

Law No. 215 of 20 July 2004
Provisions concerning the resolution of conflicts of interests

Section 1 - Scope

1. In the exercise of their functions holders of government office shall devote themselves exclusively to promoting the public interest and shall abstain from taking actions and participating in collegial decisions when they are exposed to a conflict of interest.
2. For the purposes of this law, holders of government office shall mean the President of the Council of ministers, Ministers, Deputy ministers, Undersecretaries of state and Special government commissioners referred to in Section 11 of Law No. 400 of 23 August 1988.
3. The regions and the autonomous provinces of Trento and Bolzano shall adopt suitable provisions to ensure compliance with the principle referred to in paragraph 1.

Section 2 - Incompatibilities

1. In performing their official duties holders of government office may not:
 - a) hold public offices or positions other than that of member of parliament and those provided for in Section 1 that do not pertain to such functions, except for the positions referred to in Section 1, second paragraph, of Law No. 60 of 13 February 1960;
 - b) hold offices or positions or perform other functions howsoever named in public-law entities, including economic entities;
 - c) hold offices or positions or perform other functions howsoever named or perform managerial tasks in for-profit companies or in activities of an entrepreneurial nature;
 - d) engage in professional activities or forms of self-employment of whatsoever nature in matters connected with the government office, even if performed free of charge, in favour of public or private persons; in connection with such activities holders of government office may only receive payments for services rendered before taking office; moreover, they may not hold offices or positions or perform other duties howsoever named or carry out managerial actions in professional associations or societies;
 - e) engage in any type of public employment or work;
 - f) engage in any type of private employment or work.
2. Sole traders shall appoint one or more agents pursuant to Sections 2203-2207 of the Civil Code.
3. The offices and functions indicated in paragraph 1 shall cease from the date the oath is taken for the offices referred to in Section 1 and in every case from the actual taking of office; they may not give rise to any form of remuneration or advantage for the holders of a government office for the entire duration of their tenure of office. The activities referred to paragraph 1 shall also be prohibited when they are performed abroad.
4. The incompatibility established by paragraph 1d) shall constitute a temporary impediment to the practice of a profession and as such shall be subject to the rules of the professional associations to which holders of government office belong. The incompatibility established by paragraphs 1b), 1c) and 1d) shall persist for twelve months from the end of tenure of government office in respect of public-law entities, including economic entities, and for-profit companies that operate predominantly in sectors connected with the office held.
5. Public and private employees shall be placed on leave of absence or in the analogous position envisaged by the rules of the organization of provenance and in accordance with such rules, with effect from the day the oath of office is taken and in any case from the actual taking of office. The rule that periods spent in the performance of office while on leave of absence or secondment shall not be prejudicial to an employee's employment status and career advancement shall also apply to holders of government office.

Section 3 - Conflict of interests

1. A conflict of interests shall exist under this law when holders of government office participate in the taking of an action, even by formulating the proposal, or omit taking a due action while in a situation of incompatibility pursuant to Section 2.1, or when the action or omission has a specific and preferential impact on the assets and liabilities of the holders, their spouses or their relatives up to the second degree of kinship or of undertakings or companies they control, as provided for by Section 7 of Law No. 287 of 10 October 1990, with detriment to the public interest.

Section 4 - Abuse of dominant position and cases of liability

[As amended by Law No 216 of 5 November 2004, "Conversion into law, with modifications, of the law decree No. 233 of 6 September 2004, enacting amendments to Law No.215 of 20 July 2004"]

1. The provisions in force aimed at preventing and suppressing the abuse of dominant position referred to in Section 3 of Law No. 287 of 10 October 1990 shall be unaffected.

2. The prohibition established by Section 2 of Law No. 249 of 31 July 1997 and by Section 14 of Law No. 112 of 3 May 2004 of actions or conduct whose purpose or effect is the creation or preservation of a dominant position shall also be unaffected.

3. Violations of the provisions referred to in paragraph 2 shall also be punished where, exploiting actions taken by holders of government office, they are committed by undertakings headed by the holders, their spouses or their relatives up to the second degree of kinship or are committed by undertakings or companies they control, as provided for by Section 7 of Law No. 287/1990.

4. The provisions of this law shall not exclude the applicability of the civil, penal, administrative and disciplinary provisions in force when the conditions therefor exist.

Section 5 - Declaration of the interested parties

1. Within thirty days of taking government office holders of government office shall declare to the Competition Authority established by Section 10 of Law No. 287/1990 the situations of incompatibility referred to in Section 2.1 of this law in existence at the date of taking of office.

2. Within sixty days following the expiry of the time limit established by paragraph 1 holders shall also notify the data regarding their assets, including shareholdings; the notification requirement established in this paragraph shall also apply to assets held in the three months preceding the taking of office.

3. The declarations referred to in paragraphs 1, 2 and 4 shall also be rendered to the Communications Regulatory Authority established by Section 1 of Law No. 249/1997 as amended when the situation of incompatibility concerns the sectors of radio and television communications, multimedia and publishing, including electronic publishing, and when the data on assets have a bearing on such sectors.

4. Holders of government office must declare, pursuant to paragraphs 1 and 2, every subsequent change in the data on assets previously provided within twenty days of the events that caused the change.

5. Within thirty days following receipt of the declarations referred to in this Section, the Competition Authority and the Communications Regulatory Authority shall carry out the verifications for which they are competent in the manner provided for in Sections 6 and 7.

6. The declarations referred to in this Section shall also be rendered by the spouses of holders of government office and by their relatives up to the second degree of kinship.

Section 6 - Functions of the Competition Authority regarding conflicts of interests

1. The Competition Authority shall verify the existence of situations of incompatibility referred to in Section 2.1, supervise compliance with the consequent prohibitions and in cases of non-compliance promote:
 - a) the removal or disqualification from the office or position by the competent administration or by that responsible for supervising the entity or undertaking;
 - b) the suspension of the public or private employment relationship;
 - c) the suspension of registration in professional rolls and registers, for which a request must be addressed to the professional organizations for the actions within their competence.
2. The competent organizations and authorities shall adopt the measures referred to in paragraph 1, taking account of the request of the Competition Authority.
3. In order to verify the existence of conflicts of interest pursuant to Section 3, the Competition Authority shall examine, check and verify the effects of the action of holders of government office as regards their possible specific and preferential impact on the assets and liabilities of the holders, their spouses or their relatives up to the second degree of kinship or of undertakings or companies they control, as provided for by Section 7 of Law No. 287/1990, with detriment to the public interest, as provided for by Section 3 of this law.
4. The duty to report the matter to the competent judicial authority when it is of penal significance shall be unaffected.
5. The Competition Authority, upon finding in a preliminary and specific evaluation that the question may be proposed and is admissible, shall proceed in its official capacity to carry out the verifications within its competence. To this end, it shall correspond and cooperate with organs of governmental authorities and acquire the opinions of the other competent independent administrative authorities and the information needed to carry out the tasks provided for in this law, with the limits enforceable against the judicial authority.
6. In the performance of the functions referred to in this Section, the Competition Authority shall utilize the powers referred to in Law No. 287/1990 insofar as they are compatible.
7. The participation in proceedings of the interested party pursuant to Law No. 241 of 7 August 1990 as amended shall be ensured in the conduct of the procedure referred to in this Section, without prejudice to what is provided for by Section 14.3 of Law No. 287/1990.
8. Where undertakings headed by holders of government office or by their spouses or their relatives up to the second degree of kinship, or undertakings or companies they control, as provided for by Section 7 of Law No. 287/1990, engage in conduct aimed at deriving advantage from action taken in conflict of interest pursuant to Section 3 and there is proof that the person who took the action knew of such conflict of interest, the Competition Authority shall give notice to the undertaking to abstain from any conduct aimed at exploiting the action or to take suitable steps to make the violation cease or, if possible, corrective measures. In case of non-compliance within the time limit established, the Competition Authority shall impose a fine on the undertaking commensurate with the seriousness of the conduct up to a maximum of the economic advantage actually realized by the undertaking.
9. Following the verifications referred to in paragraphs 1, 3 and 5, or the imposition of penalties referred to in paragraph 8, the Competition Authority shall report to Parliament with a reasoned account addressed to the Presidents of the Senate and the Chamber of Deputies. The report shall indicate the substance of the privileged position, the distortionary effects created in the market, the general consequences of such privileged position and any penalties imposed on the undertakings.
10. Within ninety days of the entry into force of this law, the Competition Authority shall decide the investigation procedures and verification criteria for the activities entrusted to it by this law and the appropriate internal organizational changes.

Section 7 – Functions of the Communications Regulatory Authority regarding conflicts of interests

[As amended by Law No 216 of 5 November 2004, "Conversion into law, with modifications, of the law decree No. 233 of 6 September 2004, enacting amendments to Law No.215 of 20 July 2004"]

1. The Communications Regulatory Authority shall verify that undertakings which operate in the sectors of the integrated system of communications referred to in Section 2.1(g) of Law No. 112 of 3 May 2004 and are headed by holders of government office, their spouses or their relatives up to the second degree of kinship or which such persons control pursuant to Section 7 of Law No. 287/1990 do not engage in conduct which, in violation of the provisions of Law No. 223 of 6 August 1990, Law No. 249 of 31 July 1997, and Law No. 28 of 22 February 2000, and Law No. 112 of 3 May 2004 as well, provide preferential support to the holders of government office.
2. In exercising the functions referred to in this Section, the Communications Regulatory Authority shall adopt the procedures, utilize the powers and apply the penalties envisaged by the legislative provisions referred to in paragraph 1. Sections 6.4-7, shall apply to the Communications Regulatory Authority.
3. When conduct in violation of the provisions referred to in paragraph 1 is found, the Communications Regulatory Authority shall give notice to the undertaking to desist from the offending conduct and to adopt, where possible, the necessary corrective measures. In case of non-compliance within the time limit established, the Communications Regulatory Authority shall impose on the undertaking that gave preferential support to the holders of government office the penalties provided for by the legislative provisions referred to in paragraph 1. The fines provided for therein shall be increased by up to one third in relation to the seriousness of the violation.
4. Following the verifications referred to in paragraph 1 or the imposition of penalties referred to in paragraph 3, the Communications Regulatory Authority shall report to Parliament with a reasoned account addressed to the Presidents of the Senate and the Chamber of Deputies, where an undertaking operating in the communications sector has engaged in the conduct referred to in paragraph 1. The report shall indicate the manner of creating the preferential support for the holders of government office in the exercise of their functions, the corrective measures that were ordered, the consequence of the privileged position and any penalties imposed.
5. Within ninety days of the entry into force of this law, the Communications Regulatory Authority shall decide the investigative procedures and verification criteria for the activities entrusted to it by this law and the appropriate internal organizational changes.

Section 8 – Notification requirements

1. The Competition Authority and the Communications Regulatory Authority shall present a half-yearly report to Parliament on the state of the control and supervisory activities referred to in this law.
2. Failure to render the declarations referred to in Section 5 or the rendering of false or incomplete declarations shall constitute the crime referred to in Section 328 of the Penal Code, where the holders of government office have not complied with a specific request of the competent Authority within the time limit established by such Authority, which must not be less than thirty days. The Competition Authority and the Communications Regulatory Authority, according to their respective responsibilities, upon verifying the irregularities, shall send a documented report thereof to the competent judicial authority and to the Presidents of the Senate and the Chamber of Deputies.

Section 9 – Strengthening of the staff of the Competition Authority and the Communications Regulatory Authority

[As amended by Law No 216 of 5 November 2004, "Conversion into law, with modifications, of the law decree No. 233 of 6 September 2004, enacting amendments to Law No.215 of 20 July 2004"]

1. The staff rolls referred to in Section 11 of Law No. 287/1990 and Section 1.17 of Law No. 249/1997 shall be supplemented by 15 persons for each roll in relation to the tasks assigned to the Competition Authority and the Communications Regulatory Authority by this law. Each Authority may also use a contingent of up to 15 persons, possibly made available following the reorganization and consolidation of public entities and governmental authorities or on secondment or in a similar position under the applicable rules, with the Authorities to be only

responsible for paying the fringe benefits due to the aforementioned personnel. The professional qualifications required shall be established with a decree issued by the President of the Council of Ministers.

2. In accordance with the professional qualifications specified in the decree of the President of the Council of Ministers referred to in paragraph 1, the Competition Authority may recruit 10 additional members of permanent staff with respect to the staff level provided for by Section 11.1 of Law No. 287/1990, with a corresponding reduction of 10 fixed-term private-law contracts provided for by Section 11.4 of such law, provided the additional positions are financially equivalent and such as not to produce greater costs.

3. For the purposes of this Section, an expenditure is hereby authorized of 1,462,000 euros per year with effect from 2004 in favour of the Competition Authority and of 1,462,000 euros per year with effect from 2004 in favour of the Communications Regulatory Authority. The outlay, amounting to 2,924,000 euros per year with effect from 2004, shall be covered by means of a corresponding reduction in the appropriation entered for the purposes of the budget for the three years 2004-2006 under the “Special fund” basic current expenditure item of the budget of the Ministry for the Economy and Finance for 2004, to this end partially utilizing the allocation to the aforementioned Ministry.

4. The Minister for the Economy and Finance is hereby authorized to make the necessary budgetary changes by means of ministerial decrees.

Section 10 – Transitional provisions

1. The provisions of Section 2 shall take effect from the thirtieth day following the adoption of the decisions provided for by Sections 6.10 and 7.5.

2. The functions of the Competition Authority and the Communications Regulatory Authority, respectively referred to in Sections 6.1-9 and Sections 7.1-4, shall be exercised from the thirtieth day following the adoption of the decisions referred to in Sections 6.10 and 7.5.

3. The declaration referred to in Section 5.1 shall initially be made by holders of government office within thirty days of the date on which the provisions of Section 2 take effect pursuant to paragraph 1.

4. The notification referred to in Section 5.2 shall initially be made by holders of government office within sixty days following the expiry of the time limit referred to in paragraph 3.