

EXTENSION OF STATE-OWNED MARITIME CONCESSIONS: THE DEBATE IS FAR FROM OVER

On 19 February 2025, the Regional Administrative Court of Liguria issued its judgment in case no. 3410, rejecting the complaint brought by three economic operators holding concessions over state-owned maritime areas for tourist and recreational purposes. These concessions, initially awarded in 2004, had been repeatedly extended through legislative measures. The complainants challenged the resolution, by which the Municipal Council acknowledged the expirations of the said concessions as of 31 December 2023 and provided for a new call for competition. The outgoing concessionaires were granted a temporary license until 31 October 2024 and were formally required to vacate the occupied state property.

The specific case

The complainants challenged the Municipality's decision to set 31 December 2023 as the expiration date for the said concessions. They claimed that the Municipality's resolution resulted in a breach of Law-by-Decree no. 198/2022, converted into Law no. 14/2023 that provided an extension of the existing concessions until 31 December 2024. Moreover, the complainants challenged the Municipality's orders to vacate the areas, alleging a violation of article 1, paragraph 1, letter a), no. 1.1), of Law-by-Decree no. 131/2024, converted into Law no. 166/2024, which provided for a further extension of concessions until 30 September 2027.

The Court's decision

The Court rejected the complaint basing its conclusion on the principles established by the Plenary Assembly of the Council of State in its judgments nos. 17 and 18 of 2021 and transposed in article 3 of Law no. 118/2022. In the light of the above-mentioned regulations, maritime concessions that had already been extended ceased to be effective as of 31 December 2023. Therefore, a new selection procedure which provides full guarantees of impartiality, transparency and adequate publicity shall be applied to potential concessionaire candidates, pursuant to article 12 of Directive 2006/123/EC (the so-called "*Bolkestein Directive*") and article 49 of TFEU.

As a ground supporting its finding, the Court referred to the established case-law, based on which article 12, paragraph 6-*sexies*, of Law-by-Decree no. 198/2022, converted into Law no. 14/2023—which extended the expiration of concessions until 31 December 2024 — is not compliant with the Bolkestein Directive and, thus, shall not be applied. This principle was also extended to article 1, paragraph 1, letter a), no. 1.1), of Law-by-Decree no. 131/2024, converted into Law no. 166/2024, which had further postponed the final expiration date of concessions to 30 September 2027.

Final considerations

In light of the above, the Court confirmed the decision by virtue of which the Municipality declared the expiry of concessions on 31 December 2023, required the execution of a new concession award procedure and granted outgoing concessionaires a temporary license in force until 31 October 2024. Furthermore, the Court confirmed the requirements for participation set out by the Municipality pursuant to Regional Law no. 26/2017. These criteria related to the professional and technical ability and the financial and economic standing of the candidates or tenderers, but also included environmental and climate performance levels, with a peculiar attention towards small and medium-sized enterprises.

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