

*courtesy translation – only the Italian text is authentic*

## **DECREE-LAW no 201 of 6 DECEMBER 2011**

Urgent measures for growth, equity and consolidation of public accounts

**In force as at: 8-9-2022**

Chapter II

Competition

Art. 37

### *Liberalisation of the transport sector*

1. The Transport Regulation Authority, hereinafter referred to as "the Authority", is established within the framework of the regulation of public utility services pursuant to [Law No 481 of 14 November 1995](#) and operates in full autonomy and independence of judgement and evaluation. The Authority shall be based by 31 December 2013 in a public property building in the city of Turin, where suitable and available, pursuant to a Prime Minister's decree, upon proposal of the Minister of Infrastructure and Transport. Upon first implementation of this article, the Authority's Board shall be set up by 31 May 2012. The Authority oversees the transport sector and the access to relevant infrastructure and ancillary services, in accordance with EU legislation and in compliance with the subsidiarity principle and with the responsibilities of regions and local authorities as referred to in Chapter V of Section Two of the Constitution. The Authority shall exercise its powers from the date of adoption of the regulations referred to in [article 2 \(28\) of Law No 481 of 14 November 1995](#). The provisions concerning organisation and operation under the above-mentioned law shall apply to the Authority, as appropriate.

1-a. The Authority is a collegial body composed of the President and two Members designated according to the procedures referred to in [article 2 \(7\) of Law No 481 of 14 November 1995](#). The Board and the staff of the Authority are subject to the provisions of article 2 (8) through (11) of the above law. The Board shall appoint a Secretary General who supervises the activities of the offices and reports to the President.

1-b. The members of the Board are designated, with due regard to gender balance, among persons with undisputed ethics, independence and professional qualities and expertise in the areas falling within the Authority's remit. Under penalty of dismissal, they may not carry out, either directly or indirectly, any professional or consultancy activity, nor be directors or employees of public or private entities; they may neither hold any public office, including elected office or representation in political parties, nor have direct or indirect interests in companies operating in the sector regulated by the Authority. Government

employees shall take leave of absence for the entire mandate. The members of the Board have a seven-year non-renewable mandate. In the event of resignation or impediment of the President or of a Member of the Authority, they shall be replaced according to the ordinary rules laid down for the designation of the Authority's members, their mandate and non-renewable office.

2. The Authority oversees the transport sector and the access to the relevant infrastructure and attends to the following:

a) ensuring, according to methods that encourage competition, production efficiency and cost containment for users, businesses and consumers, as well as equitable and non-discriminatory access to rail, port, airport and toll motorway infrastructure, without prejudice to the responsibilities of the *Agenzia per le infrastrutture stradali e autostradali* (Agency for road and motorway infrastructure) as referred to in [article 36 of Decree-law No 98 of 6 July 2011](#), converted into [Law No 111 of 15 July 2011](#), as amended, as well as with respect to national, local and urban mobility of passengers and freight, including that related to stations, airports and ports;

b) where it is deemed necessary with respect to the conditions of competition which are in place in each market of national and local transport services, setting the criteria to determine tariffs, charges, tolls to be applied by the parties concerned, by taking into account the need to ensure the economic equilibrium of the regulated businesses, the efficiency of operation and the cost containment for users, businesses and consumers;

c) checking the correct application of the criteria set out under (b) by the parties concerned;

d) establishing the minimum quality standards of national and local transport services that are subject to public service obligations, as identified in accordance with the local characteristics of supply and demand;

e) in relation to the different services and infrastructure, defining the minimum rights and entitlements, including compensation, that may be claimed by users from infrastructure managers and service providers, and settling the relevant disputes, without prejudice to the additional collaterals increasing users' protection which infrastructure managers and service providers may include in their service charters;

f) defining the criteria to determine the exceptions to the principle of the lesser territorial extension of tender lots as compared to mobility planning areas, taking into account actual and potential demand, economies of scale and integration of services and any other criteria established by the legislation in force, as well as designing tendering schemes for the award of transport services on an exclusive basis and model agreements to be included in the tender specifications, and setting the criteria for the appointment of

tender evaluation committees; with reference to regional rail transport, the Authority verifies that tender notices do not contain conditions which are discriminatory or may prevent access to the market by potential competitors, and, in particular, that the availability of rolling stock already at the time of the invitation to tender does not constitute a participation requirement or discrimination for applicant undertakings. In these cases, a maximum period of eighteen months starting from the final award is allowed to successful tenderers to take over the rolling stock needed to provide the service. With reference to local public transport, the Authority further lays down the model public service contracts for the services performed by internal operators or publicly owned companies pursuant to [Legislative Decree no 175 of 19 August 2016](#), as well as for those that are directly awarded. Both for tender notices and for the aforementioned public service contracts performed by internal operators or directly awarded, the Authority shall determine the effectiveness and efficiency targets to be complied with by the operator, as well as the objectives of economic and financial equilibrium; for all public service contracts it provides for accounting separation requirements between the activities carried out under public service contracts and the remaining activities;

g) with reference to the motorway sector, establishing, for new concessions as well as for those referred to in Article 43, paragraph 1 and, for matters falling within its remit, paragraph 2, toll charging systems based on the price-cap method, with determination of the productivity factor X every five years for each concession; defining concession schemes to be included in tender notices for management or construction, as well as tender schemes which motorway concessionaires are required to comply with for new concessions; defining optimal management areas of toll motorway sections so as to promote the plural management thereof and foster competition by comparison;

h) with reference to the airport sector, pursuant to [articles 71 through 81 of Decree-law no 1 of 24 January 2012](#), carrying out the responsibilities of a supervisory authority as established under article 71 (2) of the above-mentioned [Decree-law No 1 of 24 January 2012](#) implementing [Directive 2009/12/CE of the European Parliament and of the Council of 11 March 2009](#) on airport charges;

i) with reference to access to railway infrastructure, carrying out all the functions of a regulatory body as referred to in [article 37 of legislative decree no 188 of 8 July 2003](#), and, in particular, defining the criteria for setting charges by the infrastructure manager and those for path and capacity allocation, and supervising their correct application by the infrastructure manager;

l) in case of non-compliance with its measures or in case of non-compliance by the operators providing the service with the requests for information or with those related to controls, or in case of untrue information and documents, the Authority may impose administrative fines, which upon the first application are determined according to the procedures and within the limits laid down in [article 2 of Law](#)

*no 481 of 14 November 1995*. The amount resulting from the imposition of these fines is paid into a fund intended for financing projects for the benefit of consumers in the transport sector, as approved by the Minister of Infrastructure and Transport, upon the Authority's proposal. These projects may be supported by other national and EU public institutions;

m) with reference to taxi transport, monitoring and checking that the levels of supply, fares and quality of the service are aligned with the needs of the different urban areas, according to criteria of reasonableness and proportionality, to ensure the users' right to mobility. Having acquired the Authority's opinion, municipalities and regions shall adapt taxi services to these needs, in compliance with the following principles:

1) increasing the number of licenses, where it is deemed necessary including on the basis of comparative analyses carried out by the Authority with comparable EU countries, as a result of cost-benefit analyses, including environmental, in relation to proven and objective mobility needs and demographic and territorial characteristics: for this purpose, extraordinary competitions may be held - based on the existing planned number of licenses, or in derogation thereof where a planned number is not available or not deemed suitable by the concerned municipality to ensure an adequate level of supply - to issue new taxi licenses, for consideration or free of charge, to be awarded to the applicants complying with the requirements under *article 6 of Law No 21 of 15 January 1992*, by setting the payment amount in case of licenses issued for consideration and by identifying, in case of surplus applications, one or more selective criteria for the purpose of automatic or immediate assessment, so as to ensure a swift conclusion of the procedure. Revenues arising from the issue of licenses for consideration are intended for adequate compensation to be paid to already existing license holders;

2) allowing license holders - in agreement with municipalities - more freedom in the service organisation, both to address special extraordinary events or periods of expected increase in demand and in a number proportionate to the users' needs, and to develop new integrated services, e.g., taxis for collective use or other forms;

3) allowing more freedom in setting fares, which should be given correct and transparent advertising for the purpose of consumer protection, by making it possible for users to rely on fares which are pre-established by municipalities for specified paths;

4) improving the quality of the service supply, by identifying criteria aimed at increasing the vocational training of the operators, in particular with reference to road safety and knowledge of foreign languages, as well as of the related civil-law, administrative and tax legislation, by encouraging investment in new technologies for the purpose of organisational and environmental efficiency of the service and by adopting service charters at regional level;

n) with reference to the provisions under (m), the Authority may appeal to the *Tribunale Amministrativo Regionale* (Regional Administrative Court) of Lazio.

3. In order to carry out the responsibilities set out under paragraph 2, the Authority:

a) may encourage and assist the competent public authorities to identify the scope of public service and the most efficient financing arrangements, by issuing opinions which may be made public;

b) determines the criteria for the financial reporting of regulated entities and imposes, where necessary to ensure competition, accounting, and corporate separation of integrated businesses;

c) proposes to the competent authority the suspension, revocation or withdrawal of concessions, public service contracts, contractual agreements, and any other equivalent acts, however they may be described, where the conditions provided for by law are met;

d) requests information and documents which are necessary to carry out its responsibilities to any person who may hold them and takes statements from any party of interest, which shall be minuted if they are made verbally;

e) in case of any suspected infringements of regulation in the areas falling within its remit, carries out inspections on regulated businesses, by accessing facilities, means of transport and premises; during on-site inspections, including with the collaboration of other Government bodies, it may check accounting books and any other business records, obtain copies thereof, ask for clarifications and information, seal business premises, books or records; any inspections performed and statements taken shall be properly minuted;

f) orders to cease the conducts contrary to its regulatory measures and to the commitments made by regulated businesses, by providing for appropriate remedies; if it intends to adopt a decision to terminate an infringement and the business concerned proposes sufficient commitments to remove the Authority's objections, it may make such commitments binding on the businesses concerned and close the proceeding without assessing any infringement; it may re-initiate the proceeding in case of changed circumstances upon which the commitments were made or in case the information provided by the parties prove to be incomplete, incorrect or misleading; under extraordinary circumstances, where there are reasons of necessity and urgency, in order to safeguard competition and protect the users' interests from irretrievable or manifestly excessive damages, it may take provisional precautionary measures;

g) assesses complaints, requests and reports submitted by users and consumers, both individually or as a body, with respect to the compliance with quality and tariff levels by the parties operating the regulated services, for the purpose of exercising its responsibilities;

h) regulates, on the basis of its own decisions, the methods for the out-of-court dispute resolution between economic operators managing transport networks, infrastructure and services, and users or

consumers through simple and non-burdensome procedures, also by means of electronic communication. For the aforementioned disputes, as identified by the Authority's decisions referred to in the first sentence, no court proceedings may be brought until a mandatory attempt to settle the dispute has been undertaken; this procedure shall be completed no later than thirty days as of submission of the request to the Authority. For this purpose, the time-limits for bringing court proceedings are suspended until the period for the conclusion of the conciliation procedure has expired;

i) without prejudice to the sanctions provided for by law, administrative documents and contractual terms, imposes fines of up to 10 per cent of the turnover of the business undertaking in case of non-compliance with the criteria for setting and updating tariffs, charges, tolls, fees and prices subject to administrative review, however described, as well as in case of non-compliance with the criteria for accounting separation and unbundling of costs and revenues pertaining to public service activities and in case of infringement of the rules governing the access to networks and infrastructure or of the conditions imposed by the Authority, as well as in case of non-compliance with the Authority's requirements and measures;

l) imposes administrative fines of up to 1 per cent of the turnover of the business concerned, where:

1) the recipients of a request by the Authority provide incorrect, misleading, or incomplete information, or fail to provide the information within the specified time-limit;

2) the addressees of an inspection refuse to provide or produce incomplete business records or refuse to provide the requested clarifications or provide them in an inaccurate, misleading, or incomplete manner;

m) imposes fines of up to 10 per cent of the turnover of the business concerned in case of non-compliance with the commitments under (f).

4. Any other powers other than those regulated in this article pertaining to public authorities, both central and regional, in the above-mentioned areas shall remain unchanged, in particular those relating to supervision, control and imposition of fines in the relations with transport companies and infrastructure managers, as well as safety and technical standards, definition of the areas falling within the scope of public service obligations, social protection and investment promotion. All public authorities, both central and regional, as well as operating entities in charge of safety and technical standards of infrastructure and transport shall forward to the Authority the decisions that may have an impact on the competition among the transport operators, as well as on the charges and access to infrastructure; thereupon the Authority may provide indications and issue opinions about the compliance with economic regulation. The powers of the *Autorità garante della concorrenza* (Competition Authority) as regulated by [Law No 287 of 10](#)

*October 1990* and by *legislative decrees No 145 of 2 August 2007* and *No 146 of 2 August 2007*, those of the *Autorità di vigilanza sui contratti pubblici* (Authority for the Surveillance of Public Works) as referred to in *legislative decree No 163 of 12 April 2006* and of the *Agenzia per le infrastrutture stradali e autostradali* (Road and Motorway Infrastructure Agency) referred to in *article 36 of Decree-law No 98 of 6 July 2011* shall also remain unaffected and may be exercised concurrently.

5. The Authority shall make public the regulatory measures in the most appropriate manner and shall report annually to the Parliament highlighting the state of the liberalisation rules adopted and to be adopted. The regulation approved pursuant to this article shall remain effective until it is replaced by that adopted by the public authorities which shall be entrusted with the responsibilities provided for in this article.

6. The responsibilities referred to under (2) and the activities referred to under (3), as well as any other statutory responsibilities and activities, are exercised as follows:

a) costs deriving from the Authority's establishment and operation, up to a maximum of 1.5 million euro for 2013 and 2.5 million euro for 2014, are covered by a corresponding reduction of the allocation of the current special fund which has been entered, for the purpose of the three-year 2013-2015 budget, under the item "Reserve and special funds" of the mission "Funds to be allocated" of the estimates of the Ministry of Economy and Finance for 2013, using part of the reserve funds of the Ministry of Foreign Affairs for this purpose. To ensure the prompt start-up of the Transport Regulation Authority, the Competition Authority shall advance - within the limits of its budget allocation - the resources that are necessary to cover the costs for the establishment and operation of the Transport Regulation Authority, to the extent of 1.5 million euro for 2013 and 2.5 million euro for 2014. The advance payment shall be returned to the Competition Authority based on the resources referred to in the first sentence above. Until the establishment of the contribution referred to under (b), the Competition Authority shall provide the Transport Regulation Authority, based on an *ad hoc* agreement, with the necessary operational, logistical, economic and financial support for the performance of the necessary activities to implement the organisational structure of the Transport Regulation Authority;

b) by means of a contribution paid by the economic operators in the transport sector and for which the Authority has actually started, in the market in which they operate, to exercise the responsibilities or perform the activities provided for by law; such contribution shall not exceed 1 per thousand of the turnover derived from the exercise of the activities carried out in the last financial year, including the provision of exemption thresholds which take account of the turnover size. The turnover shall be calculated



in such a way as to avoid any duplication of contributions. The amount of the contribution is determined yearly by an act of the Authority, and it is subject to the Prime Minister's endorsement, in agreement with the Minister of Economy and Finance. Within thirty days of receipt of the Authority's decision, comments may be submitted which the Authority conforms to; in the absence of any comments, the decision is considered to be approved.

b-a) pursuant to article 2 (29), last sentence of *Law No 481 of 14 November 1995*, upon first implementation of the provisions of this article, the Authority shall recruit its permanent staff, not exceeding 50 percent of the posts available in the staffing plan, i.e. eighty staff members, and within the limits of the available resources, through a special selection procedure from amongst civil servants holding the required competences and professional qualifications and experience for the performance of individual functions, so as to ensure maximum neutrality and impartiality. In the start-up phase the staff selected by the Authority is seconded from other public authorities and the relevant charges are borne by the latter. Following the payment of the contribution referred to under (b), the aforementioned personnel is placed on the Authority's permanent staff with the qualification resulting from the selection procedure.

6-a. Pending the Authority's entry into operation, which is determined by its decision, the functions and powers assigned thereto under this article shall continue to be carried out by the public authorities and bodies which are in charge of the sectors concerned. As of the same date, the *Ufficio per la regolazione dei servizi ferroviari-URSF* (Office for rail service regulation) of the Ministry of Infrastructure and Transport referred to in article 4 (1) (c) of the regulation under *Presidential decree No 211 of 3 December 2008*, established under *article 37 of legislative decree No 188 of 8 July 2003*, shall be abolished. Accordingly, the Ministry of Infrastructure and Transport shall provide for the reduction of the first- and second-tier executive staff corresponding to the abolished executive offices. Likewise abolished are the budget allocations for their operation.

6-b. The powers of Ministry of Infrastructure and Transport, Ministry of Economy and Finance and *Comitato interministeriale per la programmazione economica-CIPE* (Inter-ministerial Committee for Economic Planning) relating to the approval of programme contracts and agreements, with particular reference to public finance, shall remain unaffected.



#### UPDATE (65)

Pursuant to *Law no 118 of 5 August 2022* (art. 10 (2)) “The provisions referred to under *paragraph 3 (h) of article 37 of Decree-law no 201 of 6 December 2011*, converted, with amendments, into *Law no 214 of 22 December 2011*, as amended by paragraph 1 of this article, shall take effect six months after the date of entry into force of this law and shall apply to the proceedings initiated thereafter”.