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## Second Annual Report to the Parliament

Senate of the Republic

15 July 2015

# Abstract

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## Part Two - The Authority's activities

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### 1. Introduction

This Section of the Report describes the main activities performed by the Transport Regulation Authority in the period of reference (1 July 2014 – 30 June 2015) for the purposes of implementing the provisions of paragraph 5 of article 37 of Decree-Law No 201 of 6 December 2011, converted, with amendments, by Law No 214 of 24 December 2011, as amended (hereinafter also "the Law establishing the Authority" or article 37 of Decree-Law No 201/2011).

The reports that the Authority is required to submit for implementing specific and additional provisions are in case highlighted in pertinent passages. In describing the actions and measures taken by the Authority reference is made to the relevant decisions which are also provided in a separate list in Part III of this Report.

### 2. Organization, operation, financing and staff

#### 2.1 Organization and operation

The activities necessary to complete the organizational structure and ensure the full operation of the Authority have been carried on in the period of reference. All offices provided for under the Regulation governing its organization and operation have been set up and proper continuity in their management and coordination has been ensured with the appointment of a Secretary-General, as provided for in the law establishing the Authority.

In terms of significant external and internal procedures, the Authority has adopted amendments to the Regulations concerning legal and economic treatment of staff and accounting rules. In the latter case, in particular, the Authority has adjusted the text to the changed regulatory framework in relation to the purchase of goods and services, specified the rules governing spending procedures and integrated the Regulation with the provisions concerning travel and mission expenses of staff and Board. The Authority has also adopted working time regulations and has redefined the organization chart to take account of the provisions of Legislative Decree No. 169 of 4 November 2014 (see below).

For the purposes of implementing article 27 of the Regulation governing its organization and operation, by Decision No. 15/2015 of 19 February 2015, the Authority has designated the Evaluation Unit entrusted with the "strategic monitoring and evaluation in order to check that the operational choices achieve the objectives set by the Board." It also approved the system to measure and evaluate staff performance - Performance Management – which is applied to all employees and is based on principles of meritocracy and continuous performance improvement. The system is designed not only for the purposes of the annual performance bonus and career advancement of the staff, but also to improve the skills of the people involved. The main features of the system are that the objectives are summed up to the tasks of the offices and the expected results are measurable. At the time of writing the assignment of the objectives for the year 2015 has been completed for all employees.

On 25 March 2015 the Authority's Board gave its preliminary approval to the three-year programme for transparency and integrity 2015-2017, later acquiring the opinions of the associations

represented in the National Council for Consumers and Users, as provided for under article 10 of Legislative Decree No. 33 of 14 March 2013 on the "Reorganization of the rules concerning the obligations of disclosure, transparency and dissemination of information by public authorities". Accordingly, the Authority has updated and implemented the "Transparent Authority" section on its website.

On 7 May 2015, the Board gave its preliminary approval to the Code of Ethics applicable to any persons keeping relations with the Authority, for whatever reason. The approval of the Code of Ethics will be followed by the Guarantor's designation, as required by the Regulation on the Authority's organization and operation.

Not least, the Advisory Board has started its activity and the first report will be presented and discussed in a public conference to be held in Turin on the occasion of the second anniversary of the Authority's establishment.

### **2.1.1 The implementation of the rationalisation programme for independent Authorities**

Article 22 of Decree-Law No. 90 of 26 June 2014, converted, with amendments, by Law No. 114 of 11 August 2014, provided, inter alia, for a set of requirements aimed at rationalising independent authorities. The Authority's compliance with such obligations is described hereafter in detail.

In particular, paragraph 4 of article 22 requires the unified management of the staff recruitment procedures of the Authorities. In this regard, on 9 March, a framework agreement came into force among all independent authorities concerned by this provision (Competition Authority, Securities and Exchange Commission, Transport Regulation Authority, Authority for Electricity, Gas and Water, Authority for Communications, Data Protection Authority, Anti-Corruption Authority, Supervisory Authority for Pension Funds and Guarantee Commission for the Implementation of the Law on Strikes in Essential Public Services). Such agreement regulates, among other things, the practical arrangements for carrying out the unified recruitment procedures, the annual report by each Authority relating to its staffing needs and the identification of the "Coordinator of the Framework Convention".

Regarding paragraph 5 of article 22, which requires independent authorities to reduce the accessory treatment of the staff, including managers, by no less than 20%, the only item to which this provision is applicable in 2014 is the performance bonus. In this respect, by a Decision of 24 October 2014, the Authority has set the maximum value of the performance bonus at 15% of the gross salary, thus reducing by 25% the maximum value previously provided for under article 38 of the Regulation concerning the legal and economic treatment of employees (20%). This value was originally set at 20%, 25% lower than the maximum value planned for 2014. The requirements laid down in article 22, paragraph 5, of the Decree will be taken into account when applying the regimes for overtime and for duty allowance, where available.

Further, according to paragraphs 6 and 9 (f) of article 22, as from 1 October 2014 expenses for consulting assignments, study and research and for non-statutory bodies are reduced by no less than 50% of the overall expenditure borne in 2013. In any case, such expenses must not exceed 2% of the total amount. In this respect, the Authority's expenses accounted for 1.92% of the total aggregate amount and were incurred by 30 September 2014. It should be noted that the Authority was set up on 17 September 2013 and, therefore, this year cannot be considered as a reference year for the purpose of cost containment. On the other hand, 2014 was also characterized by a not fully operational cost structure since, while this has been the first full operating year, the operation has been limited by the time needed to complete the recruitment procedures from public administrations, as well as by regulatory interventions that have slowed down the development of

the planned activities. This shifting of costs is also observed in the value of the above index, since the recording of a lower volume of total expenditure at the end of the year resulted in a greater relative value of the index itself.

Paragraph 7 of article 22 requires independent authorities to jointly manage their instrumental services by entering into agreements or establishing joint offices of at least two bodies, indicating the deadline of 31 December 2014 for their fulfilment in relation to at least three of the following services: general affairs, financial and accounting, purchasing and procurement, personnel administration, asset management, technical and logistical services, information technology systems. In this respect, during the period under consideration, the Authority has completed its establishment according to the terms and procedures referred to in Prime Ministerial Decree of 3 December 2013, which provided for the location of the offices in the *Lingotto* building in Turin and considered reasonable a nine-year duration of the loan-for-use agreement concluded in May 2014 with the *Politecnico di Torino* for the reimbursement of the costs calculated on the basis of the occupied area and those related to utilities. Having left the offices temporarily made available by the Competition Authority under a similar loan-for-use agreement and on the basis of the above Prime Ministerial Decree, the Authority has later moved some of its operational offices to the premises owned by the Customs and Monopolies Agency in Rome, in the building located in Piazza Mastai.

Both for Turin and Rome offices, the agreements with the *Politecnico* and the Customs and Monopolies Agency, respectively, not only cover the use of premises free of charge, but also the Authority's access to a number of shared facilities related to logistics and asset management, networks and technical services, and information technology systems. Indeed, such agreements, in accordance with the aforementioned Prime Ministerial Decree, anticipate the requirements under Article 22 of Decree-Law No 90/2014 as amended by the converting law. Although the Authority has started in advance to fulfil the obligations required for the purposes of cost containment and rationalisation, it intends to explore other forms of collaboration for the same purposes also with other independent authorities and, in particular, with regard to the services related to procurement, insurance, missions and finance.

With regard to the constraints provided for by paragraph 8 of article 22, which require that independent authorities apply framework agreements (CONSIP – the Italian Central Purchasing Body) for the procurement of goods and services, in accordance with article 26 of Law No 488/1999 and article 58 of Law No 388/2008, during the period under consideration, the Authority has applied the mobile convention and the Piedmont SCR Convention for fixed telephone services, connectivity and paper and stationery supplies. It has also widely used CONSIP's e-procurement platform (the Italian acronym being MEPA) for purchasing goods and services falling below EU threshold, pursuant to article 1, paragraph 450, of Law No 296 of 27 December 2006.

As for the constraints under paragraph 9 of article 22, a) through e), requiring independent authorities to contain operating expenses, in addition to the above considerations as to the free use of the buildings in Turin and Rome, as it was not possible to call for its own competitive selection procedures, with the recruitment during the first half of 2015, the percentage of permanent staff at the Turin headquarters has been 70%, in compliance with the minimum limit provided for by the law. Moreover, the expenditure incurred in 2014 for managing the offices in Rome was € 1,697,854.57, representing approximately 14% of the total expenditure, below the 20% limit referred to in the a.m. Decree-Law No. 90/2014.

Following the entry into force of article 13 of Decree-Law No 66 of 24 April 2014 on "Urgent measures for competitiveness and social justice", the maximum salary - referred to the first President of the Court of Cassation under article 23-bis and 23-ter of Decree No 201/2011, is set at € 240,000 per year, before security and welfare contributions and taxes borne by the employee. Therefore, the

salary treatment of the President and members of the Authority's Board and the other related fees on the basis of the rules on the legal and economic treatment of the Authority, was determined in accordance with the above legislation.

## **2.2 Personnel and Recruitment**

On 30 June 2015 the permanent staff enrolled in the Authority consisted of 46 units (of which 5 managers, 32 officers and 9 office employees), just about half of the total staff (90 units) provided in the organization chart. This number is determined on the basis of the law establishing the Authority, which provides a permanent staff of 80 units and 10 more units to be assigned to the functions provided for in Legislative Decree No 169 of 4 November 2014 "Rules on penalties applicable to infringements of the provisions of Regulation (EU) No 181/2011 amending Regulation (EC) No 2006/2014". As detailed below, Legislative Decree No 169/2014, as already done on the basis of Legislative Decree No 70/2014 on rail passengers' rights, entrusts the Authority with additional functions besides those statutorily provided for the rights of passengers in bus and coach transport.

The recruitment of employees was carried out through appropriate public selection procedures pursuant to article 37, paragraph 6 b-bis of Decree-Law No 201/2011 and, as far as possible, drawing on the existing lists of suitable candidates from past procedures. As regards the legal disputes relating to the above selection procedures, reference is made to rulings No 11437/2014, No 12958/2014 and 2897/2015 issued by *TAR Lazio* (the Regional Administrative Court Latium), Rome, which ruled on the jurisdiction of *TAR Piemonte* (Regional Administrative Court Piedmont). Also of interest is the first instance judgement on the merits delivered to date which ruled on the inadmissibility of the related appeal.

The Authority has also initiated the procedure for the recruitment of employees under Law No 68 of 12 March 1999 on "Regulations for the Right to Work of Disabled People" and signed a special agreement with the Province of Turin whereby one person will be recruited in July 2015 and another at the beginning of 2016. The recruitment will be carried out by invitations pursuant to article 11, paragraph 4, of Law No 68/99.

Most recently (June 2015), the Authority took initial steps to initiate the recruitment procedures by public competition of the remaining permanent staff as provided for in the organisation chart. In this respect, given the provisions of article 22 of Decree-Law No 90/2014, a phase of consultation among independent authorities, which is in progress at the time of writing, shall take place before public competition is announced.

In addition to permanent staff, 3 units have been assigned to the Office of the President and the Members of the Board, in addition to the Head of the Press Office and 5 experts. The appointment of the Chief Economist designated by the Board is being formalised.

Finally, on 12 March 2015, the Authority decided to activate, at its offices in Turin, a traineeship and internship programme. The internships will be curriculum-based (for students enrolled in the final year of a first- or second-level master degree on issues related to the Authority's institutional activity) or non-curriculum-based (for trainees who have completed a bachelor's degree, or PhD or Master's degree of I or II level in subjects related to matters of interest of the Authority since no later than one year). At the time of writing, nine universities and university institutes have expressed their interest in entering into an agreement with the Authority for the activation of both or one of the two types of training mentioned above.

## 2.3 Self-financing

When the system is fully in place, as established by the law, the Authority shall be entirely funded with fees from the regulated parties, as the phase of the one-off funding advanced by the Competition Authority has been completed. The fee is determined every year by an act of the Authority and is subject to the approval of the President of the Council of Ministers, in agreement with the Ministry of Economy and Finance. According to the law establishing the Authority, the amount of the fee cannot exceed one per thousand of the company's turnover in the last financial year.

In 2015, with Decision No 78/2014, steps were taken to identify the enterprises required to pay the fees referred to in article 37, paragraph 6 (b) of Decree-Law No 201/2011, converted into Law No 214/2011. In this regard, in addition to ATECO classification, account was taken of the activities actually carried out by the undertakings, verified through certified company profiles and databases as well as thorough discussions with business associations. This is also aimed at excluding those companies that do have ATECO codes for transport, but do not carry out activities subject to the Authority's regulation. Furthermore, the current system for payment of the fee allows the undertakings, subject to the Authority's check, to exclude such revenues arising from the exercise of non-relevant activities from the turnover which is "relevant" for the purposes of the fee payment.

With regard to the rates, the standard rate of 0.4 per thousand already set in 2014 was maintained for 2015 and the reduced rate of 0.2 per thousand was introduced for logistics and road transport, both on account of the large number of operators in this market, which involves a large number of persons required to contribute, and because of the different regulatory requirements in these two areas. The threshold of 80 million euro - established in 2014 - was also abolished in order to prevent that the contribution to funding is borne by a small number of undertakings and it was provided that the payment is not due for amounts equal to or less than 6,000 euro. Taking into account the rates of the a.m. fee equal to 0.2 and 0.4 per thousand of the turnover, the payment will not be due by those companies with a turnover less than or equal to 30 million euro (at a rate of 0.2 per thousand for logistics or trucking companies) and 15 million euro (at a rate of 0.4 per thousand for companies in other sectors).

The issue of self-financing is subject to appeals, in particular with regard to the entities falling under the obligation to pay the contribution to the Authority's self-financing. The situation calls for urgent legislative action in order to ensure certainty of the sources financing the Authority.

## 2.4 ICT

The Authority uses its own network to access Internet services and VoIP telephony. However, the system was designed and developed in close collaboration and with the support of the *Politecnico di Torino* during the planning stage, which allowed to carry out in a short time the entire revision of the Authority's network, security, connectivity and cabling systems. The head office in Turin and the offices in Rome are connected with a 100- Mbit physical network able to host data and voice traffic. Internet traffic and security are managed from Turin with additional network and security protection also in Rome. The Authority's users can operate regardless of the geographical location as all business services are always available. As for IT services, it was opted for a multi-stage planning aimed at ensuring the timely availability of infrastructure services and workstations as the newly recruited personnel start working for the Authority.

As part of the planning activities, great emphasis was placed on safety. In this respect, perimeter security reduces significantly the level of risk for the information system. In addition to ensuring uniform rules of communication between service areas according to types of users, it must be able to respond adequately to attack and intrusion attempts, ensure confidentiality, integrity and availability

of information, as well as business continuity and prevention of unauthorized use. In order to meet these needs, a number of measures have been adopted, such as Firewall and VPN, detection systems, intrusion prevention systems (IPS) and content analysis systems (Web Filtering, Antispam, Antivirus, Antispyware). Strong authentication systems (One-Time Password, Smart Card & PKI) could be provided in the near future.

With respect to IP-based services, the Authority purchased a single VOICE IP system for both the head office in Turin and the offices in Rome. The offices in Rome are in fact a branch of Turin office and the single telephone connection is registered in Turin (code number 011) to confirm the pivotal role of Turin head office. The transition to the single IP-based numbering has, among other things, enabled the Authority to pursue efficiency of operating costs by reducing costs for internal calls, regardless of the physical location of employees, and by assigning each of them the necessary service profile but without exceeding the proper business use. The activated VoIP services include instant messaging that allows short and asynchronous communication between one or more colleagues. The IP-based service has no communication costs and replaces the typical short message service or e-mail, which are sometimes too formal for instant communications, although useful to increase work efficiency.

Moreover, a video conferencing system has been installed, which, among other things, allows to establish multi-point connections for audio and video conferencing with external parties, further optimizing time and capacity of communication and reducing costs considerably.

### **3. Activities and procedures**

#### **3.1 Regulatory measures and enforcement actions**

##### **3.1.1 Airport charges regulatory models**

As underlined in the first report on the Authority's activities in 2014, with Decision No 31/2014 of 7 May 2014, the Board decided to launch a consultation on airport charges regulatory models. The consultation has reflected the approach towards the modulation of airport charges according to airport size, progressively reducing their impact with decreasing traffic volumes (over five million, between three and five and under three million passengers). The models were developed with the objective of providing infrastructure managers with an adequate margin of flexibility and, at the same time, ensuring transparency on costs and procedures for determining airport charges. This complies with the framework outlined by Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, as transposed into Italian legislation by Articles 71 to 81 of Decree-Law No 1 of 27 January 2012, establishing the Transport Regulation Authority, converted, with amendments, by Law No 27 of 24 March 2012, and by Article 37 of Decree-Law No 201 of 6 December 2011, converted, with amendments, by Law No 214 of 22 December 2011 and thereafter further amended.

The method for determining the level of charges endorsed by Directive 2009/12/EC was introduced for all three models submitted to consultation; this method provides that the way charges are set is established in the framework and as a result of a mandatory procedure of regular consultation in which airport managing bodies and users are active parties and either party may seek the intervention of the independent surveillance authority in case of disagreement. Indeed, the Authority considered it appropriate to apply these principles, which the Directive makes binding on airports with traffic volumes over five million passengers per year, also for the determination of charges for airports with traffic volumes below this threshold. Further, the models have been drafted

taking into account the Government's guidelines provided in view of the adoption of the National Airport Plan. The need to maintain operational continuity with the existing situation and with the consultation undertaken by ENAC (the Italian Civil Aviation Authority) on this issue was also considered in the drafting of the texts. The Authority has provided for the application of the models for a transitional period of four years, reserving the right to reassess the system in the light of specific airport market analyses.

In the context of the consultation, a public hearing between the Authority and the airport managing bodies and air carriers was held in Turin on 19 June 2014. During the hearing, which was attended by about fifty representatives of airlines (Italian and foreign, including low-cost carriers) and airport managing bodies, the participants expressed their views on the documents submitted for consultation by the Authority. The most interesting topics for airlines and airport managing bodies were the scope of application of the new regulatory models, the dual-till or single-till system related to the profit margin, the incentives for greater efficiency in airport management, the criteria and formulas for setting airport charges and fees. At the end of the consultation procedure both undertakings and associations submitted a number of written comments, which have been thoroughly analysed by the Authority's offices with the purpose of drafting the final text of the models. Following the end of the consultation and on the basis of the contributions provided by the parties, the Authority has finally approved the airport charges regulatory models with Decision No 64/2014 of 17 September 2014.

Based on the models, the procedure for defining proposals for the review of airport charges will be phased in and will include:

- launch of consultation by the airport managing body, at least four months before the date of entry into force of the new charging system; the consultation may be launched (at least 7 days) after notification to the Authority, which shall give notice thereof on its website. Having launched the consultation, the airport managing body is required to make available to airport users a number of documents and information describing the proposal;
- at least one public hearing of airport users, to be held 30 days after the consultation is launched; on this occasion, all issues related to the proposed review of airport charges may be dealt with. If necessary, the airport managing body may hold further hearings within the following thirty days;
- pursuit by airport managing body and users, through discussions in the consultation stage, "of an agreement on the proposed review of charges and related quality levels, in relation to the commitments undertaken by the airport managing body in the Consultation Document";
- where substantial agreement is reached, or neither parties submit an appeal, "entry into force of the level of charges published by the managing body, and related agreements, on the date indicated upon launch of the consultation, in any case not earlier than 60 days from the publication of the agreement on the managing body's website, after fulfilment of the reporting obligations to the network of IATA ticket offices";
- in case of disagreement, either party in the Consultation may apply to the Authority, according to specified time-limits and procedures. The Authority will review the reasons for the proposed review of the charging system or airport charges level.

In the phase of review of airport charges, the Authority:

- ensures adequate publicity on its website to the notification received by the airport managing body concerning the launch of consultation with users;
- oversees the proper conduct of the consultation procedure and its compliance with the specified time-frame;
- may also directly participate in the consultation and promote discussion on specific issues;
- may invalidate the consultation in case of significant procedural irregularities or serious untruthfulness of the information provided by the airport managing body during the consultation;
- examines the final proposal by the managing body at the end of the consultation and, in case of express or tacit agreement, publishes the results of the review on its website within 40 days; it may also impose amendments *“to safeguard the agreement reached by the parties”*;
- takes actions which are deemed appropriate to restore the appropriate relations between airport managing body and users;
- in the event of a dispute, takes a provisional decision within about four weeks as to the entry into force of the charges, and a final decision within four months, that can be extended by two months for justified reasons related to the inquiry activity, from the date of receipt of the request for dispute settlement.

#### 3.1.1.1. Review of Pisa airport charges

*Aeroporto Toscano Galileo Galilei S.p.A. (SAT)*, the company holding the concession for the management of Pisa civil airport *"Galileo Galilei"* was the first managing body to apply the model. On 21 November 2014 it notified the Authority the launch of the consultation procedure with airport users concerning a proposal for review of airport charges for the period from 2015 to 2018. At the same time, SAT has made available to airport users its consultation document in Italian and later in English. On 13 January 2015 a public hearing between the airport managing body and the users was held at Pisa airport *"Galileo Galilei"*, with the Authority's participation. On this occasion SAT submitted its proposal for the review of airport charges, which provides for an overall average increase of 1.1% for 2015 and was finally agreed upon by the attendants. However, it should be noted that the participation in the meeting was not particularly large and only about 10% of the airport air traffic with voting rights was represented.

The documents produced by SAT for the consultation procedure were subjected to in-depth evaluation by the Authority's offices in order to check their compliance with the charging model adopted, taking also into account the comments and requests for further study submitted by airport users during the hearing. It was decided to report to the managing body a few issues resulting from the inquiries and deserving of further study. By letter of 12 February 2015, SAT closed the consultation procedure on the proposed review of airport charges and published the charges for 2015, providing for their entry into force starting from Thursday, 16 April 2015, unless otherwise advised by the Authority. The charges for 2015 are those resulting from the consultation with airport users that have agreed thereupon at the hearing of 13 January 2015.

As no claims for the review of the final proposal were received by stakeholders within the prescribed deadline, with Decision No 22/2015 of 12 March 2015 the Authority declared that the final proposal for the review of airport charges, presented by SAT as a result of the consultation procedure, complied with the relevant charging Model, except for certain details and additional information

required by the Authority, to which SAT replied within the prescribed time limits of 90 days. SAT was therefore required to:

- apply the level of charges resulting from the consultation, with entry into force as of 16 April 2015 and on a temporary basis until 31 December 2015;
- recalculate the level of charges for the entire period, adopting the amendments imposed by the Authority following the new proposal drafted by SAT, replacing this new level as from 1 January 2016 and for the remaining period;
- recover by 31 December 2016 - as required by the Model - any (positive or negative) charge from airport users resulting from the application of the amendments imposed by the Authority with respect to the calculation of the level of charges, covering the period between their entry into force and 31 December 2015.

With the same Decision SAT was also required, at the first annual consultation after the publication by the Authority of the Revaluation Indices (Gross Fixed Investments) provided for by the Model, to adjust the calculation model of its charging system to this new index, thus amending the charge structure with effect as of 1 January of the year following the above annual consultation.

#### *3.1.1.2 Review of Florence airport charges*

On 30 December 2014, *Società Aeroporto di Firenze S.p.A. (AdF)*, the company holding the concession for the management of Florence civil airport, notified the Authority the launch of the consultation procedure with airport users concerning a proposal of review of the airport charges for the period from 2015 to 2018, indicating that the launch of the procedure had been scheduled for 7 January 2015. Having checked that the documents in support of the proposal were complete, the Authority reported the above notification on its website on 5 January 2015. In order to enable the Authority to carry out the checks on the correct application of the airport charging regulatory model adopted, AdF was required to provide supplementary documentation, which was made immediately available by the company with a note of explanation and presentation.

The first public hearing with airport users was held at Florence airport "*Amerigo Vespucci*" on 13 February 2015 and the airport managing body submitted to consultation its proposal for the review of airport charges. The Authority's representative reported a very significant presence of airport users: more than 75% of 2013 WLUs was represented, directly or by proxy. After a thorough presentation, which addressed issues concerning traffic evolution, investments - both past and expected in the regulatory period, quality and environmental protection plan, application of the methods provided in the model to determine airport charges, AdF announced the level of charges for the regulatory period, which provides an average annual increase of about 4%, compared to the past period. As airport users requested to review the quality plan and the Service Level Agreements, it was decided to convene a second hearing.

In the following hearing of 3 March 2015, airport users requested whether it was possible to discuss another proposal for amending the quality analytical indicators included in the Plan approved by the Civil Aviation Authority, as well as a short list of parameters to be included in a SLA (Service Level Agreement). After a long debate between the parties, however, the consultation ended with no deal. On 26 March 2015 AdF published the proposal for the review of airport charges, which should be applied as from 26 May 2015, unless otherwise advised by the Authority. The documents produced by AdF have been subject to thorough assessment by the Authority, so as to check their compliance with the existing regulatory models, taking into account the comments and requests for further study submitted by airport users during the hearing.

Within 20 days after the publication of the review of airport charges, three separate appeals were lodged by the following participants in the consultation: *Assaereo* (National Association of Carriers and Air Transport Operators), *IATA* (International Air Transport Association) and *IBAR* (Italian Board Airline Representatives).

The three appeals, substantially similar in their content, underlined the lack of agreement on the proposal for the review of Florence airport charges *"due to the unwillingness of the company AdF to pursue an agreement before the entry into force of the new charging levels, based on the SLA proposal redrafted by the Users"*. All appeals requested the Authority to *"make the new charges proposed by the airport managing body applicable only after the conclusion of an agreement with airport users on the service levels (Service Level Agreement)"*.

By Decision No 31/2015 of 23 April 2015, having considered it necessary to try to reach an agreement on the issue under appeal, the Authority initiated a dispute resolution proceeding, as provided for in the Model, concerning the appeals received by *Assaereo*, *IATA* and *IBAR*.

For the same purpose, the Authority urged the airport managing body to draft a Service Level Agreement (SLA) proposal, starting from the considerations put forward during the hearings of 13 February and 3 March 2015, to be sent to airport users, applicant associations and the Authority by 30 April 2015. The proposal had to comply with the following principles: *"For each of the services covered by the proposal, the target value of the quality indicator chosen for the application of penalties shall include a gradual efficiency improvement during the regulatory period, based on criteria of competitiveness and sustainability, compared to the current performance of the airport managing body. This target value should be expressed in percentage terms and cannot usually be equal to 100%; any settlement of the penalties payable by the airport managing body to individual airport users under the service level agreement, must be independent from the settlement of the airport charges payable by the users to the airport managing body for the use of the same services; the agreement shall define the procedures for monitoring the quality indicators contained therein according to immediately applicable criteria of transparency and objectivity; the agreement shall provide for the possibility of reviewing its content within one year of its entry into force, in the light of the best emerging practices."*

In order to endeavour to reach the agreement referred to in the preceding paragraph, the Authority convened a meeting with airport managing body, users and applicant associations at the Authority's head office in Turin on 5 May 2015, to discuss and possibly amend the above proposal, with a view to concluding a formal agreement. During the meeting, airport managing body, users (accounting for over 70% of airport traffic) and applicant associations discussed the draft agreement on the level of airport services presented by *AdF* on 30 April 2015. At the end of the discussion, the Authority took note of the agreement between managing body, users and applicant associations on the SLA proposal presented by *AdF*, as finalised in the hearing. At the same time, the associations declared that, with the achievement of the agreement, they had no longer an interest in pursuing the proceedings referred to in the appeals regarding the issue of Florence Airport service level (SLA).

On 7 May 2015, with Decision No 35/2015, the Authority has declared that the final proposal for the review of airport charges received by *AdF* complied with the relevant Model, but required specific additions and reviews which were adopted by the managing body within the prescribed time limits of 90 days. *AdF* was therefore required to:

- apply the level of charges resulting from the consultation, with entry into force as of 16 April 2015 and on a temporary basis until 31 December 2015;

- recalculate the level of charges for the entire period, adopting the amendments imposed by the Authority following the new proposal drawn up by *AdF*, replacing this new level as from 1 January 2016 and for the remaining period;
- recover by 31 December 2016 - as required by the Model - any (positive or negative) charge from airport users resulting from the application of the amendments imposed by the Authority with respect to the calculation of the level of charges, covering the period between their entry into force and 31 December 2015;
- provide airport users, at the first annual hearing conducted under the Model and within the framework of the Annual Information Document, thorough and well-documented information concerning the proposed review, the procedures for recovery of charges and the sources for funding the planned investments;
- at the first annual consultation after the Authority's publication of the Revaluation Indices (Gross Fixed Investments) specified in paragraph 8.5 of the Model, adjust the calculation model of its charging system to this new index, thus amending the charging structure, with effect as of 1 January of the year following the annual consultation;
- implement with airport users the service level agreement as concluded on 5 May 2015 at the Authority's head office, with effect from the date of entry into force of the new airport charges.

In the same Decision, the Authority closed the dispute resolution proceedings initiated with Decision No 31/2015, with respect to the appeals filed by Assaereo, IATA, IBAR.

#### *3.1.1.3 Review of Bologna airport charges*

On 8 May 2015, *Società Aeroporto di Bologna SpA (SAB)*, the company holding the concession for the management of Bologna civil airport, notified the Authority its intent to launch a consultation for the review of airport charges of Bologna airport "*Guglielmo Marconi*" on 15 May 2015. The public hearing with airport users was scheduled for 17 June 2015. Having checked that the documents in support of the proposal were complete, the Authority initiated the procedure for the assessment of the proposal and published the information on the launch of the consultation on its website.

#### *3.1.1.4 Review of Olbia airport charges*

On 14 May 2015 *Società Geasar S.p.A. (GEASAR)*, the company holding the concession for the management of Olbia civil airport, notified the launch of a consultation procedure with airport users concerning the proposal for the review of airport charges to be applied in the period from 2015 to 2018 and informed that the launch of the procedure was scheduled for 21 May 2015. *GEASAR* submitted the Authority the consultation document, which was made available to airport users in Italian and English. As for the other cases, having checked that the documents in support of the proposal were complete, the Authority initiated its assessment procedure and published the information on the launch of the consultation on its website.

### **3.1.2 Revaluation index of airport fixed assets**

For the purposes of evaluating the net invested capital and its return, as well as the amortization of self-financed fixed assets, in accordance with the existing provisions contained in ENAC Guidelines implementing CIPE<sup>1</sup> Directive No 38/2007, the airport charges regulatory models approved by the

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<sup>1</sup> The Italian Inter-Ministerial Committee for Economic Planning

Authority provide that airport managing bodies may opt for an evaluation "at current value", with the resulting need for revaluation of tangible assets as they are entered into the balance sheet.

For this purpose the Models provide for the annual publication by the Authority of a revaluation index of self-financed fixed assets based on ISTAT<sup>2</sup> Gross Fixed Investment index.

For the purposes of preparing the relevant procedures and information flows for this publication, the Authority acquired all the necessary information to provide an index characterized by adequate legal strength and processed accordingly on the basis of official and certified information, by using shared methodologies. To this end, the available sources were verified by comparison with the institutions quoted as a source of information for these cases (in particular, the Italian Regulatory Authority for Electricity, Gas and Water (*AEEGSI*) and the National Institute of Statistics (*ISTAT*) in order to check the evaluation and processing mechanism of indexes starting from published data.

The preliminary inquiries resulted in a proposal of methodology for the construction and the annual publication of a revaluation index based on the Annual Report published by ISTAT on its website, National Accounts section, Annual National Accounts and Economic Aggregates, under the item Gross Fixed Investments. Following talks with the Civil Aviation Authority, given the need to identify a single deflator to be applied to the entire airport sector for the revaluation for regulatory purposes of the fixed assets – property, plant and equipment, the Authority has started to exchange information with ENAC so as to share data and working assumptions.

### **3.1.3. The railway sector**

#### *3.1.3.1. Regulatory measures concerning fair and non-discriminatory access to rail infrastructure: Decision 70/2014*

As indicated in the Authority's first Annual Report, Decision No 16 of 6 March 2014 established to start a procedure for the adoption of specific regulatory measures aimed at ensuring fair and non-discriminatory access to rail infrastructure. As part of this procedure and following a period of observation of the rail sector, with Decision No 24/2014 the Authority identified the issues and specific problems to be urgently addressed for promoting competition, efficiency and cost containment for the benefit of users, businesses and consumers and for ensuring certainty to investors. Further, with the same Decision, the Authority urged all stakeholders (railway undertakings, industry associations, IM, Regions etc.) to submit their comments and proposals on these issues. Comments were received from 15 stakeholders (IM, 7 railway undertakings, 4 Regions and 2 associations) and were subject to detailed analysis, providing a major contribution - thanks to both the information supplied and the issues raised - to the drafting of the Authority's regulatory measures. This is also clear from the reading of the Decision adopted at the end of the consultation, which includes, for each subject, the reference to the main regulations and issues raised in the consultation, as well as the evidence of the analysis of the responses.

By Decision No 70 of 31 October 2014, the Authority adopted a series of regulatory measures: access to the national rail network and planning of transport services; framework agreements; capacity allocation; penalties for infringements of contractual obligations; criteria and procedures for network capacity management; management of service interruptions and disturbance of train movements; access to services and service facilities, and in particular: ticketing services, passenger information and assistance; marshalling services for freight transport; cost sharing between IM and RUs for assistance to PRM; criteria for determining charges on high-speed lines. For the purposes of implementing this measure, the IM has set a charge of 8.2 euro per train-km for high-speed rail.

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<sup>2</sup> The National Institute of Statistics

The Authority provided for the overall review of the criteria for determining the charges for the use of railway infrastructure, both for conventional and high-speed networks. Subject to the measures adopted are mainly IM and RUs. For the benefit of undertakings and of a wider and more competitive use of the rail infrastructure, the Decision provides, *inter alia*, for reduction of charges for services to PRM (measures 9.6.1 and 9.6.2), cost reduction for relief operations on the network (measure 4.6.1) and for marshalling services in the freight transport (measures 11.6.1 and 11.6.2). The regulatory measures are, in particular, aimed at promoting competition in already liberalized sectors – medium- and long-distance passenger transport and freight transport - by encouraging efficient undertakings to remain on the market, in order to help maintain end-user price levels proportionate to the quality of the services supplied and the costs actually incurred by undertakings for management and investments, net of Government funding.

While referring to the Decision for a detailed description of the twenty-eight regulatory measures, it is, however, possible to identify some recurring themes. Several measures share the objective of strengthening market mechanisms and incentives towards efficient behaviors in the relations between RUs and IM. By way of example, measure 7.6.1 aims at making the penalty system (the so-called performance regime) more effective against those (RUs or IM) that cause traffic disruption and hence delays compared to the scheduled times of train departures and arrivals. The measures aiming at introducing service quality provisions in long-term contracts for the purchase of infrastructure capacity (measure 1.6.4) and in the contracts governing station services (measure 10.6.3) and marshalling services for freight transport (measure 11.6.1) are to the same effect, too.

Another recurring theme in the measures is transparency in the relations between IM and those who may request infrastructure capacity, be they rail undertakings or recipients of transport services (regions, autonomous provinces, etc.). The multiple obligations imposed on the Manager may be read from this perspective, in particular as to the publication of the information about available and already allocated infrastructure capacity (measure 1.6.1), communication of specific information to the RUs whose path requests conflict with those submitted by other undertakings (measure 2.6.5), publication of the time schedule for the investments planned in the following five years aimed at relieving infrastructure "bottlenecks" (3.6.1), publication in a single document of any information about the supply of all equipment and services related to the use of the rail infrastructure (measure 8.6.1).

Other measures are designed to reduce market barriers in the transport industry in order to encourage the access of new undertakings (measure 10.6.1 on access to advertising space, information desks and ticket offices) by carefully balancing the requirements with the objective of promoting a stable regulatory framework and encouraging investments by undertakings already operating in the market (1.6.2 (d)). Finally, Decision No 70 pays particular attention to the need of increasing rail freight (measures 11.6.1, 11.6.2 and 11.6.3) and facilitating the regional planning of local public transport services, by providing a dedicated path to acquire the necessary network capacity (measure 1.6.4).

### 3.1.3.2 Requirements and guidelines for the Network Statement: Decision No 76/2014

The Network Statement (NS) is the document drawn up by the IM in accordance with article 27, paragraph 2, of Directive 2012/34/EU, which "(...) shall set out the nature of the infrastructure which is available to railway undertakings, and contain information setting out the conditions for access to the relevant railway infrastructure. The network statement shall also contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities (...)". In this respect, article 13 of Legislative Decree No 188/2003 - in force at the time the activities in this field were started - provides that "After consultation with regions, autonomous provinces and other stakeholders, the infrastructure manager

*shall develop a Network Statement, provide its periodic updating and make the appropriate amendments and additions, based on any guidelines and requirements of the regulatory body referred to in Article 37”.*

Based on these provisions, the a.m. regulatory measures introduced with Decision No 70/2014 provide for a number of obligations for the IM which are reflected in the amendments to the Network Statement. By Decision No 76 of 27 November 2014, the Authority imposed *Rete Ferroviaria Italiana* to modify or supplement the NS so as to implement the regulatory measures described in the previous paragraph. It also provided additional guidelines and requirements to ensure greater clarity and consistency of the provisions contained in the NS and enrich its content with additional information for RUs and public authorities entrusted with local public transport planning .

### 3.1.3.3. *Infringement proceedings*

The regulatory measures provided for in Decisions No 70 and No 76 of 2014 impose obligations primarily on the Infrastructure Manager of the national rail infrastructure. Having found that some of these measures had not been implemented, in 2015 the Authority adopted Decisions No 24 and No 25 and initiated two separate infringement proceedings.

In particular, by Decision No 24/2015 the Authority claimed the infringement of the measures concerning fair and non-discriminatory access to rail infrastructure; based on the outcome of the proceedings, each infringement may be subject to an administrative fine amounting to a maximum of 154,937,069.73 euro. The most significant infringements relate to the following issues:

- conditions for access to facilities and related services;
- determination of charges for PRM-related services;
- allocation of advertising space, information desks, areas for automated customer services;
- criteria applicable to the contracts between RUs and station manager relating to the identification of Service Level Agreements (SLA), cost-oriented charges, multi-year term.

By Decision No 25/2015 claimed the infringement of the requirements and guidelines concerning the Network Statement 2015 drawn up by the Infrastructure Manager of the national railway network, *RFI*. Based on the outcome of the proceedings started with the above Decision, each infringement may be subject to an administrative fine amounting to a maximum of 500,000.00 euro. In this case, the most significant infringements relate to the non-fulfilment of the following requirements and guidelines:

- inclusion in the NS of the reference to the opening hours for lines and facilities;
- inclusion in the NS of the information on station classification;
- submission to the Authority by 31/12/2014 of the documents concerning agreements and conventions relating to the network interconnection between *RFI* and regional managers;
- obligation for IM to provide information on arrival and departure displays, in areas close to ticket offices, as well as timetables;
- communication to the Authority of the calculation simulation highlighting the impact on railway undertakings of the service quality incentive mechanism, known as *performance regime*, based on train delays;
- fair charges for services outside the scope of Regulation (EC) No 1371/2007, such as those provided at stations without IM staff.

Within the framework of the inquiries governed by article 5 of the *Rules for carrying out infringement proceedings within the Authority’s remit*, approved with Decision No 15/2014 of 27 February 2014, *RFI* was heard on 26 March 2015 at the Authority’s offices, as requested by the company itself to

clarify its position as to the infringements referred to in the Decisions initiating the proceedings. In accordance with the set of provisions under article 37, paragraph 3 (f), of Decree-Law No 201/2011, *RFI* committed to take steps for the purpose of removing the Authority's objections. Four of them relate to Decision No 24/2014, while seven concern Decision No 25/2015.

Under article 8, paragraph 2 of the above-mentioned Rules, to be eligible the proposed commitments must include a detailed description of the obligations that the IM is prepared to meet, the expected costs and the time needed for their implementation. As a further guarantee for the proposal, under article 9, paragraph 2, of the above Rules, the proposed commitments cannot be accepted by the Authority in the absence of specific characteristics, among which, in particular, their usefulness for a more effective pursuit of the interests protected by the provisions which have been allegedly infringed.

Following the inquiries under the above provisions, *RFI*'s proposed commitments were declared eligible by the Authority. With measures dated 7 May 2015, the Authority has therefore published the eligible commitments on its website for the purposes of the performance of the so-called *market test* and of the related stages under articles 8 and 9 of the Rules, with particular regard to the possibility for third parties to submit comments on the proposed commitments by *RFI* and the entitlement of *RFI* to submit counter-arguments and introduce additional amendments thereto. Having completed the inquiries on the commitments, the Authority shall approve them or not, in their final wording. In case of approval, it will make them binding for *RFI*, closing the proceeding without ascertaining infringements or imposing fines, but continuing to monitor their compliance or non-compliance; in case of non-approval, the procedure will advance and result in the imposition of penalties or in dismissal.

#### 3.1.3.4 *Litigation*

The Authority's Decisions No 70/2014 and No 76/2014 concerning fair and non-discriminatory access to rail infrastructure were appealed before *TAR Lazio* (Regional Administrative Court Latium). To date no ruling has been delivered yet. In brief, *Rete Ferroviaria Italiana S.p.A.* and *Nuovo Trasporto Viaggiatori S.p.A.* challenge the criteria set by the Authority to determine the access charges for high speed/high-capacity network and the procedure applied based on substantially opposing arguments. *Nuovo Trasporto Viaggiatori S.p.A.* mainly contends that the eligible cost item for determining the access charge for HS/HC network includes the financial charges for long-term costs related to investments in progress or already completed for the network development, as to the part not covered by Government funding. Under dispute are also the measures concerning fair and non-discriminatory management of the spaces available to RUs in the stations, which are aimed at ensuring that railway undertakings enjoy equal and adequate visibility and accessibility in railway stations. *Grandi Stazioni S.p.A.* and *Centostazioni S.p.a.*, with separate actions, challenge the scope of regulated services, claiming that the sale of advertising space, the rental of spaces for carrying out commercial activities in the stations (e.g. ticket offices) and the inclusion of SLAs in the contracts concluded with RUs to ensure the quality of the services rendered (for example, as to the information to users), do not fall under the areas subject to regulation.

#### 3.1.3.5 *Initiation of a procedure to define the criteria for determining access charges*

Article 1, paragraph 2, of Decision No 70/2014 of 31 October 2014 provides for the initiation of a specific procedure, to be concluded by 30 September 2015, aimed at defining the criteria for determining access charges for the use of the rail infrastructure so as to connect the charges with the costs and investments borne, net of Government funding, based on principles of transparency, accountability and accounting separation and subject to enhanced requirements as for the application of the regulatory accounting and related certification.

The procedure concerns not only the criteria for determining access charges for the use of rail infrastructure, both on the conventional network and on high speed/high capacity networks (so-called "Minimum Access Package" services), but also the criteria for setting the charges for the RUs' access to other facilities and services, such as those at passenger stations and terminals for freight transport. Therefore, in addition to railway undertakings and infrastructure manager, it also applies to the so-called "operators of service facilities", as defined by EU Directive 2012/34 as any public or private entity responsible for managing one or more service facilities or supplying one or more services which are deemed necessary or are otherwise closely linked to the rail transport operation.

By Decision No 86 of 23 December 2014, the Authority established that, given the complexity of the subject at issue, the regulatory measures shall be enacted after the following stages of inquiry:

- "Call for Inputs" to acquire useful preliminary information, comments and considerations from stakeholders, in particular as to cost assessment and regulatory accounting; possible differentiation of access charges according to the type of network infrastructure and/or "market segments" and according to the different charge components; competition level in the services related or functional to rail infrastructure access; charging criteria to be applied to such services, if they are not provided in a competitive environment;
- analysis of stakeholders' responses to the "Call for Inputs";
- possible further consultation with stakeholders;
- collection of economic/quantitative data to carry out simulations of the impact arising from possible regulatory alternatives for railway operators;
- drawing up of a draft measure to be submitted to public consultation.

At the time of writing, the draft measure to be submitted to public consultation is being examined by the Authority's Board.

#### *3.1.3.6 Authorization to SNCF to provide 'cabotage' services on the Milan – Paris route*

The French railway undertaking *SNCF (Société Nationale de Chemin de Fer)* carries out, through a subsidiary, the Paris-Lyon-Turin-Milan (TGV) connection through three trains per day in each direction. Already authorized to supply "cabotage" services (i.e., allowing passenger boarding and disembarking within the national territory) from Milan, Novara, Vercelli to Oulx, Bardonecchia and back, *SNCF* requested to extend this authorisation to the cabotage between the stops at Turin, Vercelli, Novara, Milan.

As provided by article 59 of Law No 99 of 23 July 2009, the Authority informed all potential stakeholders (*Trentino*, Piedmont and Lombardy regions, Ministry of Infrastructure and Transport, *RFI*) about the request for authorization submitted by *SNCF* and asked to provide the information necessary to start the verification of compliance with regulatory conditions, namely: that "*the service principal purpose is to carry passengers between stations located in different Member States*" (Law 99/2009, article 59, paragraph 1), and that the service does not prejudice "*the economic equilibrium of public service contracts*", that may exist (paragraph 2).

One stakeholder has asked the Authority to check the compliance with the first requirement (i.e. that "*the main purpose of the service is the transport of passengers between stations located in different Member States*"), while none of the parties concerned requested the Authority to carry out a formal verification that the service does not prejudice "*the economic equilibrium of public service contracts*", that may exist (Law 99/2009, article 59, paragraph 2). For this reason, the Authority verified only the main purpose of the service, in line with the provisions of the a.m. Interpretative Communication from the European Commission no 353/2010, which in several places insists that regulatory bodies

should not act on their own initiative, but only following a request from one of the stakeholders referred to in the Directive.

By Decision No 19 of 5 March 2015, the Authority assessed that the principal purpose of the rail service at issue is international transport, and has consequently authorized *SNCF* to perform the required passenger service on the Paris – Milan route, with the right to take on board and disembark passengers at Milan, Novara, Vercelli and Turin.

### **3.1.4. The motorway sector**

#### *3.1.4.1 Award of Autostrada del Brennero A22 construction and operation contract*

Judgment No 1243 of the Council of State (IV section) of 13 March 2014 cancelled the tender notice issued by *ANAS S.p.A.* for the award of *Autostrada del Brennero A22* construction and operation contract. Having to restart the procedure to re-award the concession contract, expired on 30 April 2014, by Decision No 23 of 11 April 2014, the Authority launched a consultation on certain regulatory issues in view of the preparation of the tender scheme for the award of the above concession.

The Authority's decision provided for a period of thirty days from the date of publication on the website for the submission of comments by stakeholders. By this deadline sixty-two documents, including comments on single regulatory issues subject to the consultation, were received by various parties (regions, local authorities, construction companies, motorway concession holders, private entities). A public hearing was held at the Authority's offices on 4 June 2014 and the parties that had submitted comments were invited to provide additional information on specific issues.

The entry into force of Article 5 of Decree Law No 133 of 12 September 2014 introduced new rules on motorway concessions, which directly impact on the procedure at issue. This provision stipulates that concession holders may propose to amend substantial elements of existing agreements, such as persons covered, scope of application, duration and economic value. Upon conversion of the aforementioned decree into law, paragraph 4-bis, included into article 5, provided that the implementation of the provisions is subject to the prior consent of the competent European Commission bodies.

Pending the implementation of the above provisions, the Authority concluded the consultation procedure by adopting a document containing "*Requirements and guidelines for the preparation of the draft concession to be included in the tender notice for the award of Autostrada del Brennero A22 construction and operation contract*".

#### *3.1.4.2 Optimal management areas of motorway sections*

Article 37, paragraph 2 (g) of Decree-Law No 201/2011, as amended, identifies the functions assigned to the Authority in the area of motorway concessions. In particular, according to the second last period of the above paragraph 2(g), the Authority is entrusted with the task of "*(...) defining optimal management areas of motorway sections so as to promote pluralism in the management of motorway sections and competition by comparison; (...)*". As part of broader regulatory powers conferred upon the Authority, this provision is functional for defining *ex ante* new management structures in the existing framework of motorway concessions.

In order to comply with the statutory provision, in March 2014 the Authority started discussions with the management of the Italian Association of Motorways and Tunnels Operators (*AISCAT*), which highlighted the need to build a database for each concession holder. Therefore, the Authority started an overview of the main technical and economic data of the last decade (recently updated with preliminary figures relating to 2014).

The data collection was aimed at building a parametric benchmarking system to check the efficiency of each undertaking compared to other market operators and defining regulatory measures on pricing and, indeed, on the optimal management areas. The Authority has applied the method of stochastic frontier analysis, never applied before in motorway regulation.

The procedure initiated by the Authority will be completed in the course of 2015. The first results apparently show the existence of economies of scale, albeit not very pronounced, so that the system could - under certain conditions - benefit from business aggregations.

### **3.1.5 The port sector**

Ports are part of the infrastructure for which article 37, paragraph 2 (a) provides that the Authority ensures fair and non-discriminatory access also in relation to passenger and freight mobility. However, as these provisions are not explicitly harmonized with those contained in the Code of Navigation and in Law No 84/1994 on port system reorganization, this could result in the overlapping of tasks with other public entities, especially port authorities.

In the field of port concessions, regulated by article 18 of Law No 84/1994, the Authority expressed its opposition to measures for their renewal or extension without competitive tendering procedures that distort market competition, according to the principles already established in EU case law and in the 2007 Ports Policy Communication of the European Commission. The Authority can play an important role also in the area pertaining to the services of general interest (lighting, cleaning, waste reception, maintenance and repair, IT and telecommunication services, marshalling and ferry services, etc.) referred to in Law 84/1994, article 6, paragraph 1 (b). With reference to some of such services, such as marshalling and ferry services, the Authority is competent (in case of direct awarding) for designing tender schemes according to Decree-Law No 201/2011, article 37, paragraph 2(f). In the field of technical-nautical services (pilotage, towing, mooring), too, which are often essential services for port infrastructure access, the Authority could play an important role by establishing the criteria for setting port charges, on the basis of Decree-Law No 201/2011, article 37, paragraph 2(b). However, this provision, concerning all modes of transport, needs to be related with the previous provision of law (Law No 84/1994, article 14, paragraph 1-bis), under which the Ministry for Infrastructure and Transport is specifically competent for defining the criteria for setting the charges of technical-nautical services.

In conclusion, many are the Authority's prerogatives as regards ports: although not all clearly expressed by the legislator, they can be derived from a systematic link to the legislative framework. In any case, in order to avoid overlapping of functions with other stakeholders, it is necessary to systematically ensure due regard to the Authority's competences. It would be desirable that this is attained as part of the port sector reform announced by the Government for the coming months.

Further, the Authority follows closely the proposal of a European Regulation on market access to port services and financial transparency of ports. In this regard, it reckons that port services charges meet economic efficiency criteria and that the Commission's proposal as to the establishment by Member States of independent national supervisory bodies is maintained.

### **3.1.6 Users' and passengers' rights**

#### *3.1.6.1 Competences provided by the law establishing the Authority and by European rules*

The effective protection of users' and passengers' rights is a priority for the Authority, that has set itself the objective to examine each and every complaint addressed by transport users. As specified below, about 180 complaints and reports concerning rail transport and about 40 related to bus transport were received in the period under consideration. 14 preliminary inquiries were started on

the Authority's own initiative in relation to news items and 74 reports were received in relation to transport sectors which currently do not fall within the Authority's remit for passengers' rights (in particular, air and maritime transport). Moreover, the Authority's competence in this field evolved during the brief period since it took up its duties.

One of the functions conferred upon the Authority by article 37 is to define, in relation to the different type of service and infrastructure, the minimum contents of the specific rights, even compensatory, which may be claimed by users against service providers and infrastructure managers. This is without prejudice to the collaterals increasing users' and consumers' protection which service providers and infrastructure managers include in service charters (paragraph 2 (e) ). In addition, the Authority will assess complaints, petitions and reports submitted by users and consumers, individuals or associations, as to the compliance with quality and charge levels by the parties operating the regulated service, for the purpose of exercising its competence (paragraph 3 (g)) and encouraging the establishment of simple and inexpensive dispute resolution procedures between operators and users (paragraph 3(h)).

Further, the Authority's competence include passengers' rights protection in the different modes of transport provided for under the relevant European regulations. In particular, at the time of writing, the Authority is assigned the functions of a "monitoring body" within the meaning of Legislative Decree No 70 of 17 April 2014, implementing EU Regulation No 1371/2007 on rail passengers' rights and Legislative Decree No 169 of 4 November 2014, implementing EU Regulation No 181/2011 concerning the rights of passengers in bus and coach transport. These provisions lay down specific powers to establish infringements and impose sanctions on the providers of services subject to the specific rights ensured by the European legislator. Typically, the powers conferred upon the Authority for implementing such provisions are, in some cases, wider than those provided by article 37 of the law establishing the Authority and are extended, in specific cases, to passengers' transport regardless of existing public service obligations.

As for the other transport modes subject to European regulations, with the expected forthcoming adoption of national measures implementing EU Regulation No 1177/2010, the Authority will be conferred the competence concerning passengers' rights in maritime and inland waterway transport. On the other hand, passengers' rights and quality of air transport services fall within the remit of the Italian Civil Aviation Authority (ENAC), to which the Authority addresses the relevant notices.

The entry into force of Legislative Decrees No 70 and no 169 increased the level of protection for users of transport services by rail and bus. Under Decrees No 70 and No 169 of 2014, the Authority has, in fact, the power to monitor, supervise and impose sanctions for infringements of passengers' rights as for the basic level of service referred to in article 117, paragraph 2(m) of the Constitution. Indeed, both implementing measures are primarily aimed at strengthening passengers' rights as the "weaker" part in the transport relationship, and at improving the service quality and efficiency. Specific measures are, in particular, provided in both decrees to ensure the right to mobility and accessibility of the transport services to disabled persons and persons with reduced mobility to avoid any discrimination as a result of their condition.

In the exercise of its powers the Authority, on the one hand, ensures uniform levels of passengers' rights protection throughout the national territory, regardless of the type and territory where the transport service is provided and, on the other hand, with regard to regional and local services, it coordinates its action with that of the competent regional structures, which receive and forward passengers' complaints to the Authority on a monthly basis. In this latter respect, as regards the railway sector, a Decree by the Minister for Infrastructure and Transport, adopted on 29 May 2015, identifies the regional structures responsible for receiving complaints following alleged infringements in relation to regional and local rail services. On the other hand, with reference to bus and coach

transport, it is expected that, after consultation with the Standing Conference for Relations between Government, Regions and Autonomous Provinces of Trento and Bolzano, a ministerial decree shall set out criteria and procedures to identify the stations providing assistance to disabled persons and persons with reduced mobility. In this regard, the Ministry has submitted to the Authority the final draft ministerial decree for the identification of such structures.

In accordance with Regulations No 1371 and No 181, passengers by rail and by bus and coach are entitled to receive full and timely information - before and during the journey - about any possible events (i.e. delays, cancellations), purchase tickets without undue difficulty, be offered meals, refreshment and assistance both in the event of cancellation and delay of a service, be applied non-discriminatory contractual or tariff conditions, as well as receive non-discriminatory treatment of disabled persons and persons with reduced mobility and general information about their rights. There follows a number of precise obligations imposed on the undertakings, such as having a minimum amount of insurance for rail passengers and their luggage, recognizing compensation for delays, missed connections and cancelled services, ensuring passengers' personal security, implementing complaint handling systems and service quality rules.

For this purpose, the instruments available to the Authority in accordance with Legislative Decrees No 70 and No 169 of 2014 include powers to carry out monitoring and surveys, adopt injunctions and precautionary measures for reasons of necessity and urgency, as well as impose penalties on the undertakings that violate passengers' rights. To this end, the Authority evaluates and deals with passengers' complaints, including associations representing their interests, without prejudice to the Authority's power to act on its own initiative. The Authority may also accept and make binding the undertakings' commitments in relation to alleged infringements of users' rights concluding proceedings without establishing any infringement. In the exercise of its responsibilities, the Authority may also acquire information and documentation from railway undertakings, infrastructure managers, carriers, terminal managing bodies or any other interested or involved party. On these persons the Authority may also carry out audits and inspections.

The specific penalty system provided for by both decrees (under the scheme established by Law No 689/81) provides for the imposition of fines by the Authority ranging between a minimum and a maximum amount, predetermined on the basis of the infringement and proportionate not only to the seriousness and duration of the infringement and the existence of aggravating and mitigating circumstances (such as repetition of the facts and actions taken to mitigate or eliminate the effects), but also to the percentage ratio of passengers affected by the infringement to the percentage of transported passengers. For the rail sector the penalties that can be imposed range from a minimum of 200 euro to a maximum of 20,000 euro, while for passenger services by bus from 150 euro to 40,000 euro.

With regard to the allocation of the fines imposed by the Authority, both Legislative Decree No 70 and Legislative Decree No 169 of 2014 provide for the establishment of a special fund at the Ministry for Infrastructure and Transport to finance projects for the benefit of transport users. At present, these funds have not been established yet. However, taking into account the maximum amounts provided for infringements of passengers' rights and in order to identify the most significant projects, it would seem reasonable to combine the two funds.

In the field of transport by bus and coach, the Authority was finally designated by Law No 169/2014 as the body responsible for the implementation of Regulation (EC) No 2006/2004 on cooperation between national authorities for consumer protection, in relation to the subject covered by Regulation No 181/2011.

Pursuant to article 4, paragraph 3, of Legislative Decree No 74/2014 and article 3, paragraph 4 of Legislative Decree No 169/2014, some overview data on the activities carried out by the Authority for the protection of passengers' rights in rail and bus and coach transport during this first year of enforcement are provided in the ensuing paragraphs.

### 3.1.6.2 Enforcement of domestic provisions implementing EU Regulation

In order to enforce Legislative Decrees No 70 and no 169, the Authority adopted – after appropriate consultation of the relevant stakeholders - the relevant implementing measures and initiated the first inquiries on its own initiative or at the passengers' request on 4 July 2014 and 20 January 2015, respectively. The two measures regulate in detail the conduct of each stage of the enforcement procedure and the arrangements for the submission of complaints. As to the wording, the two measures show a few inconsistencies which will be eliminated with the forthcoming entry into force of the Legislative Decree implementing Regulation No 1177/2010 on maritime transport.

It is important to underline that, on the basis of these measures, passengers are required to apply to the Authority in the second instance, i.e. following an action of complaint to the service provider and after a certain period of time has elapsed (thirty days from submission of the complaint for rail transport, ninety days for bus and coach transport). This procedure for the submission of passengers' complaints, provided for by European regulations, allows, *inter alia*, the service provider to remedy any disruption or inconvenience suffered by passengers before initiating infringement proceedings.

The procedures described by each of the two regulations in the relevant area is based on the following principles: full knowledge of the inquiry measures by the stakeholders, written and oral hearing and separation of inquiry functions, carried out by the Authority's offices, and decision-making functions which are assigned to the Board. When adopting the two regulations, the Authority has also drafted, for each sector, a specific "form" (available on the Authority's website at <http://www.autorita-trasporti.it/>) for the submission of complaints. In this respect, the Authority took into account the suggestions made by the European Commission and other Member States in the regular meetings of the competent EU working groups. In addition, in order to simplify the communication between the Authority and the citizens, a dedicated mailbox was set up for receiving complaints relating to bus and coach transport. Upon review of the rules of procedure, the same simplified procedure will be introduced also for rail transport.

### 3.1.6.3 Rail transport

A year after the application of Legislative Decree No 70/2014 and the related Authority's measure on enforcement procedures of 4 July 2014, the Authority has received 22 complaints in the second instance, and about 150 additional reports of poor service. Six cases have been solved, and in many other cases it was considered that the relevance of the facts brought to the Authority's attention called for a clarification from the service provider, also in view of a possible future regulation. Further, in 13 cases the Authority decided to act on its own initiative on the basis of information reported by the national press and in the media, and sent requests for clarification to railway undertakings and infrastructure managers.

Preliminary information was required, for example, on the cancellation without notice of a stop at Orvieto station, the difficult travelling conditions for commuters on the routes Turin-Milan, Mariano Comense-Milan Rogoredo, Naples-Foggia, Poggio Mirteto-Fiumicino due to overcrowding, old trains and non-coordination between reserved passengers and subscribers, frequent late arrivals at Frattamaggiore-Grumo Nevano station and dissemination of incorrect information on board on Milan-Malpensa route. In addition, as a result of numerous requests for assistance received by

citizens and by commuter associations, the Authority has focused its attention, in the high-speed sector, on the impact of the obligation of reservation even for subscribers.

The more problematic areas as to passengers' rights concern service cancellation and lack of timely information provided by railway undertakings and station managers, missed train connections due to non-coordination of the timetables of different rail undertakings and to delays, failure to provide adequate travel assistance in case of service disruptions, failure to adapt trains and stations to the needs of people with disabilities or with reduced mobility, difficulty encountered by passengers to get refunds from rail undertakings due to the way in which they calculate the delays accrued and in the cases where train cancellations are due to strikes. In many cases, the difficulty in obtaining the ticket refund has been related to the complaint procedures provided for by the undertakings, which are considered too complex and burdensome for users. Still problematic is also the non-recognition by railway undertakings of compensation for delays in case the journey requires the use of different railway services (for example, a regional train and a high-speed train) operated by different railway undertakings.

At the time of writing, with respect to the reports submitted or the Authority's own initiatives, no penalty proceedings for infringements of rail passengers' rights have been initiated yet, also taking into account the cooperative attitude by rail undertakings in providing feedback to the Authority's requests for clarification.

Moreover, as regards rail transport, the Authority is still examining the effective implementation by railway undertakings, station managers and infrastructure manager of the (disclosure and/or behavioral) obligations provided for by Legislative Decree No 70/2014. Indeed, article 16, paragraph 1 of the Decree provides that railway undertakings and station managers inform the Authority about the steps taken to ensure the transport rights of people with disabilities and people with reduced mobility. A similar disclosure obligation is provided by article 19, paragraph 1, in relation to the service quality standards adopted by railway undertakings. Article 18, paragraph 1, of the Decree – albeit not introducing a corresponding disclosure obligation to the Authority – requires railway undertakings to regulate and implement systems for collecting and processing passengers' complaints. A specific disclosure obligation, by an appropriate public notice, is also provided for railway companies under paragraph 3 of article 18 and paragraph 2 of article 19 of the decree regarding procedures adopted, timeframe for handling complaints and service quality performance, respectively. The failure to comply with these obligations implies the imposition of fines by the Authority, ranging from 200 euro to 20,000 euro. Further, article 18, paragraph 3, of Legislative Decree No 70/2014 establishes the obligation for the undertakings to inform, in their service quality annual report, about the complaints received and processed, including response times and measures taken to improve the procedures, if necessary. On the other hand, under article 19, paragraph 2, of the decree, railway undertakings shall publish on their website (and make it available on the European Railway Agency website) an annual report on their service quality performance. Indeed, an initial review of the documents submitted to the Authority show that just a few of the undertakings concerned have actually fulfilled the above obligations, despite the expired statutory time limits.

#### *3.1.6.4 Bus and coach transport*

As for passengers' rights in bus and coach transport, Regulation No 181/2011 draws a distinction between long-distance services (250 km or more) and short-distance services (less than 250 km). A similar distinction characterizes the surveillance and sanctioning powers conferred upon the Authority by Legislative Decree No 169/2014.

With regard to long-distance services, the Authority is competent for imposing penalties for infringement of the right to receive: adequate assistance in case of cancellation or delay of more

than 90 minutes for a journey with a scheduled duration of more than 3 hours; reimbursement or re-routing in case of overbooking, cancellation or delay in departure of more than 120 minutes; compensation amounting to 50% of the ticket price for delay in departure of more than 120 minutes, cancellation of the service and non-rerouting or non-reimbursement; adequate and timely information in case of cancellation or delayed departure; adequate protection in the event of accidents.

The right to non-discriminatory contract or charging conditions, non-discriminatory treatment of disabled people and people with reduced mobility as well as compensation for loss or damage to assistive devices that facilitate mobility in the event of an accident, timely and complete information before and during the journey, easily accessible information on their rights and on the ways for managing and resolving complaints are extended to bus and coach services with a distance of less than 250 km.

Between the entry into force of Legislative Decree 169/04 and the time of writing, 10 complaints were received pursuant to the measure providing for the submission to the Authority in the second instance and 28 reports. One of the cases raised has been solved. In another case, the Authority considered it necessary to open a case on its own initiative in relation to the earlier departure than scheduled time of a famous bus transport undertaking, which had been highlighted in the press.

Substantially, the cases brought to the Authority's attention mainly concern cancellation or interruption without notice of the service, delays (or earlier departure) than scheduled times, lack of information and failure to provide systems for handling complaints and replacement services in the event of breakage by transport undertakings.

To date the Authority has not initiated yet any penalty proceedings for infringements of bus passengers' rights, but it is considering whether some bus transport companies have not adjusted their general conditions of carriage with the provisions of Regulation No 181/2011, in particular with regard to the dissemination of complete and timely information on the journey, the setting up of an adequate and transparent system for handling complaints and the compliance with the rights of disabled people and people with reduced mobility.

#### *3.1.6.5 Maritime and inland waterway transport*

In accordance with previous Regulations on passengers' rights, Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway, too, aims at protecting the weakest part in the transport relationship, guaranteeing each and every one, without discrimination, accessibility of port terminals and ships, improving the supply of services in terms of information and quality even when they are not characterized by public service obligations and ensuring passengers an effective protection against disrupted operations, at appropriate times and according to certain procedures. Therefore, with the national implementation of Regulation No 1177/2010, the level of protection of passengers' rights will be reinforced also in maritime transport, in the same way as in rail and bus transport.

At the time of writing, the procedure for adopting the measures implementing the Regulation is still under way and the measure, approved by the Council of Ministers on 26 June 2015, has not been published yet. In case of no substantive changes thereto, the relevant draft legislative decree identifies the Transport Regulation Authority as the monitoring body responsible for protecting the rights of maritime transport users. *Inter alia*, the measure allows the legislator to remedy infringement procedure No 2013/2258 initiated by the Commission against Italy for breach of the obligation to notify the European Commission the national implementing measures requested by the aforementioned Regulation.

### **3.1.7 Scheduled local public transport**

#### *3.1.7.1 Measures for drawing up notices issuing invitations to tender and conventions and for setting the criteria for the appointment of contracting authorities in the field of local public transport*

By Decision No 6 of 16 January 2014, the Authority started a fact-finding survey on passenger services with particular reference to local public transport, in order to identify priority areas for the introduction of regulatory measures implementing article 37 of Decree-Law No 201 of 6 June 2011. As part of this survey, by Decision No 46 of 19 June 2014, the Authority initiated a procedure for the adoption, under a.m. article 37, paragraph 2 (f), of regulatory measures for drawing up notices issuing invitations to tender and conventions for the direct award of local public transport services and for setting the criteria for the appointment of contracting authorities. The Decision also provided for the publication of a consultation paper on regulatory issues related to the direct awarding of local public transport services. Many stakeholders participated in the consultation, including public institutions, businesses and their representative associations, as well as consumer associations and trade unions.

Based also on the analysis of the contributions received on the a.m. document during the consultation, the Authority has drawn up a draft regulatory measure approved by Decision No 26 of 12 March 2015. The draft measure lays down a first set of provisions covering the regulatory aspects of the tendering procedures called for by competent local authorities (or their delegated bodies) for the direct award of public transport service contracts under Legislative Decree No 422/1997 and Regulation (EC) No 1370/2007, in accordance with the provisions of the law establishing the Authority.

In order to enable maximum participation of stakeholders, and in consideration of the complexity and importance of the regulatory issues addressed, the Authority acquired additional accurate comments on the draft regulatory measure before its final adoption. At the end of the consultation procedure, by Decision No 49 of 17 June 2015, the Authority adopted the measure consisting of twenty requirements concerning: capital goods for service performance and personnel, preparatory to the drafting of tender notices; fair and non-discriminatory participation in the tenders; submission of tenders, business plan and incentives in case of award with non-competitive tendering procedures; pro-competitive criteria for the definition of contractual regulations; transparency and prevention of conflicts of interest, through the provisions relating to the appointment of contracting authorities.

Some measures also cover service contracts awarded according to procedures other than tendering (*in-house providing*, awarding to joint public-private partnerships with designation of the private partner through public competitive procedures and direct awarding as may be permitted by regulations). The measures are the first part of the "regulatory framework" within which, for the purposes of the new public procurement procedures, regions and local authorities may exercise the powers conferred upon them by the Constitution with regard to public transport, as established by Ruling No 41 of 11 March 2013 of the Constitutional Court.

#### *3.1.7.2. Monitoring of tender procedures for the award of local public transport services*

During the year at issue, the Authority conducted fruitful inquiries with some contracting bodies with respect to individual tendering procedures already organized or under preparation for the awarding of local public transport services. The Authority's intervention has been requested by the same contracting bodies or, in some cases, by undertakings which, for various reasons, considered that the tender documents were not fully in line with the relevant European and national principles.

### 3.1.7.3 *Participation in the activities of the National Observatory on Local Public Transport Policies of the Ministry for Infrastructure and Transport*

In the period under consideration, the Authority has participated, *inter alia*, in the activities of the working group operating at the National Observatory on Local Public Transport Policies, set up to create a database and a public information system related to the regional ones, and to verify the development of the sector and the completion of the reform process. Among others, the following issues were addressed: organizing the analysis of existing Community, national, regional and local legislation in the different public transport areas; structuring schemes to facilitate comparison in the application of existing different regulations concerning invitations to tender and tendering procedures for the awarding of local public transport services; identifying and highlighting the relevant aspects contained in each regulation, both at the regional and local level, for the purpose of comparing different situations.

### 3.1.7.4 *Participation in the market monitoring of the rail sector*

Article 15 of Directive 2012/34/EU (the so-called 'Recast Directive') provides that the European Commission carries out the monitoring of the technical and economic conditions, as well as of the developments in EU rail transport market (market monitoring activities). In particular, in accordance with paragraph 5 of the above article, Member States shall report annually to the Commission the necessary information on the use of networks and the evolution of framework conditions in the rail sector. As regards Italy, this task is assigned to the Ministry for Infrastructure and Transport, which operates through the Directorate-General for Information and Statistical Systems. The latter has set up a working group on rail transport statistics, of which the Authority is member, for the purpose of analysing and collecting the requested data.

This year, the Working Group focused on the definition of the new structure of the questionnaire *Railways Market Monitoring Statistics (RMMS)*, which will be used to collect data on EU rail transport market starting from 1 January 2016. In particular, the Working Group's activity led to amendments of the original questionnaire proposed by the Commission, which included, *inter alia*, new indicators or new calculation algorithms. This is also relevant for the monitoring function on regulated markets, within the Authority's remit at national level, for which available updated statistics, collected on the basis of shared and rigorous methodologies, are of fundamental importance. The activity is also of interest to the working groups within the *Independent Regulators Group (IRG)* and the *Network of Rail Regulators (ENRRB)*, of which the Authority is member.

## **3.1.8 Non-scheduled local public transport and service platforms**

### 3.1.8.1 *Taxi services*

The Authority has started activities related to non-scheduled road transport passenger services, with particular reference to taxi and C&DH services. In this respect, under paragraph 2, letter m) of Decree-Law No 201/2011, the Authority is entrusted with the task of monitoring and verifying whether the levels of the provision of taxi services, their tariffs and quality meet the needs of the different cities, according to criteria of reasonableness and proportionality, to ensure the users' right to mobility. Upon prior approval by the Authority, municipalities and regions, within their areas of competence, shall ensure to adapt taxi services to the specific needs in accordance with the principles established by the above-mentioned provision. In case of inadequate implementation of these principles by local authorities, paragraph n) of the above Decree-Law confers upon the

Authority the power to appeal before *TAR Lazio* (Regional Administrative Court Latium) against any measures they may have adopted.

In carrying out these activities, the Authority has been addressed numerous requests for assistance from local authorities with respect to the service organization and performance. Individual parties operating taxi services have, too, reported ongoing disputes with local authorities, as regards their relations with radio taxi co-operatives and other parties operating the service in different geographical areas. In this respect, the Authority urged the competent administrations to take initiatives aimed at ensuring the provision of taxi services in line with the principles of competition and at strengthening the citizens-users' right to mobility, consistently with the criteria indicated in the a.m. article 37, paragraph 2, letter m) of Decree-Law No 201/2011.

#### *3.1.8.2. 'Atto di segnalazione' to the Government and the Parliament on non-scheduled road transport passenger services (taxi, car-and-driver hire and technological platforms for new mobility services)*

The Authority submitted the Government and the Parliament considerations and remarks with a view to possible legislative initiatives concerning non-scheduled road transport passenger services: taxi, C&DH and technology mobility services: the aim is to enhance new and distinct markets, promote competition and ensure adequate levels of quality and efficiency of non-scheduled road transport passenger services. The proposal examines the differences between taxi and C&DH services, in particular the different market access regime, the territorial implications of the organization of these services, the existence of public service obligations and the way the new platforms for mobility technological services impact on more traditional markets.

The recent widespread use of information technologies applied in an innovative way to passenger mobility has had significant effects on both users' demand and behavior and the availability of non-scheduled local transport services. Within this framework, in the first months of 2015 the Authority started a survey aimed at expanding on the knowledge and understanding of the above-mentioned services, their trends and implications in terms of economic regulation. All the major stakeholders were involved: associations representing taxi and C&DH service operators, new technology platforms operating in different ways in this sector, consumer groups, the National Association of Italian Municipalities (ANCI) and the Conference of the Regions and autonomous Provinces.

The results of the survey highlighted the opportunity to propose changes to Law No 21 of 15 January 1992, "*Legge quadro per il trasporto di persone mediante autoservizi pubblici non di linea*" (framework law on non-scheduled public road passenger transport services). Indeed, the above framework provisions for taxi and C&DH services, as well as the relevant regional and local regulations, seem no longer suited to pursue the principles of competition and users' protection in this sector. Should the Authority's indications attached to the proposal be accepted, the related set of rules should also be amended.

#### *3.1.8.3 Opinion to the Competition Authority pursuant to article 27, paragraph 1-bis, of the Consumer Code*

Article 27, paragraph 1-bis of Legislative Decree No 206 of 6 September 2005 on the Consumer Code provides that "*in the regulated sectors, too, in accordance with article 19, paragraph 3, the competence to take action in respect of the conduct of professionals engaging in unfair commercial practices, without prejudice to the compliance with existing regulations, rests exclusively with the Competition Authority and is exercised in accordance with the powers referred to in this article, having acquired the opinion of the competent regulatory authority ...*". The Transport Regulation Authority, for the purposes of implementing the Memorandum of Understanding concluded on 27 August 2014, delivered its opinion to the Competition Authority in the proceedings AS4848, initiated

on 5 March 2014 against *Trenitalia Sp.A.* and *R.F.I. S.p.A.* for unfair commercial practices in the passenger transport by rail. The Authority's opinion concerned the proposed commitments submitted by *Trenitalia* for removing the alleged misconduct raised by the Competition Authority in the notice initiating the procedure, in view of its final closure without assessment of infringements. The procedure was concluded with the acceptance of the commitments resulting in a change in *Trenitalia* policy, as from March of this year, with respect to the refunds to be granted to passengers.

## **4. Institutional and international relations**

### **4.1 At national level**

#### **4.1.1 The Authority's hearings before Parliamentary Committees**

Parliamentary committees are an important reference for the Authority that is actively involved in legislating through the hearings on matters within its competence.

During the second year of activity, the Authority held hearings in relation to the proceedings for the adoption of the draft legislative decree concerning passengers' rights (see above), the transposition of the Recast Directive in the railway sector (see below), the Decree-Law No 133/2014 (the so-called "Unlock-Italy"), as well as with regard to the survey on motorway concessions and the conversion into law of Decree-Law No 90/2014 on administrative simplification and transparency.

The hearings constituted the forum where the Authority has described and expressed its views - even critical - on the measures concerned.

#### **4.1.2 Central Government administrations**

The Authority has established close collaboration with central Government administrations.

In particular, the Authority was supported by the Presidency of the Council of Ministers for the conference organized - on the occasion of the first anniversary of its establishment and in collaboration with the City of Turin - on certain issues of the Fourth Railway Package, which had been included in the Italian EU Presidency programme in the second half of 2014. Further, the Authority has participated in the activities of the Expert Group on public procurement, in particular in relation to the issue of concessions.

With reference to the Ministry of Infrastructure and Transport, as mentioned above, the Authority has been invited to participate in the working group in charge of collecting data for the market monitoring in accordance with article 15 of Directive 2012/34/EU (the so-called Recast), and in the National Observatory on Local Public Transport Policies. In addition, the Ministry has consulted the Authority with respect to the measures implementing the Recast Directive (in particular in the field of direct costs and service facilities) adopted by the European Commission.

As for the Ministry of Economy and Finance, and in particular, the Economic and Financial Analysis Directorate of the Treasury Department, the Authority has contributed to draw up the replies to the Recommendations of the European Commission on the 2014 National Reform Programme. The Authority was also involved in processing the replies to the OECD questionnaire in view of the Economic Survey of Italy 2015.

With regard to the Ministry of Foreign Affairs, the Service for Legal Affairs regularly involves the Authority in the examination of referrals to the European Court of Justice in matters within its competence.

The Authority has also contacts with the offices of the Italian Permanent Representatives to the European Union and the OECD.

Further, the State-Regions Conference has involved the Authority in the meetings concerning the draft legislative decrees on the rights of passengers travelling by bus and coach and in maritime transport and inland waterway. In this context, the Authority had the opportunity to hold discussions with representatives of the Regions and appreciate their comments.

## **4.2 At European and international level**

### **4.2.1 The activities at European level**

#### *4.2.1.1 The Independent Regulators' Networks for railways, airports and passengers' rights*

Given the transnational nature of transport, an effective regulation implies intense cooperation among EU countries. For this purpose, the European Commission has set up networks of organizations that meet regularly to exchange information and best practices. In particular, the European Commission set up the European Network Rail Regulatory Bodies (ENRRB) and, more recently, the Forum of Airport Charges Regulators (the so-called Thessaloniki Forum). The Network of Regulatory Bodies responsible for passengers' rights in the different modes of transport also meets once a year. The Authority is regularly present in all European fora and started to cooperate with other regulatory bodies also at the bilateral level, in particular with ARAF and ORR, the railway regulatory bodies in France and United Kingdom, respectively.

#### *4.2.1.2 Rail corridors*

Rail corridors are part of the TEN-T network. Italy is involved in four of the nine corridors and the Authority is entrusted with the coordination of Corridor 6 (Mediterranean Corridor) connecting Spain with Ukraine also through Northern Italy. The Authority participates in the meetings convened by the Executive Board and the European Commission and is in charge of dispute resolution. In 2014 no complaints were received in relation to access to the corridor and capacity allocation procedures.

### **4.2.2 IRG-Rail**

As indicated in the first report, in March 2014 Italy has joined the Independent Regulators' Group - Rail. IRG-Rail helps define the European policies for railways through a transparent and open dialogue with European Commission, European Parliament and key stakeholders. In particular, during 2015, besides participating in the various IRG-Rail sub-groups, the Authority has subscribed to the papers approved by the plenary assembly on the Fourth Railway Package and the procurement procedures other than tendering.

### **4.2.3 The activities within OECD**

In 2015 the Authority has participated for the first time in the activities of the Network of Economic Regulators (NER) chaired by a member of the Board of the Italian Regulatory Authority for Electricity, Gas and Water; the group includes representatives from AGCOM (the Authority for Communications Guarantees), too. Currently, its work is focused on the actual degree of independence of the various regulatory bodies.

## **5. Media relations**

Since the Authority's establishment and start of operation, media relations have gradually developed, supporting the Authority's action and strengthening the awareness of its functions on the part of institutional partners, regulated businesses, other stakeholders and the public.

The communication activities have been addressed mainly to domestic and foreign media, providing journalists with regular information to improve the knowledge and understanding of the Authority's decisions, increase the transparency of its acts and raise the awareness of transport users about their rights. Media relations have been promoted through press releases, organization of interviews with the President, organization of press conferences and publication of documents.

Besides media communication, the Authority has regularly used its website for its relations with regulated parties and service users thanks to its essential characteristics of speed, universal connectivity and interactivity. Complementing the more traditional ways of information and communication, the website is also the online information tool to publicise the Authority's documents and ensure transparency of procedures, as provided for by applicable law. Through the construction of the website, the Authority intended to strengthen knowledge of its administrative action through the publication of news updated in real time on its main initiatives and measures.

Moreover, the first services in the area of users' rights have been activated with a special dedicated area allowing access to EU legislation, regulatory measures adopted by the Authority in the different transport sectors and forms for filing complaints and reports.

An on-line consultation section is provided including the comments of the parties interested in the Authority's measures.

The Authority's purpose is to enhance the available technologies by turning the website from a communication and information tool into a virtual helpdesk and by increasing interactive services to foster the dialogue with citizens and regulated parties.

## Part Three - Acts and measures

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In the period under review (1 July 2014 – 30 June 2015), the Authority adopted about a hundred formal decisions; far more numerous were its determinations.

Taking into account that the Authority started its activities in this period, the measures relating to its organization and operation have been widely prevailing (approx. 70%) over regulatory measures (approx. 30%).

Below is a list of the principal acts and measures divided by type and year, the full contents of which is published on the Authority's website [www.autorita-trasporti.it](http://www.autorita-trasporti.it).

### 1. The Authority's regulatory activity

#### 1.1 Year 2014

Decision No 52 - Adoption of the rules on penalties applicable to infringements of the provisions of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations.

Decision No 64 - Approval of airport charges regulatory models.

Decision No 65 - Opinion to the Competition Authority in the proceedings initiated against Trenitalia S.p.A. and R.F.I. S.p.A. (PS 4848)

Decision No 704 - Regulation for fair and non-discriminatory access to rail infrastructure

Decision No 76 - Guidelines and requirements on the 2015 Network Statement submitted by the Italian Rail Network Infrastructure Manager, *R.F.I. S.p.A.*

Decision No 79 - Consultation procedure on the application of penalties for infringements of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.

Decision No 86 - Definition of the criteria for determining access charges for the use of railway infrastructure (Procedure pursuant to Decision No 70/2014) - "Call for Inputs".

#### 1.1 Year 2015

Decision No 4 - Adoption of the rules on penalties applicable to infringements of the provisions of Regulation (EC) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.

Decision No 19 - Request for authorization submitted by *Società Viaggiatori Italia S.r.l.* to provide 'cabotage' services on the Paris – Milan route.

Decision No 22 - Proposal for airport charges review of Pisa Airport "*Galileo Galilei*" for 2015 - 2018. Compliance with the airport charges regulatory models approved by ART's Decision No 64 of 2014.

Decision No 24 - Initiation of the procedure for the application of penalties for non-compliance with the immediate enforcement of the guidelines and requirements concerning fair and non-discriminatory access to the railway infrastructure, pursuant to Decision No 70/2014 of 31 October 2014.

Decision No 25 - Initiation of the procedure for the application of penalties for non-compliance with the guidelines and requirements under Decision No 76/2014 of 27 November 2014, relating to the 2015 Network Statement, submitted by the Italian Rail Network Infrastructure Manager, *R.F.I. S.p.A.*

Decision No 26 - Public consultation on the draft regulation concerning measures for drawing up notices issuing invitations to tender and conventions for the direct award of local public transport services and for setting the criteria for the appointment of contracting authorities.

Decision No 32 - Procedure for defining optimal management areas of motorway sections.

Decision No 35 - Proposal for airport charges review of Florence Airport "*Amerigo Vespucci*" for 2015-2018. Compliance with the airport charges regulatory models approved by ART's Decision No 64/2014 and termination of the dispute resolution procedure initiated by Decision No 31/2015.

Decision No 36 - The Three-Year Programme (2015-2017) for Transparency and Integrity of the Transport Regulation Authority. Preliminary approval.

Decision No 37 - Statement of eligibility and publication of the proposed commitments submitted by *Rete Ferroviaria Italiana S.p.A.* concerning the procedure initiated by Decision No 24/2015 of 12 March 2015.

Decision No 38 - Statement of eligibility and publication of the proposed commitments submitted by *Rete Ferroviaria Italiana S.p.A.* concerning the procedure initiated by Decision No 25/2015 of 12 March 2015.

Decision No 39 - Proposal for airport charges review of Bologna Airport "*Guglielmo Marconi*" for 2016-2019: initiation of the procedure to assess the compliance with the airport charges regulatory models approved by Decision No 64/2014.

Decision No 40 - Proposal for airport charges review of Olbia Airport "*Costa Smeralda*" for 2015-2018: initiation of the procedure to assess the compliance with the airport charges regulatory models approved by Decision No 64/2014.

Decision No 49 - Regulatory measures for drawing up notices issuing invitations to tender and conventions for the direct award of local public transport services and for setting the criteria for the appointment of contracting authorities and initiation of a procedure for defining methods to identify public service areas and more efficient financing.

## **2. The Authority's organisation and operation**

### **2.1 Year 2014**

Decision No 66 - Budget 2014. Multi-annual Plan 2014-2016. Fifth variation.

Decision No 74 - Working time regulations.

Decision No 77 - Budget 2015. Multi-annual Plan 2015-2016 – Approval.

Decision No 78 - Amount and method of payment of the contributions payable to the Transport Regulation Authority for 2015.

Decision No 82 - Organization chart of the Transport Regulation Authority. Update.

## **2.1 Year 2015**

Decision No 13 - Appointment of the person in charge of the prevention of corruption and of the person in charge of Transparency of the Transport Regulation Authority.

Decision No 14 - Accounting rules. Amendment.

Decision No 15 - Appointment of the Evaluation Unit.

Decision No 21 - Fulfillment of the obligations under Law No 68 of 12 March 1999 on "Regulations for the Right to Work of Disabled People". Agreement with the Metropolitan City of Turin.

Decision No 27 - Publication on the Transport Regulation Authority's website of the notice for activation of traineeships and curricular- and extracurricular internships.

Decision No 30 - Performance Management.