


# New Italian Privatisation Rules on Publicly-Owned Companies

MARCO CERRITELLI AND VALENTINA PERRONE



After much debate, and the positive outcome of sales of publicly-held assets in 2015, the Italian Government is close to enacting a legislative decree to consolidate in one instrument the regulations applicable to publicly-owned enterprises.

The decree is expected to become one of the main pillars of the Government's privatisation policy, which was recently confirmed in the budget law.

Revenue arising from the privatisation or disposal of publicly owned assets in 2015 amounted to 0.4 per cent of Italy's gross domestic product (GDP). Divestments in the pipeline for the period 2016 to 2018 are estimated to collect further revenue in the amount of 0.5 per cent of GDP. By law, revenue generated from sales of shares that were directly held by the Italian Government must be used to reduce the public debt.

The new decree will be enacted in accordance with Law no. 124/2015 (the Spending Review Law) and is one of the 11 decrees with which the Italian Government intends to reform the entire Italian public administration system.

The decree provides, *inter alia*, for new privatisation rules that will apply to publicly-owned companies with the aim of facilitating the consolidation of the Italian public-sector market and opening the market to foreign players and financial investors.

## PURPOSES AND LIMITS OF PUBLICLY-OWNED COMPANIES UNDER THE NEW FRAMEWORK

Article 4 of the new decree sets forth the main purposes that a public administrative body should fulfill through the purchase and the management of publicly-held companies. It also notes that an administrative body cannot establish, or directly or indirectly own, companies whose purpose is the production of goods or supply of services that are not strictly necessary to fulfill the administrative body's institutional purpose, nor purchase

or hold interests (even minority interests) in such companies.

An administrative body can only establish companies and purchase or maintain interests in companies that provide the following:

- > Management of services of public/general relevance, such as local public services
- > Construction and operation of public works that form elements of programmes developed by public entities
- > Construction and operation of public works or services under a public-private partnership between an administrative body and a private investor, which will be selected according to the rules relating to the selection of a private partner for the construction of public works

- > Production (*autoproduzione*) of goods or services necessary for the purposes of the administrative body according to the provisions set forth by the European Directives and Italian laws in relation to public contracts
- > Contracting services (*servizi di committenza*) that support nonprofit entities and public contracting entities (*centrali di committenza*) according to the Italian Code of Public Contracts.

Article 5 of the new decree states that the deed of incorporation of any company wholly or partly owned by an administrative body must confirm that one or more of the company's purposes are among those indicated in Article 4, and the reasons behind the administrative body's decision to hold an interest in that

## “ The decree provides for new privatisation rules that will apply to publicly-owned companies. ”

company. The administrative body must also highlight the economic benefits and the financial sustainability of its interests in the company, taking into account any alternative use of public resources.

The deed of incorporation must also make clear the consistency of the administrative body's choice to hold an interest in the company with the principle of administrative economic efficiency as laid out in the Italian Constitutional Laws.

With specific reference to the privatisation rules, Article 25 of the new decree provides that administrative bodies must sell any interests which, at the date of entry into force of the decree, it owns directly or indirectly in companies that

- > Do not provide any of the services listed in Article 4
- > Have purposes that are not consistent with Articles 4 and 5
- > Have no employees, or have more directors than employees
- > Carry out the same, or similar, activities as the ones carried out by other, existing public companies or public entities

- > In the three years before the entry into force of the new decree achieved average revenues of less than €1 million
- > Have negative financial outcomes in four of the previous five accounting periods (with the exception of companies operating in the public services sector).

### MANDATORY SALES AND WINDING UP PROCEDURES

Within six months from the date of entry into force of the new decree, administrative bodies must analyse the companies in which it has interests and identify those that must be sold.

The outcomes of the analyses must be notified to the relevant offices of the Italian Court of Auditors (the Corte dei Conti).

The sales must take place within one year of the conclusion of the analysis (18 months after the entry into force of the new decree). If an administrative body does not carry out its analysis, or the sale does not occur within this period, the administrative body cannot exercise its corporate rights and its interests will be liquidated in accordance with the relevant provisions of the Italian Civil Code.

With specific reference to the sale procedure, the new decree provides that, in relation to

- > State-owned interests, the final decision on the sale will be taken by the Italian Government by means of a specific decree of the President of the Italian Government
- > Interests owned by a Region, the final decision on the sale will be taken by the Regional Committee (Giunta Regionale) by means of a decree made by the President of the Region
- > Interests owned by a Municipality, the decision on the sale will be taken by the City Council (Consiglio Comunale).

In all cases, the procedure for the sale of public interests must ensure sufficient advertising and be compliant with the principles of transparency and non-discrimination. The sale procedure will normally take place through a public tender. In exceptional cases, however, an administrative body may sell its interests through a negotiation procedure with a single private buyer. In these cases, the administrative body must specifically clarify the economic expediency of the sale, with particular reference to the price proposed by the private buyer.

### EXCEPTIONS

The privatisation rules of the new decree will not apply to listed public companies (such as Enel S.p.A., Eni S.p.A. and Finmeccanica S.p.A.) and to some specific public companies or groups indicated in Annex A of the new decree: Coni Servizi, EXPO, Arexpo, Invimit, IPZS, Sogin, Anas Group, GSE Group and Eur Group.

The new decree is currently undergoing a final assessment with the purpose of fine tuning of the text. After it receives governmental approval, the final text will be submitted for consultation purposes to the competent Parliament Committee (Commissione Parlamentare) and to the Consiglio di Stato. Once approved by these bodies, the new decree will be signed by the President of the Italian Republic and enter into force.



**Marco Cerritelli**  
Partner  
Rome  
mcerritelli@mwe.com

Marco's practice focuses on project finance, energy, infrastructure and public-private partnerships, representing the full range of market participants.



**Valentina Perrone**  
Associate  
Rome  
vperrone@mwe.com

Valentia focuses her practice on project finance, public finance, infrastructure, energy and public utilities.