

Opinion No. 21/2025

Opinion to the Port System Authority of Mar Tirreno centrale, issued pursuant to Article 12 of the "Guidelines on the procedures for the application of the Regulation governing the granting of concessions for port areas and quays, approved by Decree No. 202 of 28 December 2022 of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance", adopted by Ministerial Decree No. 110 of 21 April 2023, concerning the application submitted by Co.na.te.co. S.p.A. for the extension of the duration of a concession pursuant to Article 6 (2) of Ministerial Decree No. 202 of 28 December 2022.

At its meeting of 21 August 2025, the Transport Regulation Authority, having considered the documentation submitted and,

whereas:

by note ART ref. no. 63721/2025 of 22 July 2025, the Port System Authority of Mar Tirreno Centrale (hereinafter "PSA") transmitted, for the purpose of obtaining the required opinion, the Economic and Financial Plan (hereinafter "EFP") related to the application submitted by Co.Na.Te.Co. S.p.A. (hereinafter "the Company") for the extension of the duration of a concession pursuant to Article 18 of Law No. 84/1994, in the Port of Naples (Molo Bausan area)

hereby sets out the following considerations.

I. Legal framework

Article 37 of Decree-Law No. 201 of 6 December 2011, converted, with amendments, into Law No. 214 of 22 December 2011, which established — within the scope of the regulation of public utility services under Law No. 481 of 14 November 1995 — the Transport Regulation Authority (hereinafter "Authority" or "ART"), provides, under paragraph 2, letter (a), that the Authority shall: "ensur[e], according to methodologies that promote 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 [...], as well as with respect to national, local and urban mobility of passengers and freight, including that related to stations, airports and ports [...]".

Law No. 84 of 29 January 1994 ("Reorganisation of port legislation"), in particular Article 8(3)(n), which defines the functions assigned to the President of the Port System Authority, provides that the latter "shall exercise, after consulting the Management Committee, the powers conferred on the Port System Authority by Articles 16, 17 and 18, in compliance with the provisions laid down in the decrees of the Minister of Infrastructure and Transport referred to, respectively, in Article 16(4) and Article 18(1) and (3), as well as with the decisions of the Transport Regulation Authority for matters falling within its competence.". The aforementioned Article 18 governs the granting of concessions for port areas and quays for the performance of the port operations referred to in Article 16 of the same law.

By Decision No. 57/2018, the Authority adopted the first set of regulatory measures establishing methodologies and criteria to ensure fair and non-discriminatory access to port infrastructure. These measures provided the Port System Authorities with a coherent reference framework aimed at guaranteeing



equitable and non-discriminatory access to infrastructure and at enhancing operational efficiency. The measures adopted covered the following areas:

- identification and designation of port areas and quays
- award of concessions for port areas and quays
- identification of activities subject to authorisation
- criteria and procedures for granting authorisations
- determination of fees and charges
- verification of incentive mechanisms and regulatory accounting criteria.

The measures adopted are consistent with the provisions of Regulation (EU) No. 352 of 15 February 2017, establishing "a framework for the provision of port services and common rules on the financial transparency of ports".

Law No. 118 of 5 August 2022 amended the sectoral legislation by revising Article 18 of Law No. 84/1994, which provides for the adoption of an interministerial decree laying down the rules and criteria governing the award of port concessions.

This reform was followed by Decree No. 202 of 28 December 2022 of the Minister of Infrastructure and Transport, adopted in agreement with the Minister of Economy and Finance, which introduced the "Regulation laying down rules for the granting of concessions for port areas and quays" (hereinafter "the Regulation"), including provisions concerning:

- granting of State property concessions within port areas
- entities eligible to submit applications for the granting of such concessions
- publication of calls for tenders and public notices
- criteria for determining concession fees
- amendments to the content of the concession
- changes in the legal status of the concessionaire following the award
- replacement of port concessionaires
- monitoring activities of the granting authority.

By Decision No. 153/2022, the Authority launched a Regulatory Impact Assessment of the measures introduced by the aforementioned Decision No. 57/2018, with the aim of analysing the effects of the initial set of regulatory measures and identifying any necessary adjustments. The findings of that assessment were taken into consideration in the procedure, initiated with Decision No. 170/2022, for the update of Decision No. 57/2018.

Thereafter, by Decree No. 110 of 21 April 2023, the Minister of Infrastructure and Transport adopted the "Guidelines on the procedures for the application of the Regulation governing the granting of concessions for port areas and quays, approved by Decree No. 202 of 28 December 2022 of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance," (hereinafter "Guidelines"). In particular, with regard to the duration of concessions, Article 7 of the Guidelines stipulates that participants in public tender procedures are required to submit an Investment Plan and an Economic and Financial Plan (hereinafter "EFP"). The text further specifies that: "The duration of the concession [...] shall be proportionate to the investments set out in the Economic and Financial Plan ("EFP") prepared by the concessionaire on the basis of templates drawn up by the Transport Regulation Authority [...]. Before launching the public tender procedure for the granting of the concession, the Port System Authority shall transmit the EFP template to



ART, which may issue its opinion under the terms and conditions laid down in Article 37(3) of Decree-Law No. 201 of 6 December 2011 [...]."

With regard to the extension of the concession duration, Article 6(2) of the Regulation provides that: "The extension of the concession duration, in any case not exceeding five years, may be authorised by the granting authority for the period of time necessary to recover the investments relating to works required for the adaptation of port facilities or for maintaining the proper functioning of the concession." Paragraph 3 further specifies that: "for the purposes of granting an extension of the concession duration pursuant to the same paragraph, the investments must relate to works not included in the programme referred to in Article 2(3)(g)(1), submitted upon request by the concessionaire, [...] and authorised by the granting authority. No new works may be authorised within three years prior to the expiry of the concession." Furthermore, Article 12(1) of the Guidelines provides that: "Any extension of the concession duration, allowed only in the cases provided for in Article 6(2) of the Regulation, may be authorised solely for concessions with a duration exceeding ten years. Where the request for extension concerns a concession or an award lasting more than ten years, ART, following mandatory notification by the granting authority, shall issue, within thirty days from the date of notification, a binding opinion on the consistency of such request with the EFP relating to the concession or award concerned."

The adoption of the aforementioned Regulation and the related Guidelines warranted the introduction of supplementary measures to the existing regulatory framework on concessions, to be implemented as a priority within the procedure initiated by Decision No. 170/2022.

Accordingly, by Decision No. 89/2024 of 26 June 2024, the Transport Regulation Authority approved an amendment to Measure 2 of Annex A to Decision No. 57/2018, introducing Annex 1, which contains the prescribed EFP template. This template serves as the reference model for the preparation of the EFPs to be submitted by participants in public tender procedures for the granting of concessions pursuant to Article 18 of Law No. 84/1994.

II. Considerations of the Authority

In light of the regulatory framework outlined in Section I, and based on the information and documentation made available, the Authority sets out the following considerations.

By the aforementioned note ART ref. no. 63721/2025 of 22 July 2025, the PSA reported that the Company:

- holds a thirty-year concession pursuant to Article 18 of Law No. 84/1994, expiring on 23 March 2029, concerning State-owned maritime property located at Molo Bausan and adjoining areas, covering a total surface of 144,761.64 m², used as a container terminal
- by application dated 7 November 2024, requested a five-year extension of the aforementioned concession, in order to amortise and recover the investments relating to works required for the adaptation of port facilities and the maintenance of the proper functioning of the concession
- as part of the procedure initiated by the PSA, submitted the EFP prepared in accordance with the template annexed to ART Decision No. 89/2024.

The PSA therefore requested the Authority to issue its opinion pursuant to Article 6 of the Regulation and Article 12, first subparagraph, of the Guidelines.



As a preliminary point, it should be noted that under Article 6, and in particular paragraphs 2 and 3, of the aforementioned Regulation, all verifications of admissibility and evaluations concerning the actual necessity of the proposed works for ensuring the proper functioning of the concession fall within the competence of the PSA, in its capacity as granting authority. Conversely, pursuant to Article 12 of the Guidelines, the Transport Regulation Authority is required to express its opinion on the consistency of the relevant application with the EFP associated with the concession.

With regard to the documentation submitted, the Authority makes the following considerations.

First, it should be noted that the EFP has not been fully filled in, due to the absence of the annual breakdown of investments made for each individual project (Sheet II – Investment Programme), and the omission of depreciation data concerning investments undertaken before 2025 but not yet fully amortised as of that date (Sheet III – Depreciation Plan). Accordingly, Sheet II (Investment Programme) and Sheet III (Depreciation Plan) should be completed in full.

Secondly, with regard to Sheet IV (Accounting Schemes), in Scheme 2 – Forecast Financial Plan, the value entered under Item 2 – Operating Cash Flow (FCON) includes only the sum of investment-related cash flows, and does not take into account the cash flow from current operations. An integration in this respect **would therefore be appropriate in order to ensure the correct valuation of the item concerned**. In addition, neither the calculation of the NPV nor any alternative methodology used has been provided to verify, on the basis of the scheduled investments, the consistency of the proposed extension of the concession period. Accordingly, the documentation submitted should also be supplemented in this respect.

Finally, a discrepancy is observed between the time horizon of the concession, as indicated in Sheet III (Depreciation Plan), and the actual duration of the concession, for which a five-year extension beyond the current expiry date of 23 March 2029 has been requested. The depreciation plan, in fact, extends until 2036, indicating that the depreciation of the investments would be completed after the expiry date that would apply if the requested extension of the concession (2034) were granted. As of 2034, tangible fixed assets amounting to EUR 14,857,449 would remain, resulting not only from the incomplete depreciation of new investments but presumably also from other investments planned and implemented previously. Moreover, the time horizon indicated in Sheet I (Demand Forecasts) and Sheet IV (Accounting Schemes) does not appear to be consistent with the expiry date of the concession if the requested extension is approved, since both sheets refer to 2035. These circumstances appear to be inconsistent with the provisions and the overall rationale of the applicable rules concerning the alignment of concession duration with the investment plan, which are also intended to prevent the creation of takeover liabilities for new concessionaires upon expiry of the concession. In conclusion, it is necessary to ensure that the investment plan and the corresponding depreciation period are consistent with the proposed extension of the concession duration.

In light of the above considerations, this opinion is issued pursuant to Article 12 of the "Guidelines on the procedures for the application of the Regulation on the granting of concessions for port areas and quays, approved by Decree No. 202 of 28 December 2022 of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance", adopted by Decree No. 110 of 21 April 2023 of the Minister of Infrastructure and Transport, concerning the application submitted by Co.na.te.co. S.p.A. for the extension of the duration of the State-owned maritime concession pursuant to Article 18 of Law No. 84/1994 referred to in the heading.



This opinion shall be transmitted to the Port System Authority of Mar Tirreno centrale, the Ministry of Infrastructure and Transport, and Co.Na.Te.Co. S.p.A., and published on the Authority's official website.

Turin, 21 August 2025

The President Nicola Zaccheo

(digitally signed document pursuant to lgs.d. 82/2005)