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The Reform of the Port System Authorities in Italy

Abstract: Recently the Italian Government has adopted a new regulation of the Italian Port Authorities under the law no. 124 of 7 August 2015 in order to implement the European Union's transport policy as well as to improve the strategic maritime logistic sectors and attracting investments. The 58 Italian ports have been organized into 15 new Port System Authorities (PSA) with the cooperation by the National Coordination Conference under the supervision of the Ministry of Infrastructures and Transport. The achievement of the aforementioned objectives was pursued by the Government through four key points: the introduction of strategic decision-making centers, administrative reorganization, bureaucratic simplification, and the promotion of other actions for logistics and ports. The tasks of the new Port System Authorities, which represent the nodes of the TEN-T Corridors, a logistics network integrating maritime, road and air transports, are: a) guidance, planning, coordination, and control of port operations and services, concessionary activities and other commercial and industrial activities carried out in ports and territorial districts as well as ordinance powers in safety and hygiene at work; b) ordinary

and extraordinary maintenance of the common parts in the port area, including that for the maintenance of the seabed; c) entrustment and control of activities aimed at supplying services of general interest to port users for valuable consideration, with the exception of port operations and services strictly connected to said operations; d) coordination of administrative activities carried out by public bodies and bodies within the ports and in the state-owned maritime areas included in the territorial district of the Authority; e) the exclusive administration of the areas and assets of the maritime state property included in their own districts; f) promotion of the forms of connection with the port and inland logistics systems.

Key words: Port System Authorities (PSA), National Co-ordination Conference, maritime cluster, President PSA, Customs Agency, Management Committee of Port System Authorities, TEN-T, logistic integrated system

Reforma sistema pristaniške uprave v Italiji

Izvleček: Italijanska vlada je nedavno sprejela novo uredbo o sistemu pristaniške uprave v Italiji, ki je del zakona št. 124 z dne 7. avgusta 2015, da bi na tak način uveljavila usmeritve transportne politike Evropske unije in obenem izboljšala strateško pomemben sektor pomorske logistike ter privabila nove vlagatelje. Oseminpetdeset italijanskih pristanišč je bilo preoblikovanih v petnajst novih enot sistema pristaniške uprave (PSA), organiziranih v sodelovanju z Nacionalno konferenco za koordinacijo pod nadzorom Ministrstva za infrastrukturo in promet. Omenjene cilje je vlada uresničila preko štirih ključnih točk: uvedbe centrov za

strateško odločanje, administrativne reorganizacije, poenostavitve uradniških postopkov in promocije drugih ukrepov na področju logistike in pristanišč. Naloge novega sistema pristaniške uprave, ki predstavljajo jedro koridorjev TEN-T, logistične mreže, v katero je vključen pomorski, cestni in zračni promet, so naslednje: 1. usmerjanje, načrtovanje, koordinacija in nadzor nad pristaniškimi dejavnostmi in storitvami, koncesioniranimi dejavnostmi ter drugimi poslovnimi in industrijskimi dejavnostmi v pristaniščih in na kopnem, pa tudi uredbena oblast na področju varnosti in higijene pri delu; 2. redno in izredno vzdrževanje skupnih površin na območju pristanišč vključno z vzdrževanjem morskega dna; 3. pristojnost in nadzor nad dejavnostmi za izvajanje storitev javnega pomena za uporabnike pristanišč z izjemo pristaniških dejavnosti in storitev, neposredno povezanih z omenjenimi dejavnostmi; 4. koordinacija administrativnih postopkov, ki jih izvajajo javni organi in organi znotraj pristanišč ter na morskih območjih v državni lasti, vključenih v posamezno teritorialno pristaniško upravo; 5. izključno upravljanje območij in virov morske državne lastnine, vključene v posamezno enoto; 6. promocija oblik povezovanja med pristaniškimi in kopenskimi logističnimi sistemi.

Ključne besede: sistem pristaniške uprave (PSA), Nacionalna konferenca za koordinacijo, pomorski grozd, predsednik PSA, carinska uprava, Upravni odbor sistema pristaniške uprave, TEN-T, logistično integrirani sistem

Introduction

Recently the Italian Government has adopted a new regulation of the Italian Port Authorities under the law no. 124 of 7

August 2015 (*Gazzetta ufficiale* 2015, 1–49) in order to implement the European Union’s transport policy (Neller 2018, 456; Tonner 2007, 138) as well as to improve the strategic maritime logistic sectors and attracting investments. (Louis 2006, 3) By virtue of this delegated law, in fact, the Government was given the power to adopt legislative decrees aimed at the reorganization of public administrations, including also non-economic public bodies, like the Port Authorities. (Maresca 2001, 55) More precisely, pursuant to art. 8, co. 1, lett. f), the object of the aforementioned delegation to the Government is also the “reorganization, rationalization and simplification of the regulations concerning the port authorities pursuant to law of January 28, 1994, no. 84, with particular reference to the number, identification of system authorities and to governance taking into account the role of the regions and local authorities and the simplification and unification of customs and administrative procedures concerning ports.”

In this regard, the Explanatory Report to the above mentioned legislative decree highlights that the aim pursued by the provision in question, in accordance with the aforementioned principles and directive criteria established by the delegated legislator, is “to improve the competitiveness of the system port and logistics, to facilitate the growth of transport and goods as well as the promotion of intermodality in freight traffic, also in relation to the rationalization, reorganization and consolidation of existing Port Authorities.” The aim is not to privatize the ports but to improve the public administration of the Port System Authorities. (Prosser 2005, 22; Tongzone 2005, 410; Iudica 2018, 468)

Purpose of the reform

The achievement of the aforementioned objectives was pursued by the Government through four key points: the introduction of strategic decision-making centers, administrative reorganization, bureaucratic simplification, and the promotion of other actions for logistics and ports. From the first point of view, the legislative decree under review foresees a reorganization of Italian ports aimed at transforming “the current fragmented and disjointed framework into a modern and efficient national system for organizing and governing ports and logistics”. In particular, as highlighted by the aforementioned Explanatory Report, the decree under review identifies the single-stop dimension typical of the city port model conceived by the legislator in the early nineties. This concerns the government bodies of Italian ports, one of the main factors on which to intervene, having over time this structure produced an inefficient allocation of resources and investments. In fact, the pre-existing situation of 76 ports of economic, commercial or industrial significance, half managed by 24 Port Authorities and the other half by the Maritime Authority or the Regions, has certified the absence of an integrated strategic governance of development and a geo-economic collocation attributable to a “national vision”. All aspects of the reform intend to establish strategic decision-making centers which work in cooperation represented by the new Port System Authorities: they represent the nodes of the TEN-T Corridors, a logistics network integrating maritime, road and air transports. (Costa 2014, 24)

More specifically, the art. 5 of the provision in question provides for a radical amendment to art. 6 of the Law 84/1994

aimed at reorganizing the above described structure of the Italian ports by setting up (Pericu 2005, 317; Radicati di Brozolo 2007, 527), instead of the current Port Authorities and the Port Territorial Offices, 15 new Port System Authorities to which 54 ports of national importance will report. These 15 new Port System Authorities are identified by the annex A of the provision in question and they do not affect the faculty of the Regions to request the inclusion of ports of regional importance within the port system headed by the territorially competent Port System Authority. Each Port System Authority will be located in the core port – to be identified, pursuant to the Regulation of the European Union no. 1315/2013 (Official Journal 2013, 1–128), in the port that has the greatest strategic importance among the ports falling within the competence system of each Authority. This will not affect the possibility for the Minister of Infrastructure and Transport to identify, on a reasoned proposal from the region or regions whose territory is affected by the Port System Authority, the headquarters of the latter at a different port that was the site of the previous Port Authorities suppressed and replaced by the new Port System Authority .

The Port System Authorities assigned tasks are: a) guidance, planning, coordination, and control of port operations and services, concessionary activities and other commercial and industrial activities carried out in ports and territorial districts as well as ordinance powers also in safety and hygiene at work; b) ordinary and extraordinary maintenance of the common parts in the port area, including that for the maintenance of the seabed; c) entrustment and control of activities aimed at supplying services of general interest to port users for valuable consideration, with the exception of port operations and services strictly connected to said

operations; d) coordination of administrative activities carried out by public bodies and bodies within the ports and in the state-owned maritime areas included in the territorial district of the Authority; e) the exclusive administration of the areas and assets of the maritime state property included in their own districts; f) promotion of forms of connection with the port and inland logistics systems.

The Port System Authorities are configured as non-economic public bodies of national relevance with special regulations, endowed with administrative, organizational, regulatory, budgetary and financial autonomy, who will take over “the Port Authorities ceased in the ownership and possession of the assets and in all the ongoing relationships, including those working”.

Characteristics of the reorganization

The reorganization of the current structure of Italian ports is then completed through the introduction of peripheral offices constituted by the territorial port offices, alongside the strategic decision-making centers described above. Article 6 of the decree in question provides, in fact, the introduction of the art. 6-bis Law 84/1994, by virtue of which, within the territorial districts of the Port System Authorities (PSA) comprising two or more port calls, a port call center will be established at each port that is already the headquarters of the suppressed Port Authority, with the exception of the port where the PSA is located. The port call centers are, therefore, configured as territorial offices of the Port System Authorities which are entrusted with functions: a) preliminary investigation, for the purpose of adopting the delibera-

tions for which the PSA is responsible; b) of proposal, with reference to matters of local importance falling, however, in the competence of the PSA; c) administrative, in relation to matters of non-strategic importance, to the coordination of port operations, to minor works of ordinary maintenance of the port; d) supervision and control under the direction of the PSA. These functions will be exercised by the port call centers using the structures of the discontinued Port Authority. (Tonoletti 2008, 296)

In terms of administrative reorganization, the legislative decree under review outlines a governance model of the Port System Authority, which, although characterized by four bodies, similarly to the port Authority's governance model, should be more streamlined, given the net reduction in the number of members of the Management Committees with respect to the Port Committees that they will replace. More precisely, under the art. 7 Law 84/1994, as amended by art. 7 of the provision in question, the bodies of the Port System Authority are: a) the President; b) the Management Committee; c) the general secretary; d) the Board of Auditors. The emoluments of these bodies are charged to the budget of the Port System Authority and are determined by the Management Committee within the maximum limits established by a specific decree of the Minister of Infrastructure and Transport.

According to the reformed art. 8 of Law 84/1994, the President is appointed by the Minister of Infrastructure and Transport, in agreement with the President or the Presidents of the regions concerned. And he is chosen among subjects with proven experience and professional qualification in the sectors of the transport economy and port, taking into ac-

count the applicability of the rules dictated in the matter of incompatibility, accumulation of jobs and offices pursuant to art. 53 Legislative Decree 165/2001 and Legislative Decree 39/2013. The President remains in office for 4 years, with the possibility of being reappointed only once, he is the legal representative of the institution and exercises all the powers of ordinary and extraordinary administration, with the exception of those reserved to other bodies, as well as all the functions expressly assigned to him, such as: presiding over the Management Committee, to propose the appointment of the General Secretary, to appoint, having heard the Management Committee, the managers of the port call centers, to submit to the Management Committee the operational plan, the regulatory plan of port system and the patterns of resolutions regarding the budget and the final account, to coordinate the activities carried out in the port by the public administrations, as well as to control and coordinate the activities subject to authorization and concession and the port services with the right to convene a special conference of services with the participation of representatives of public administrations, of the concessionaries and owners of the services concerned in order to examine and resolve issues of interest to the port. The President also reports annually on the activity carried out in relation to the Minister of Infrastructure and Transport.

Otherwise, the Management Committee, pursuant to art. 9 Law 84/1994, as amended by the legislative decree under discussion, is composed of: the President of the Port System Authority, who presides over it and whose vote prevails if the Committee is composed or is in any case resolved in an even number of components; by a member designated by the Region or by the Regions whose territory falls, even

partially, in the territorial district of the Port System Authority; by a member appointed by the Mayor of each of the metropolitan cities whose territory falls within the territorial district of the Port System Authority (Citrigno 2003, 46); by a member appointed by the Mayor of each of the Municipalities of the former Port Authority office included in the territorial constituency of the Port System Authority, with the exception of the municipalities capital of the metropolitan cities; by a representative of the Maritime Authority, to whom, however, the right to vote is attributed exclusively in the relative matters of competence. The members of the Management Committee, like the President, hold office for 4 years, without prejudice to their forfeiture if a new President is appointed.

The Management Committee is assigned numerous functions that are listed in detail in the new art. 9 Law 84/1994, such as: the adoption of the regulatory system of the port system; the approval of the three-year operational plan concerning the development strategies of port and logistic activities; the approval of the budget, the variation notes and the final account; the preparation, at the proposal of the President, of the administration and accounting regulations of the Port System Authority, which must then be approved by decree of the Minister of Infrastructure and Transport together with the Minister of Economy and Finance; as well as the approval of the annual report on the activity of the Port System Authority prepared by the President and to be presented to the Minister of Infrastructure and Transport. The Management Committee meets every two months and, in any case, upon convocation by the President and/or when requested by a third of its members. For the purposes of validating the sessions, the presence of half plus one of

the members is required and the resolutions are passed by a majority of those present. The General Secretary actually replaces the previous Secretariat and absorbs its tasks and functions. Under the art. 10 of Law 84/1994, as amended by the provision in question, he is appointed by the Management Committee, on the proposal of the President of the Port System Authority, from experts with proven professional qualifications in the sector of ports and in administrative and accounting matters. Like the President, the Secretary General holds office for 4 years with the possibility of being renewed only once; however, he can be removed from office by resolution of the Management Committee, based on a justified proposal by the President.

The functions specifically identified in art. 10, co. 4, Law 84/1994, as amended by the legislative decree in question, including those to provide for the necessary formalities for the operation of the Port System Authority, are: to handle the preliminary investigation of the deeds of competence of the President and the Committee of management; to take care of relationships for the purpose of coordinating the respective activities with state, regional and local government administrations; to oversee the implementation of the directives of the President and the Management Committee, as well as to draw up the port regulatory plan. He is also in charge of the technical-operational secretariat which he uses for the purpose of performing the aforementioned functions and which is composed of suppressed Port Authority staff.

With regard to the Board of Auditors, the new art. 11 of the Law 84/1994 establishes that it is composed of 3 effective members and 2 substitutes chosen from among those registered in the register of statutory auditors or between

persons in possession of specific professional skills and appointed by the Minister of Infrastructure and Transport, who is responsible for the appointment of chairman of the Board (Xerri Salamone 1998, 56), of another effective member and a substitute member, as well as of the Ministry of the Economy and Finance, which is responsible for appointing an effective member and an alternate member. The members of the Board of Auditors shall hold office for 4 years with the possibility of being reappointed only once; the same are assigned “all the tasks required by the current regulations regarding the function of auditor” , and, in particular, the functions of verifying the regular keeping of books and accounting records, of performing quarterly cash audits, of drafting the reports within its competence, of reporting periodically to the Minister of Infrastructure and Transport, as well as to attend the meetings of the Management Committee; otherwise, it is forbidden for members of the Board of Auditors to participate, in any form, in activities related to the responsibilities of the PSA or other bodies that perform tasks, in any way connected to the activities of PSA. In order to perform these functions, the Board of Auditors is convened by the President of the Board whenever he believes it is necessary and/or upon request of the members of the Board, as well as, in any case, at least once a quarter.

Coordination and partnerships

Finally, next to the above-described bodies of the Port System Authority, the decree under review also provides for the establishment of partnership tables for the sea resource and a national coordination table for the Port System Authorities aimed at guaranteeing, respectively, the dialogue

of the aforementioned PSA bodies with the economic and social subjects operating in the ports and the unity and coherence of the national strategy.

More specifically, the art. 12 of the legislative decree hereby provides for the introduction of the art. 11-bis Law 84/1994, on the basis of which at each Port System Authority a Sea resource partnership table will be set up consisting of the President of the PSA, the commander of the port or the ports that are part of the port system to headed by the PSA, as well as by representatives of all employers' associations and trade union representatives of the categories operating in the port. This body is assigned consultative functions of economic and social partnership, partially coinciding with the functions previously attributed to the Advisory Commissions which, in fact, will be replaced by the body in question. More specifically, the advisory functions attributed to the Sea Resource Partnership Table concern the adoption of the port system regulatory plan and the three-year operational plan, the determination of the levels of services rendered within the PSA port system, the work organization in port and also the approval of the budget and final balance. Moreover, if more core ports than Port Authorities meet in the port system under the responsibility of a single PSA, the Maritime Cluster Table will be set up at each of them.

The same art. 12 of the decree in question also provides for the introduction of the art. 11-ter Law 84/1994 which establishes the establishment of the National Coordinating Table of the Port System Authorities which will be composed of the Presidents of the PSA and coordinated by a subject to be appointed by decree of the President of the Council of Ministers, upon proposal of the Ministry infrastructure

and transport, with proven experience and professional qualification in the transport and port economy sectors. This body is responsible for coordinating and harmonizing, at the national level, the choices that concern large-scale infrastructure investments, urban planning in the port area, as well as the strategies for implementing the policies of the maritime domain and marketing and promotion of the system national port on international markets.

The objective of bureaucratic simplification is pursued by the provision under review by setting up a Single Administrative Desk (SUA) and the implementation of the current Single Customs Desk, which will absorb the functions of the various and numerous subjects currently competent to carry out administrative procedures related to the port system in order to lower customs clearance and administrative times. In particular, the *de quo* legislative decree envisages provides, first of all, for the establishment, at each Port System Authority, of a SUA which will perform a front office function with respect to all the subjects appointed to operate in port for all administrative and authorization procedures not related to commercial and industrial activities carried out of the port. Secondly, the provision in question establishes the implementation of the current Single Customs Desk through the attribution to the Customs Agency also of the competences for all the obligations connected to the entry and exit of goods in and from the national territory and of the coordination function, as well as on the procedures deriving from the application of the union rules already attributed in the head of the aforesaid Desk, also on those arranged by other administrations or state bodies, with the exception of those arranged by the Judicial Authority and those carried out by the competent bodies for state security. (Gallo 2010,

88) In the light of the extension of the powers attributed to the Customs Agency to the aforementioned controls, the aforementioned Desk will be renamed into the Single Customs Desk and the Controls.

Furthermore, in order to reduce the excessively time-consuming timing of customs clearance procedures, the legislative decree under review establishes that the aforementioned controls coordinated by the Customs Agency through the aforementioned branch must be carried out simultaneously, in the same place and in compliance with particularly deadlines stringent. Finally, for the same purpose, provisions are laid down to simplify the administrative requirements concerning the arrivals and departures of ships falling within the scope of the Legislative Decree 196/2005, implementation of Directive (EC) 2002/59. In this regard, it is established, in fact, that ships operating in the customs territory of the European Union, when they do not come from a port located outside the Union or from a free zone, do not call or go there, the IMO FAL forms required by Directive 2010/65/EU are exempt concerning declarations of ship's stores, crew's personal effects, the list of passengers and dangerous goods on board.

Conclusion

In conclusion, therefore, it is clear that the changes introduced by the legislative decree in question, in implementation of the principles and directive criteria set by the delegating legislator, are aimed at remedying the continuing absence of a stringent national strategy, aimed at developing the port system as a whole through the development of

an integrated strategic governance for the strengthening of the Italian port system attributable to a “national vision” that allows a greater effectiveness of the allocation of resources and investments. This reform of the Italian port system is, in fact, closely linked to other actions aimed at improving the competitiveness of Italian ports in the international arena, such as, first of all, public investments aimed at improving the depth of the seabed of Italian ports and the connections of the last mile between the latter and interports, airports, logistics and distribution platforms. In this regard, in fact, it was highlighted that, on the one hand, the Italian port system can benefit from the renewed centrality of the Mediterranean Sea in global maritime traffic as a result of the recent doubling of the Suez Canal; on the other hand, however, Italian ports have to cope with increased competition from the large ports of Northern Europe but also from North Africa, the south-eastern area of the Mediterranean, and the need to provide for structural changes necessary to cope with the naval gigantism, as well as attracting investments from the large industrial partnerships that, to date, control most of the world’s commercial traffic.

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