



Andrea OSTELLARI
Italian Senate, Chair of the Justice Committee

Cc: Maria Elisabetta ALBERTI CASELLATI
Italian Senate, President

Members of the Justice Committee
Italian Senate

Brussels, 20 April 2021

Subject: Urgency in putting the bill on measures to prevent violence and discrimination to a vote in the Justice Committee of the Italian Senate

Dear Justice Committee Chair, Andrea Ostellari,

As Members of the LGBTI Intergroup in the European Parliament, we write to you with concern over the delay in putting to a vote the bill on measures to prevent violence and discrimination on the grounds of sex, gender, sexual orientation, gender identity and disability. We believe that the lack of a swift procedure on behalf of the Senate's Justice Committee has unduly delayed the adoption of a law which will substantially contribute to the protection of vulnerable groups in Italy, in particular of LGBT persons, in alignment with European values and the work programme of the European Commission.

On 4 November 2020, the lower house of the Italian Parliament overwhelmingly approved the before-mentioned bill. The fundamental part of the bill, drafted by Alessandro Zan (PD), lies on the modification of article 604 bis and ter of the Penal Code, which currently punishes with imprisonment of up to six years the crimes of propaganda and incitement to commit racial, ethnic and religious discrimination. The addition would ensure that discriminatory acts based "on sex, gender, sexual orientation or gender identity and disability" would also be contemplated, providing for sentences of up to four years in prison. The sentence may also be commuted even partially in work of public utility to be carried out also by associations for the protection of victims.

Months have passed without any step being taken in the Senate to schedule the vote of the bill. A second attempt last week by the Senate's justice committee to schedule a date for the final vote failed. You decided on April 7, 2021, as committee president, for a new postponement in the scheduling of the vote, which had been called for by the majority parties. According to our understanding, this decision was taken on the basis of the rules of procedure of the Senate. A technicality, referring to Rule 51 of the Senate Rules of Procedure, provided that "*bills having identical or closely related subjects shall be placed jointly on the agenda of the appropriate committee.*" Your decision was therefore to refer all four bills on the same subject to the office of the President of the Senate to fulfil an indispensable technical step. After the swift approval from the President's office, we count on your due diligence to start the debate on the bill and to put it to a vote in the Justice Committee.

The proposed bill is crucial for the alignment of the legal framework of Italy on hate crime and hate speech with that of other EU and Council of Europe Member States on the matter. At present, there are a number of significant policy documents calling for such measures to be adopted from different international organisations:

1. The European Commission proposed in its recently published LGBTIQ Equality Strategy to present an initiative in the fourth quarter of 2021 to extend the list of 'EU crimes' (Article 83 TFEU) to cover hate crime and hate speech, including when targeted at LGBTIQ people;¹
2. The European Commission Against Racism and Intolerance's (ECRI) General Policy Recommendation No. 15 recommends governments of Member States to *"take appropriate and effective actions against the use, in a public context, of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination, against those targeted by it through the use of criminal law"*;²
3. The European Parliament's 2013 Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity specifically mentions that *"Member States should register and investigate hate crimes against LGBTI people, and adopt criminal legislation prohibiting incitement to hatred on grounds of sexual orientation and gender identity"*;³
4. The Council of Europe's Committee of Ministers' 2010 Recommendation to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity expressly calls on Member States to 1) ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance and to 2) take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons;⁴
5. The European Parliament's 2006 resolution on homophobia in Europe called on Member States to fight against homophobia through *"administrative, judicial and legislative means"*, as well as to *"promote and implement the principle of equal treatment in their societies and legal systems"*;⁵

Indeed, different attempts at altering the applicable legislation in Italy have taken place over the years, all without success. We praise for instance the role of the civil society mobilisation "Da' Voce al Rispetto", which has been crucial in advocating for legal reform. Your active diligence in this matter will allow Italy to strengthen its protection of vulnerable citizens, and in so doing, move it closer to a situation where they benefit from the recognition and protection of the state.

Therefore, we call on you to start the debate on the bill and to put it to a vote so that the legislative procedure can continue in full legitimacy of the powers vested upon the Members of the Senate. We call equally on all Senate Members to support the legislative process and to push for its continuation while acknowledging the possibility of making improvements to the text.

We look forward to your response and appreciate in advance your consideration of our letter, through which we advocate for a more equal environment for all persons in Italy, in particular for its LGBT citizens.

¹ European Commission (2020), *"Union of Equality: LGBTIQ Equality Strategy 2020-2025"*, published on 12 November 2020, accessible at https://ec.europa.eu/info/sites/info/files/lgbtiq_strategy_2020-2025_en.pdf.

² ECRI (2015), *"General Policy Recommendation No. 15 on Combating Hate Speech"*, adopted on 8 December 2015, accessible at <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>.

³ European Parliament (2013), *"Resolution on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity"*, accessible at https://www.europarl.europa.eu/doceo/document/TA-7-2014-0062_EN.html.

⁴ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies), accessible on https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a.

⁵ European Parliament (2006), *"Resolution on homophobia in Europe"*, accessible at <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0018+0+DOC+XML+V0//EN>.

Yours sincerely,

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