures – it has to be remarked that the Italian measures may also be in direct contradiction of EU law on the free movement of EU citizens. As observed by Amnesty International (2008), throughout the year the Italian authorities engaged in a large-scale eviction of Roma communities. The ‘emergency measures’ adopted had the character of

¹⁰² These forms were made available by an Italian Catholic human rights group, Comunità di Sant Egidio, and used as a front page of the report *Security a la Italiana: Fingerprinting, Extreme Violence and Harassment of Roma in Italy* (ERRC et al., 2008, op. cit.).

¹⁰³ See Council of the European Union, Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995.

¹⁰⁴ See Republic of Italy, Ministry of the Interior, Cabinet of the Minister, Guidelines for the implementation of the Ordinances of the President of the Council of Ministers 30.05.2008, No. 3676, No. 3677 and No. 3678, regarding settlements of nomad communities in the regions of Campania, Latium and Lombardy, Ministry of the Interior, Rome, 2008. The English version of the ‘guidelines’ is on the Statewatch website (retrieved from <http://www.statewatch.org/news/2008/jul/italy-roma-ministry-guidelines.pdf>).

¹⁰⁵ See European Parliament (2008a), op. cit.

¹⁰⁶ See Council of the European Union, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180/22, 19.7.2000.

public order operations, entailing mass expulsions of the Roma,¹⁰⁷ many of whom are in fact EU citizens (mostly Romanian, but also Bulgarian and Hungarian). The expulsions of the Roma who have EU citizenship are incompatible with Art. 27 of Directive 2004/38/EC.¹⁰⁸ The nature of Art. 27 has also been recently reaffirmed by the ECJ. In the judgment in the case of *Gheorghe Jipa*,¹⁰⁹ in paragraph 30 of its ruling the ECJ stated that Art. 18 EC Treaty and Art. 27 of Directive 2004/38/EC do not preclude national legislation from restricting the right of a national of a member state to travel to another member state on condition that

the *personal conduct* of that national constitutes a *genuine, present and sufficiently serious threat* to one of the fundamental interests of society and that the restrictive measure envisaged is *appropriate* to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it (emphasis added).

In line with this ruling, national authorities must take into account personal conduct and they are forbidden from adopting collective actions targeting groups.

Furthermore, Protocol No. 4 of Art. 4 ECHR expressly prohibits collective expulsions, including when these involve TCNs. In line with the principle enshrined in the Convention, each expulsion order should be adopted individually and take into account the particular situation of each subject. It thus aims at avoiding those measures that target groups that are living together as a consequence of their common culture or religion. Yet this seems to be the case with the expulsion orders that were adopted by the Italian authorities. These orders concern, all at the same time and under the same general motivation of ‘reasons of public security’, persons of the same ethnic origin living in the same place. As emphasised by Paolo Artini of the UNHCR in Rome, about 20% of the estimated 160,000 Roma in Italy have come from the Balkans. Therefore, due consideration should be given that among them are individuals who have the status of refugee, whose rights are (or should be) protected by the national legislation and the Geneva Convention of 1951.¹¹⁰

5.2 The “persistent and extraordinary influx of non-EU citizens” and the deployment of the army

On the basis of a “persistent and extraordinary influx of non-EU citizens” and “with the aim of strengthening the activities of fighting and management of the phenomena”, the government prorogued and extended to the entire Italian territory the state of emergency. The alarming declaration of a national state of emergency together with the adoption of measures such as the introduction of the crime of illegal immigration have engendered sentiments of insecurity (in relation to the constructed image of the ‘illegal’ migrant) and xenophobia across the country. It seems that this ‘situation of emergency’ has been produced (or at least heightened) by the government itself. Afterwards, on the grounds of the ‘(in)security emergency’ the Berlusconi

¹⁰⁷ See “Situation of Roma in Italy and report of the visits and meetings of Marco Cappato and Victoria Mohacsi (ALDE MEPs) in Rome, 17–18 July 2008”, OM, 24.7.2008, (retrieved from <http://www.statewatch.org/news/2008/jul/italy-roma-meps-report.pdf>).

¹⁰⁸ Art. 27 of Directive 2004/38/EC states that “measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned”, which “must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.”

¹⁰⁹ See Case C-33/07, *Ministerul Administrației și Internelor – Direcția Generală de Pașapoarte București v. Gheorghe Jipa*, 10 July 2008, OJ C 140, 23.06.2006.

¹¹⁰ See European Parliament (2008a), op. cit.

government deployed 3,000 personnel from the army, the navy, the air force and Carabinieri with military duties for internal security.

It is worth recalling that there has been a tendency in Western democracies to overextend the concept of a state of emergency and its duration. With the end of the cold war, liberal states have seen the once clear dividing line between the realms of internal and external security increasingly blurred.¹¹¹ This has been the consequence of the emergence of new transnational challenges to security: international terrorism, transnational criminality, drug trafficking and others (Lutterberck, 2004). Thus, the distinction between internal and external security has no longer been plainly reflected at the institutional level by the separation of competences between the police (focused on the domestic sphere) and the military (at one time solely engaged on external threats).

Notwithstanding this general tendency, in the Italian case the recourse to the state of emergency highlights the government's incapacity or unwillingness to deal with a particular internal situation through the ordinary police forces. A case in point is the recent declaration by Ignazio La Russa, minister for defence, of the intention to "bring the soldiers to the construction sites" in order to address the increasing phenomenon of deaths in the workplace.¹¹² This declaration evidences the government's propensity to 'resolve' every kind of internal problem through the deployment of the military, completely disregarding the fact that the use of the military for internal matters should be based on immediately pressing, emergency situations.

It has to be stressed that the deployment of the military for internal matters endangers the fundamental rights of the people living in the country. First, as Guild (2007, p. 3) pointed out, "the traditional forces of law and order within the state, the police, are generally recognised as owing a high duty of care to the individuals whom they are policing", but that is not so for the military! Second, the different legal regime as regards the legality of police actions and military actions – police are answerable for their actions within the criminal justice system of the state, while the military are judged by their own separate courts (ibid.) – impedes the right of individuals to pursue a case in the civilian courts for alleged illegal military actions.

6. Conclusions and recommendations

This working paper has examined the current political situation and legal context in Italy and its difficult relationship with EU law, the process of Europeanization and the general principles of liberal democracies that are at the core of the EU: the principles of liberty, respect for fundamental rights and the rule of law.

The right-wing coalition that took power after the general elections in March 2008 has adopted a package of legislative measures – the (in)security package – that have inter alia criminalised the phenomenon of immigration and targeted ethnic minorities. The implementation of this

¹¹¹ In Italy, there has never been a clear dividing line between internal and external security. From the end of the Second World War, however, governments have progressively limited the use of military force for internal security to exceptional and extremely dramatic situations, as for example in relation to internal terrorism during the 1970s. It was in the 1990s that the state began to return to the use of military force to face internal matters – namely organised crime, irregular immigration and influxes of refugees owing to the Balkan wars. During the 1990s, the Italian naval interventions in the Channel of Otranto and the use of military airports to repatriate immigrants increasingly became 'ordinary' missions rather than 'exceptional' ones. The same thing happened in the case of the 'Vespri Siciliani' operation, which went on from 1992 to 1998 (A. Tsoukala, « La lutte contre le crime organisé en Sicile, L'opération militaire Vespri Siciliani », *Cultures & Conflits*, No. 56, hiver, 2004).

¹¹² See L. Sebastiani, "Militari ovunque, anche contro le morti bianche", *L'Unita*, 12 August 2008.

restrictive immigration policy has been facilitated by two major transformations that have occurred in the Italian political scenario: the exit of the Union of Christian and Centre Democrats (Unione dei Democratici Cristiani e di Centro or UDC)¹¹³ from the new government coalition and the absence of left-wing parties¹¹⁴ in the parliament. This situation has allowed Berlusconi's government to pass the (in)security package without facing any significant opposition from within either his coalition or the parliament.

The (in)security package has been accompanied by the declaration of a state of emergency in the regions of Lombardy, Latium and Campania. The emergency legislation, justified at the official level by the presence of camps of nomads, has particularly targeted Roma communities. The new competences attributed to the prefects – appointed as special commissioners – have increased the exceptionalism of the situation through their implementation of a census of persons living in the camps (mostly Roma). This census has facilitated the closure of 'irregular camps', the eviction of those living in them and the expulsion of those whose administrative status is 'irregular'.

In this paper, the following arguments have been put forward. First, the implementation of a census based on race and ethnic origin represents both an act of direct discrimination according to Art. 14 ECHR and an act of discrimination between EU citizens of Roma origin and other citizens, contrary to Art. 13 of the EC Treaty and Art. 2 of Directive 2000/43/EC.

Second, expulsion orders for EU citizens of Roma origin violate the principle of free movement of persons as enshrined in the treaties and Directive 2004/38/EC. As Guild (2001) rightly pointed out, expulsion needs to be considered an exception to the rule governing the right of free movement. The state therefore has to justify on very strict grounds the use of the exception against citizens of other member states whose rights derive directly from EU law (ibid.).

Third, the Italian legislative measures providing for the expulsion of non-nationals (including EU citizens and their family members) who have been sentenced to more than two years in prison do not comply with the provisions of Directive 2004/38/EC and its proactive interpretation by the ECJ. Indeed, it is clearly stated in the text of Directive 2004/38/EC and it has been stressed by the ECJ that any expulsion measure must be based on the personal conduct of the individual concerned, who must also represent "a genuine, *present* and *sufficiently serious threat* affecting one of the fundamental interests of the society" (emphasis added).¹¹⁵

Fourth, the provision stipulating that failure to satisfy administrative requirements may justify the expulsion of EU citizens and their family members is contrary to Community law. According to Art. 8(2) of Directive 2004/38/EC, the sanctions related to the failure to comply with registration requirements should be "proportionate and non-discriminatory". The Italian measure is manifestly disproportionate to the seriousness of the infringement at stake.

Fifth, expulsion measures addressed at both EU and non-EU citizens that affect rights that are protected by the ECHR should always be necessary and proportionate to the legitimate aim pursued. The Italian legislative instruments allowing expulsions on grounds of public security create difficulties in relation to some of the ECHR provisions. This holds true in particular as regards Art. 8 ECHR, which establishes the right of respect for private and family life.

¹¹³ The Unione dei Democratici Cristiani e di Centro was formed in 2002 by the union of Christian Democratic parties in Italy: the Christian Democratic Centre (Centro Cristiano Democratico), the United Christian Democrats (Cristiani Democratici Uniti) and European Democracy (Democrazia Europea).

¹¹⁴ More specifically, this refers to parties of the Rainbow Left coalition that in the last elections did not reach the threshold of 4% in order to have representatives in the national parliament.

¹¹⁵ See Art. 27(2) of Directive 2004/38/EC.

Sixth, the expulsion of the Roma living in the camps on grounds of public security is contrary to Art. 4 of Protocol No. 4 ECHR, which forbids collective expulsions. These actions have been implemented on the bases of orders that were adopted all at the same time, using the same reasoning and addressing the same ethnic group.

Seventh, the legal provision that has added the status of ‘irregular immigrant’ to the list of ‘aggravating circumstances’ in the Italian penal code contravenes the principle of proportionality and the principle of non-discrimination on grounds of nationality (Art. 12 EC Treaty). Furthermore, it is in conflict with the principle of equality before the law and protection against discrimination for all persons, which are universal rights recognised by the Universal Declaration of Human Rights as well as by the ECHR.

Finally, in addition to the possible infringements of the EU directives, many of the legislative measures of the (in)security package are in contradiction of the founding principles of the EU: liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles, which should be common to all member states, are established by Art. 6 TEU.¹¹⁶ They have also been embraced by the Charter of Fundamental Rights of the EU and have been proactively interpreted in ECJ jurisprudence.

This paper has argued that the adoption of ‘emergency legislation’, such as that adopted by the Italian government, undermines the fundamental principle of the rule of law in the EU. Moreover, we have shown that to a certain extent, the ‘Roma emergency’ has been created by the discursive and electoral strategy of the public authorities. As highlighted by Thomas Hammarberg, the government declaration that “the extremely critical situation generated by the presence of numerous irregular and nomad foreigners...has caused situations of serious social alarm [among] the local populations”,¹¹⁷ has generated further social marginalisation of migrants and fostered an anti-immigration and xenophobic climate in the country.¹¹⁸ The Italian (in)security package shows that the respect of human rights cannot be taken for granted in Europe. The (in)security package constitutes an illustrative example of illiberal practices by liberal regimes (Bigo and Tsoukala, 2006).

Based on the assessment carried out in this paper, and in line with the recommendations put forward by (among others) the European Parliament, the Council of Europe¹¹⁹ and the coalitions of NGOs,¹²⁰ we propose the set of policy recommendations below.

At the national level, the Italian authorities should

- withdraw the declaration of the state of emergency owing to the presence of nomadic communities;
- stop the implementation of the census based on race and ethnic origin and the forced evictions when no alternative accommodation is provided;
- strongly condemn all racist statements addressing ethnic minorities and implement a comprehensive anti-discrimination law;
- investigate the alleged police violence and abuses during raids of Roma camps and take immediate action to identify and prosecute the perpetrators of violent assaults on the camps;

¹¹⁶ On this point, see COHRE et al. (2008), op. cit.

¹¹⁷ See the preambles of Ordinances of the president of the Council of Ministers, Nos. 3676, 3677 and 3678.

¹¹⁸ See Council of Europe (2008), op. cit.

¹¹⁹ Ibid.

¹²⁰ See COHRE et al. (2008), op. cit. and ERRC et al. (2008), op. cit.

- implement, in consultation with Romani representatives, action plans aimed at the effective protection of Roma social rights, in particular housing and education;
- include the Roma and Sinti in Law No. 482/199 on the protection of a historical linguistic minority;¹²¹ and
- immediately repeal the legislative measures that do not comply with Community or international law.

At the EU level, the European Commission should

- launch, without further delay, the infringement proceedings as provided for by the EC Treaty¹²² in relation to those Italian provisions that do not comply with EU law; and
- consider the possibility of adopting a reasoned proposal, upon which the Council, according to Art. 7, may determine the existence of “a clear risk of a serious breach of the principles mentioned in Art. 6(1)”.

Yet, as observed in the Parliament Resolution of 14 January 2009 on the situation of fundamental rights in the EU 2004–08,¹²³ the EU procedure to make sure that systematic and serious violations of human rights and fundamental freedoms do not take place in the EU (established by Art. 7 TEU) has never been used, despite the fact that violations have been ascertained by the European Court of Human Rights.

The EU should set up a strategy to have at its disposal more substantive and institutional mechanisms for evaluating and assuring that member states do indeed respect human rights and the rule of law when acting within the remits of EU law. In this regard, inter alia three possible paths could be taken:

- establish a set of objective criteria for the implementation of Art. 7 TEU.
- expand the mandate and competences of the FRA,¹²⁴ in particular as regards the evaluation and monitoring mechanisms in cases where a potential violation of fundamental rights and rule of law takes place; and
- set up a European Parliament standing committee¹²⁵ to evaluate, in cooperation with the FRA, the adherence to fundamental rights and rule of law principles of member states’ policies falling within the scope of EU law, especially those concerning the rubric of an Area of Freedom, Security and Justice.

¹²¹ The Roma and Sinti have been excluded from Law No. 482/199 on the grounds that they have no links with any specific area. This decision was taken on the erroneous assumption that Roma are ‘nomads’ who prefer to live in camps.

¹²² See Arts. 226 and 228.

¹²³ See European Parliament, Resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008, P6_TA-PROV(2009)0019, Strasbourg, 14 January 2009.

¹²⁴ The FRA came into existence on 1 March 2007. See Council of the European Union, Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights.

¹²⁵ See European Parliament, “Title VII: Committees and Delegations”, *Rules of Procedure of the European Parliament*, 16th Edition, October 2008(b). Rule No. 174, “Setting up of standing committees”, establishes that “[o]n a proposal from the Conference of Presidents, Parliament shall set up standing committees whose powers shall be defined in an annex to the Rules of Procedure. Their members shall be elected during the first part-session following the re-election of Parliament and again two and a half years thereafter.” The *Rules of Procedure of the European Parliament* is available from the European Parliament’s website (retrieved from <http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>).

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About CHALLENGE

The familiar world of secure communities living within well-defined territories and enjoying all the celebrated liberties of civil societies is now seriously in conflict with a profound restructuring of political identities and transnational practices of securitisation. **CHALLENGE** (Changing Landscape of European Liberty and Security) is a European Commission-funded project that seeks to facilitate a more responsive and responsible assessment of the rules and practices of security. It examines the implications of these practices for civil liberties, human rights and social cohesion in an enlarged EU. The project analyses the illiberal practices of liberal regimes and challenges their justification on the grounds of emergency and necessity.

The objectives of the **CHALLENGE** project are to:

- understand the convergence of internal and external security and evaluate the changing character of the relationship between liberty and security in Europe;
- analyse the role of different institutions in charge of security and their current transformations;
- facilitate and enhance a new interdisciplinary network of scholars who have been influential in the re-conceptualising and analysis of many of the theoretical, political, sociological, legal and policy implications of new forms of violence and political identity; and
- bring together a new interdisciplinary network of scholars in an integrated project, focusing on the state of exception as enacted through illiberal practices and forms of resistance to it.

The **CHALLENGE** network is composed of 21 universities and research institutes selected from across the EU. Their collective efforts are organised under four work headings:

- *Conceptual* – investigating the ways in which the contemporary re-articulation and disaggregation of borders imply a dispersal of practices of exceptionalism; analysing the changing relationship between new forms of war and defence, new procedures for policing and governance, and new threats to civil liberties and social cohesion.
- *Empirical* – mapping the convergence of internal and external security and transnational relations in these areas with regard to national life; assessing new vulnerabilities (e.g. the ‘others’ targeted and critical infrastructures) and lack of social cohesion (e.g. the perception of other religious groups).
- *Governance/polity/legality* – examining the dangers to liberty in conditions of violence, when the state no longer has the last word on the monopoly of the legitimate use of force.
- *Policy* – studying the implications of the dispersal of exceptionalism for the changing relationship among government departments concerned with security, justice and home affairs, along with the securing of state borders and the policing of foreign interventions.

The CHALLENGE Observatory

The purpose of the **CHALLENGE** Observatory is to track changes in the concept of security and monitor the tension between danger and freedom. Its authoritative website maps the different missions and activities of the main institutions charged with the role of protection. By following developments in the relations between these institutions, it explores the convergence of internal and external security as well as policing and military functions. The resulting database is fully accessible to all actors involved in the area of freedom, security and justice. For further information or an update on the network’s activities, please visit the **CHALLENGE** website (www.libertysecurity.org).

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