

# *The Italian Administrative Procedure Act\**

*Law N. 241 dated 7<sup>th</sup> August 1990*

**Translation of the Law's original text, as  
subsequently amended up to 1 July 2010**

\* English translation of Legge 7 agosto 1990 n. 241 by Catharine de Rienzo (née Everett-Heath), A.I.T.I.

Law no. 241 dated 7 August 1990

New Rules Regarding Administrative Procedure  
and the Right of Access to Administrative  
Documents

**Chapter I**

**PRINCIPLES**

**Section 1 (General principles underpinning Administrative Action)**

1. Administrative action shall pursue the objectives established by law and shall be founded on criteria of economy of action, effectiveness, impartiality, publicity and transparency, in accordance with the modes of action provided for both by the present Law and by the other provisions governing individual procedures, as well as by the principles underpinning the Community's legal order.

1-*bis*. When adopting measures that are not authoritative, the public administration shall act in accordance with the rules of private law save where the law provides otherwise.

1-*ter*. Private parties responsible for carrying out administrative activities shall ensure that the criteria and principles referred to under subsection (1) are observed.

2. The public administration shall not make a procedure more onerous unless extraordinary and justified requirements during the preliminary fact-finding activities make such action necessary.

**Section 2 (Conclusion of a Procedure)**

1. Where a procedure is the mandatory consequence of an application or must be begun *ex officio*, public authorities shall have the duty to conclude it by way of an express measure.

2. In those cases where legislative provisions or the measures referred to under subsections (3), (4) and (5) below do not provide for a different timeframe, the administrative procedures falling within the competence

of state authorities or national public bodies must be concluded within thirty days.

3. The timeframes (not exceeding ninety days) within which the procedures falling within the competence of state authorities must be concluded shall be established by way of one or more decrees adopted by the President of the Council of Ministers, pursuant to section 17(3) of Law no. 400 dated 23 August 1988, upon the proposal of the Ministers with competence, acting in agreement with the Minister for Public Administration and Innovation and the Minister for Legislative Simplification. National public bodies shall, in accordance with their own internal rules, establish the timeframes (not exceeding ninety days) within which the procedures falling within their competence must be concluded.

4. In those cases where, considering a timeframe's sustainability in the light of administrative organisation, the nature of the public interests being protected and a procedure's particular complexity, timeframes exceeding ninety days are indispensable for concluding procedures falling within the competence of state authorities or national public bodies, the decrees referred to under subsection (3) above shall also be adopted upon the proposal of the Minister for Public Administration and Innovation and the Minister for Legislative Simplification after prior deliberation by the Council of Ministers. The timeframes provided for therein nevertheless cannot exceed one hundred and eighty days, with the sole exception of the procedures relating to the acquisition of Italian citizenship and those regarding immigration.

5. Save as provided for by specific normative provisions, the independent regulatory authorities shall regulate the timeframes for concluding the procedures falling within their respective competences in conformity with their own internal rules.

6. The timeframes for concluding procedures shall run from the beginning of an *ex officio* procedure or from receipt of an application, if the procedure is initiated by an interested party.

7. Without prejudice to the provisions of section 17, the timeframes referred to under subsections (2), (3), (4) and (5) of the present section can be suspended, only once and for a period not exceeding thirty days, for the purposes of acquiring information or certification relating to fact, status, capacity or qualification not certified by documents already in the

possession of the same authority or not directly obtainable from other public authorities. The provisions contained in section 14(2) shall apply.

8. With the exception of the “silence-equals-assent” [*silenzio assenso*] cases, once the timeframes for concluding a procedure have expired, judicial review of an authority’s silence may, for as long as the non-performance continues but no later than one year after expiry of the timeframes referred to under subsections (2) or (3) of the present section, be sought pursuant to section 21-*bis* of Law no. 1034 dated 6 December 1971, without any need to challenge the defaulting authority directly. The administrative judge shall have the power to try the merits of the original application. The possibility of re-presenting the application to begin the procedure shall remain unaffected should the prescribed conditions be satisfied.

9. Failure to issue a measure within the timeframes shall constitute a relevant factor in assessments of senior-public-servant liability.

### **Section 2-*bis* (Consequences of an Authority’s delayed Conclusion of a Procedure)**

1. Public authorities and the parties referred to in section 1(1-*ter*) shall compensate any unjust loss or damage caused by their intentional or negligent failure to observe the timeframes for concluding a procedure.

2. Disputes relating to the application of the present section shall fall within the exclusive jurisdiction of the administrative court. The right to receive compensation for loss or damage shall be barred after five years.

### **Section 3 (Statement of Reasons for a Measure)**

1. Save in the situations provided for under subsection (2), every administrative measure, including those regarding administrative organisation, staff and the conduct of public competitive examinations, must include a statement of reasons. The statement of reasons must set out the factual premises and the points of law that determined the authority’s decision, as these emerge from the preliminary fact-finding activities.

2. A statement of reasons shall not be required for normative measures or for those of general application.

3. If the reasons for the decision derive from another of the authority's measures that is referred to by the decision itself, then the measure referred to must, in accordance with the present Law, be indicated and made available at the same time that the said decision is communicated.
4. Every measure that is served on its addressee must indicate the timeframe within which and the authority to whom review requests may be made.

### **Section 3-bis (Use of Electronic Communication)**

1. In order to achieve greater efficiency in their activities, public authorities shall encourage the use of electronic communication in internal relations, between different authorities and between the latter and private parties.

## **Chapter II**

### **OFFICER RESPONSIBLE FOR A PROCEDURE**

#### **Section 4 (Organizational Unit responsible for a Procedure)**

1. Where not already directly established by a Law or by a Regulation, public authorities shall have the duty to determine, for each kind of procedure relating to acts falling within their competence, the organizational unit responsible for the preliminary fact-finding activities and every other kind of procedural activity, as well as for adoption of the final measure.
2. The provisions adopted pursuant to subsection (1) shall be made public in accordance with the provisions of each individual authority's internal rules.

#### **Section 5 (Officer responsible for a Procedure)**

1. The senior public servant in charge of each organizational unit shall assign responsibility for the preliminary fact-finding activities and every other activity connected with an individual procedure, as well as for

adoption of the final measure, where appropriate, either to him/herself or to another employee working in the unit.

2. Until the assignation referred to in subsection (1) has been made, the officer in charge of the organizational unit determined pursuant to section 4(1) shall be deemed responsible for the individual procedure.

3. The competent organizational unit and the name of the officer responsible for the procedure shall be communicated to the parties referred to in section 7 and, upon request, to anyone who has an interest.

### **Section 6 (Duties of the Officer responsible for a Procedure)**

1. The officer responsible for a procedure shall:

- a) for the purposes of the preliminary fact-finding activities, assess the admissibility-creating conditions, the legitimating requirements and the circumstances that are to be relevant for the issue of a measure;
- b) ascertain the facts *ex officio*, providing for the completion of the necessary instruments if need be, and take every action required for the appropriate and prompt conduct of the preliminary fact-finding activities. In particular, he/she shall have the power to request the making of statements and the rectification of erroneous or incomplete statements or applications, to carry out technical assessments and inspections and to order the exhibition of documents;
- c) propose the calling of or, having the necessary competence, call the services conferences referred to in section 14;
- d) see to the communications, publications and notifications provided for by Laws and Regulations; and
- e) adopt the final measure, should he/she have the competence, or transmit the documents to the organ with competence for its adoption. Where other than the officer responsible for the procedure, the organ with competence for adoption of the final measure shall not have the power to depart from the results of the preliminary fact-finding activities conducted by the officer responsible for the procedure without indicating the reasons for such action in the final measure.

## **Chapter III**

### **PARTICIPATION IN ADMINISTRATIVE PROCEDURES**

## **Section 7 (Communication of a Procedure's Commencement)**

1. Provided there exist no impediments deriving from the need to conduct a procedure particularly swiftly, the commencement of a procedure shall be communicated, using the methods provided for by section 8, to the parties who will be directly affected by the final measure and to those who are required by law to intervene. Likewise provided that there exist none of the aforesaid impediments, should a measure be capable of adversely affecting identified or easily identifiable parties other than its direct addressees, the authority shall have the duty to inform them, using the same methods, of the beginning of the procedure.

2. In the circumstances envisaged by subsection (1), the authority's power to adopt preventive measures, even before the communications referred to in the said subsection (1) have been effected, shall remain unaffected.

## **Section 8 (Communication of a Procedure's Commencement: Manner and Content)**

1. Authorities shall give notice of a procedure's commencement by way of a personal communication.

2. The communication must indicate:

a) the authority with competence;

b) the object of the procedure commenced;

c) the office and the person responsible for the procedure;

*c-bis*) the date by which, according to the timeframes provided for by subsection (2) or subsection (3) of section 2, the procedure must be concluded and the remedies available, in the case of the authority's failure to act.

*c-ter*) in procedures initiated by an interested party, the date on which the related application was presented; and

d) the office at which the documents may be inspected.

3. Should personal communication be impossible or prove particularly onerous on account of the number of addressees, the authority shall see that the elements referred to in subsection (2) are made known through suitable forms of publicity to be established on each individual occasion by the same authority.

4. The omission of any of the prescribed communications may be challenged only by the party in whose interest the communication is required.

### **Section 9 (Interventions during a Procedure)**

1. Any party having either public or private interests, as well as parties having diffuse interests and legally established as associations or committees, who may be adversely affected by a measure, shall have the right to intervene during the related procedure.

### **Section 10 (Rights of those participating in a Procedure)**

1. The parties referred to in section 7 and those who have intervened pursuant to section 9 shall have the right:

a) to inspect the procedure's documents, save as provided for under section 24; and

b) to present documents and written arguments, which the authority has the duty to evaluate provided that they are pertinent to the object of the procedure.

### **Section 10-bis (Communication of Reasons preventing the Allowing of an Application)**

1. In procedures requested by interested parties, the officer responsible for the procedure or the competent authority shall, before the formal adoption of a measure refusing an application, promptly communicate to the applicants the reasons preventing the allowing of the application. Within ten days of receipt of the communication, the applicants shall have the right to present their observations in writing, accompanied by documentation where appropriate. The communication referred to in the first sentence shall interrupt the timeframes for concluding the procedure

and these shall start to run again from the date on which the observations are presented or, in their absence, from expiry of the timeframe referred to in the second sentence. The reason for any failure to accept such observations shall be given in the statement of reasons contained in the final measure. The provisions of the present section shall not apply to competitive procedures or to procedures relating to social security or welfare arising as a result of an application by an interested party and managed by the social-security bodies.

### **Section 11 (Agreements integrating or substituting a Measure)**

1. When accepting observations or proposals presented pursuant to section 10, the authority conducting the procedure shall, without prejudice to the rights of third parties and in pursuit of the public interest in any event, have the power to conclude agreements with the parties concerned, for the purposes of determining the discretionary content of the final measure or in substitution of the latter.

*1-bis.* For the purposes of fostering conclusion of the agreements referred to in subsection (1), the officer responsible for the procedure shall have the power to prepare a programme of meetings to which he/she shall invite, either one by one or at the same time, the addressee of the measure and any parties with conflicting interests.

2. Save where the law prescribes otherwise, the agreements to which the present section refers must, on pain of nullity, be drawn up in a written instrument. If not provided for differently, they shall be governed by the principles of the Civil Code regarding duties and contracts, insofar as these are compatible.

3. Agreements substituting measures shall be subject to the same checks as established for the latter.

4. An authority shall withdraw unilaterally from an agreement for subsequently arising reasons of public interest, without prejudice to its duty to pay compensation for any loss or damage that the private party may have suffered.

*4-bis.* In order to guarantee the impartiality and good functioning of administrative action, in all cases where a public authority concludes an agreement in the circumstances provided for by subsection (1), the stipulation of the agreement shall be preceded by a determination issued by the organ that would have competence to adopt the measure.

5. Disputes regarding the framing, conclusion or performance of the agreements referred to in the present section shall be reserved to the exclusive jurisdiction of the administrative court.

### **Section 12 (Measures conferring Economic Advantages)**

1. The granting of subventions, allowances, subsidies or financial assistance and the allocation of economic advantages of any kind whatsoever to persons or to public or private bodies shall be subject to the prior determination and publication, by the authorities conducting the procedures and in the forms provided for by their respective internal rules, of the criteria and modes of action that the same authorities must follow.

2. The actual observance of the criteria and modes of action referred to in subsection (1) must be evidenced by the individual measures relating to the interventions referred to in the same subsection (1).

### **Section 13 (Scope of Application of the Rules on Participation)**

1. The provisions contained in the present chapter shall not apply to public administrative action that is directed towards the issue of measures having a normative, general administrative, planning or programming function. Such measures shall continue to be governed by the specific rules regulating their framing.

2. The said provisions shall likewise not apply to taxation procedures. Such procedures shall equally continue to be governed by the specific rules regulating them.

## **Chapter IV**

### **SIMPLIFICATION OF ADMINISTRATIVE ACTION**

#### **Section 14 ( "Services Conference" [*Conferenza di Servizi*])**

1. Should the joint consideration of several public interests involved in an administrative procedure be appropriate, the authority conducting the procedure may call a services conference.

2. A services conference shall always be called when the authority conducting the procedure has to acquire understandings, agreements, permissions or assent documents of whatever denomination from other public authorities and does not obtain them within thirty days of the competent authority's receipt of the related request. A conference may likewise be called when, within the same timeframe, dissent has been expressed by one or more of the authorities addressed or in the cases where the authority conducting the procedure is permitted to make provision directly in the absence of determinations by the authorities with competence.

3. A services conference may also be convened for the joint consideration of interests involved in several connected administrative procedures regarding the same activities or results. In such a case, the conference shall be called by the authority or, after reaching an informal understanding, by one of the authorities that are responsible for the prevalent public interest. The calling of a conference may be requested by any of the other authorities involved.

4. When the activity of a private party is subject to the formal consent, howsoever defined, of more than one public authority, a services conference shall be convened, including at the request of the interested party, by the authority with competence to adopt the final measure.

5. Without prejudice to the provisions contained in regional legislation governing Environmental Impact Assessments (EIAs), in cases involving the grant of a concession to carry out public works, a services conference shall be convened by the licensing authority or, with the latter's consent, by the licensee within fifteen days. When the conference is convened at the request of the licensee, the licensing authority shall have the right to vote in any event.

*5-bis.* After prior agreement between the authorities involved, the services conference shall be convened and conducted using the data-processing instruments available, in accordance with the timeframes and modes of action established by the same authorities.

#### **Section 14-*bis* (Preliminary Services Conference)**

1. A services conference may be convened, at the request of the interested party, before the presentation of a definitive application or

project for particularly complex projects or projects concerning installations producing goods or services. The request must contain a statement of reasons and, in the absence of a preliminary project, be documented by a feasibility study. The conference shall have the purpose of examining on what conditions the necessary formal consent may be obtained when the definitive application or project is presented. In such cases, the conference shall state its conclusions within thirty days of the date of the request and the related costs shall be borne by the party making the request.

2. In procedures concerning the realisation of public works or works in the public interest, the services conference shall evaluate the preliminary project for the purposes of indicating the conditions on which the understandings, opinions, concessions, authorizations, licences, permissions or assent documents of whatever denomination required by the legislation in force for the definitive project may be obtained. On that occasion, the authorities responsible for protection of the environment, the landscape and territory and the historical and artistic heritage or protection of health and public safety shall assess the project's proposed solutions with reference to the interest that each one protects. If, on the basis of the available documentation, no elements definitively precluding the project's realisation emerge, the aforesaid authorities shall, within forty-five days, indicate the conditions and elements necessary for obtaining formal consent when the definitive project is presented.

3. In cases where an EIA is required, the services conference shall express its view within thirty days of the conclusion of the preliminary phase defining the contents of the Environmental Impact Study, in accordance with the provisions governing EIAs. Should such phase not be concluded within ninety days of the request referred to in subsection (1), the services conference shall express its view within the following thirty days in any event. During such conference, the authority with competence for the EIA shall state the conditions governing development of both the project and the environmental impact study. During this phase, which constitutes an integral part of the EIA procedure, the aforesaid authority shall examine the main alternatives, including the zero alternative and, on the basis of the documentation available, check for potentially incompatible elements, including with reference to the project's proposed location. Should no such elements exist, it shall, during the services conference, indicate the conditions on which the necessary formal consent may be obtained when the definitive project is presented.

3-*bis*. Dissent expressed during the preliminary conference by an authority responsible for protection of the environment, the landscape and territory, the historical and artistic heritage, health or public safety, with reference to inter-regional works, shall be subject to the provisions contained in section 14-quater(3).

4. In the cases referred to in subsections (1), (2) and (3), the services conference shall express its view on the basis of the documents at its disposal and the indications given on that occasion may be modified or integrated only if significant elements emerge during subsequent phases of the procedure, including following observations made by private parties in relation to the definitive project. Such modifications or integrations must include a statement of reasons.

5. In the case referred to under subsection (2), the officer with exclusive responsibility for the procedure shall send the authorities concerned a copy of the definitive project, drawn up on the basis of the conditions indicated by the same authorities during the services conference on the preliminary project. He/she shall convene the conference on a date falling between the thirtieth and sixtieth day following the project's transmission. In cases where public works are entrusted by way of a procurement contract, competitive tendering or the grant of a licence, the contracting authority shall convene the services conference on the sole basis of the preliminary project, in accordance with the provisions of Law no. 109, dated 11 February 1994, as subsequently amended.

### **Section 14-*ter* (The Services Conference Proceedings)**

01. The first meeting of the services conference shall be convened within fifteen days or, in cases where the preliminary fact-finding activities are particularly complex, within thirty days of the date on which it was called.

1. The services conference shall take decisions concerning the organization of its work by way of a majority of those present and may be conducted electronically.

2. The communication convening the first meeting of the services conference must reach the public authorities concerned (including by electronic or computerised means) at least five days before the relevant date. Should they be unable to participate, the authorities convened may, within the next five days, request that the meeting be held on another

date; in such case, the authority conducting the procedure shall arrange a new date, within ten days of the first, in any event. The new date for the meeting may be fixed within the following fifteen days in cases where the request is made by an authority responsible for cultural heritage. The officers responsible for the Single Offices covering Productive Activities and Building, where established, or the Municipalities shall agree with the Superintendents having territorial competence the programme (lasting at least three months) for those meetings of the services conferences that involve the formal assent or advisory papers of whatever denomination falling within the competence of the Ministry of Cultural Assets and Activities.

*2-bis.* The parties proposing the project to be discussed at the services conference shall be summoned to the services conference referred to in sections 14 and 14-*bis* and shall participate in it without voting rights.

*2-ter.* Licensees and public service providers may participate, without voting rights, in the conference in those cases where the administrative procedure or the project to be discussed at the conference implies duties for them or affects their activities directly or indirectly. Communication of the services conference's convocation shall be sent to the same, including electronically and suitably in advance. The authorities responsible for managing any existing public incentive may also participate in the conference without voting rights.

3. During the first meeting of the services conference or, in any event, during that immediately following transmission of the application or the definitive project pursuant to section 14-*bis*, the authorities participating in it shall determine the timeframe for adopting the final decision. The conference proceedings shall not exceed ninety days, save as provided for by subsection (4). Upon expiry of such timeframe without result, the authority conducting the procedure shall take action pursuant to subsections (6-*bis*) and (9) of the present section.

*3-bis.* In the case of a work or activity that is also subject to landscape authorization, the Superintendent shall, during the services conference, if convened, express his/her definitive view regarding all the measures falling within his/her competence pursuant to Legislative Decree no. 42 dated 22 January 2004.

4. In those cases where an EIA is required, the services conference shall express its view after acquiring the said assessment and the timeframe referred to in subsection (3) shall be suspended, for a maximum of ninety

days, until an opinion on environmental compatibility has been acquired. If the EIA does not arrive within the timeframe established for adoption of the relevant measure, the authority with competence shall express its view during the services conference, which conference shall be concluded during the thirty days following the aforesaid timeframe. Nevertheless, at the request of a majority of the parties participating in the services conference, the timeframe of thirty days referred to in the previous sentence shall be extended by another thirty days should the need for in-depth factual investigations become evident.

*4-bis.* In those cases where the intervention the object of the services conference has been positively submitted to a strategic environmental assessment (SEA), the respective results and requirements, including the duties referred to under subsections (4) and (5) of section 10 of Legislative Decree no. 152 dated 3 April 2006, must be used, unmodified, for the purposes of the EIA, should the latter be carried out in the same state or regional office, pursuant to section 7 of Legislative Decree no. 152 dated 3 April 2006.

5. In procedures in relation to which the decision concerning the EIA has already been taken, the provisions set out in section 14-quater (3), as well as those set out in section 16(3) and section 17(2) shall apply solely to those authorities responsible for the protection of health, historical and artistic heritage and public safety.

6. Every authority that has been convened shall participate in the services conference through a sole representative. Such representative shall have the competent organ's authorisation to express the authority's will bindingly in relation to all the decisions falling within the latter's competence.

*6-bis.* At the end of the conference's proceedings and upon expiry of the timeframe referred to in subsections (3) and (4) in any event, the authority conducting the procedure, in the case of a state EIA, may have direct recourse to the Council of Ministers pursuant to section 26(2) of Legislative Decree no. 152 dated 30 April 2006; in all other cases, after assessing the specific findings of the conference and taking account of the prevailing positions expressed during it, it shall adopt the determination concluding the procedure, which shall include a statement of reasons. Such determination shall substitute, to all intents and purposes, every authorisation, licence, permission or formal assent of whatever denomination falling within the competence of the authorities participating, or in any event, invited to participate in but actually absent

from, the aforesaid conference. Failure to participate in the services conference or delayed or non-adoption of the determination including a statement of reasons that concludes a procedure shall be evaluated for the purposes of senior-public-servant, disciplinary or administrative liability, as well as for the purposes of awarding result-based bonuses. The right of private parties to demonstrate loss or damage deriving from failure to observe the timeframe for conclusion of the procedure pursuant to sections 2 and 2-bis shall remain unaffected.

7. The assent of an authority, including those responsible for the protection of health and public safety and the protection of the environment (excluding the measures concerning Environmental Impact Assessments, Strategic Environmental Assessments and Environmental Impact Analyses) and of the landscape and territory, is to be deemed acquired when its representative has not, at the end of the conference's proceedings, definitively expressed the will of the authority represented.

8. Clarifications or further documentation may be requested only once of the application's proponents or the design engineers during the services conference. If the clarifications or further documentation are not supplied to the conference within thirty days of the request, the conference shall proceed to consider the final measure to be adopted.

9. *(Repealed by section 49(2)(f) of Decree-Law no. 78 dated 31 May 2010)*

10. Final measures regarding works subject to an EIA shall be published by the proponent, together with a summary of the said EIA, in the Official Journal or in the regional Official Journal, in the case of a regional EIA, and in a daily newspaper with a national distribution. The timeframes for any judicial review actions brought by affected parties shall run from the date of publication in the Official Journal.

#### **Section 14-quater (Effects of Dissent expressed at a Services Conference)**

1. The dissent of one or more representatives of the authorities duly summoned to a services conference, including those responsible for protection of the environment (without prejudice to the provisions of section 26 of Legislative Decree no. 152 dated 3 April 2006), the landscape and territory, the historical and artistic heritage or the protection of health and public safety, must, on pain of inadmissibility,

be expressed during the services conference, must include an appropriate statement of reasons, cannot refer to related issues that do not constitute the subject-matter of the same conference and must specifically indicate the amendments to the project that are necessary in order to obtain assent.

*2. (Repealed by section 11(1)(a) of Law no. 15/2005)*

3. With the exception of the cases referred to in article 117(8) of the Constitution and of the infrastructures and productive installations that are strategic and of prevalent national interest referred to in Part II, Title III, Chapter IV of Legislative Decree no. 163 dated 12 April 2006, as subsequently amended, as well as the cases involving localisation of works of state interest, if dissent supported by reasons is expressed by an authority responsible for protection of the environment, the landscape and territory or the historical and artistic heritage or for the protection of health or public safety, the issue shall, in implementation and observance both of the principle of loyal co-operation and of article 120 of the Constitution, be remitted by the authority conducting the procedure for formal decision by the Council of Ministers, which shall state its conclusions within sixty days, after reaching an understanding with the Region or Regions and the autonomous Provinces concerned, in the case of disagreement between a state authority and a regional one or between different regional authorities, or after reaching an understanding with the Region and the local authorities concerned, in the case of disagreement between a state or regional authority and a local authority or between different local authorities. If an understanding is not reached within the following thirty days, the Council of Ministers may take its decision in any event. If dissent supported by reasons is expressed by a Region or an autonomous Province regarding one of the subject-matters falling within its competence, the Council of Ministers shall exercise its substitutive power and take a decision, with the participation of the Presidents of the Regions or the autonomous Provinces concerned.

*3-bis. (Substituted by subsection (3) above, pursuant to section 49(3)(b) of Decree-Law no. 78 dated 31 May 2010)*

*3-ter. (Substituted by subsection (3) above, pursuant to section 49(3)(b) of Decree-Law no. 78 dated 31 May 2010)*

*3-quater. (Substituted by subsection (3) above, pursuant to section 49(3)(b) of Decree-Law no. 78 dated 31 May 2010)*

*3-quinquies.* The powers and privileges accorded to the Regions with special charters and to the autonomous provinces of Trent and Bolzano by the special autonomy-conferring charters and their related implementation rules shall not be affected.

*4. (Repealed by section 11(1)(c) of Law no. 15/2005)*

5. In cases where the work is subject to an EIA and the measure refuses the application, section 5(2)(c-bis) of Law no. 400 dated 23 August 1988, introduced by section 12(2) of Legislative Decree no. 303 dated 30 July 1999, shall apply.

#### **Section 14-quinquies (Services Conferences regarding Project Financing)**

1. In cases where a services conference has the purpose of approving a definitive project to which the procedures referred to in sections 37-bis et seq. of Law no. 109 dated 11 February 1994 apply, the licence-winning parties identified at the end of the procedure referred to in section 37-quater of Law no. 109/1994, or the project companies referred to in section 37-quinquies of the same Law shall also be summoned to the conference, without voting rights.

#### **Section 15 (Agreements between Public Authorities)**

1. Even outside the circumstances provided for by section 14, public authorities shall still have the power to conclude agreements with one another for the purposes of regulating the joint conduct of activities in which they have a common interest.

2. Such agreements shall be governed by the provisions contained in subsections (2), (3) and (5) of section 11, insofar as they are applicable.

#### **Section 16 (Advisory Activities)**

1. The advisory bodies of the public authorities defined in section 1(2) of Legislative Decree no. 29 dated 3 February 1993 shall be bound to give the opinions requested of them in compliance with a legal duty within twenty days of receipt of the request. Should they be requested to provide opinions that are not required by law, they shall be bound to send the

requesting authorities an immediate communication of the timeframe within which the opinion will be given, which cannot exceed twenty days from receipt of the request in any event.

2. Should the timeframe expire without the mandatory opinion having been communicated or without the body applied to having stated the need for preliminary fact-finding activities, it shall be within the requesting authority's power to proceed independently of the expression of opinion. Should the timeframe expire without the optional opinion having been communicated or without the body applied to having stated the need to carry out preliminary fact-finding activities, the requesting authority shall proceed independently of the expression of opinion. Save in cases of failure to request an opinion, the officer responsible for the procedure cannot be held answerable for any loss or damage deriving from failures to provide the opinions referred to in the present subsection.

3. The provisions contained in subsections (1) and (2) shall not apply to opinions that must be issued by authorities responsible for protection of the environment, the landscape, the territory or the health of citizens.

4. In the case where the body applied to has stated the need for preliminary fact-finding activities, the timeframes referred to in subsection (1) may be interrupted only once and the definitive opinion must be given within fifteen days of receipt, from the authorities concerned, of the results of the fact-finding activities.

5. The opinions referred to in subsection (1) shall be transmitted electronically.

6. State advisory bodies shall establish particularly urgent procedures for adopting the opinions requested of them.

*6-bis.* The provisions of section 127 of the Code on Public Contracts relating to Works, Services and Supplies contained in Legislative Decree no. 163 dated 12 April 2006, as subsequently amended, shall not be affected.

## **Section 17 (Expert Evaluations)**

1. Where it is established by express provision of a Law or a Regulation that the adoption of a measure requires the prior acquisition of expert evaluations from specific offices or bodies and such offices or bodies do

not provide them and do not state the need for preliminary fact-finding activities falling within the competence of the authority conducting the procedure within the timeframes established by the same provision or, failing that, within ninety days of receipt of the request, the officer responsible for the procedure must request the said expert evaluations from other organs of the public administration or from public bodies that have equivalent qualifications and technical ability, or from universities.

2. The provision contained in subsection (1) shall not apply in cases of evaluations that must be produced by authorities responsible for the protection of the environment, the landscape and territory or the health of citizens.

3. In the case where the body or office applied to has stated the need for preliminary fact-finding activities to the authority conducting the procedure, the provisions of section 16(4) shall apply.

### **Section 18 (Self-certification)**

1. Within six months of the date on which the present Law enters into force, the authorities concerned shall take the appropriate organizational steps to guarantee application of the provisions governing both self-certification and the presentation of instruments and documents by citizens to public authorities contained in Law no. 15 dated 4<sup>th</sup> January 1968, as subsequently amended and integrated. The authorities shall inform the Commission referred to in section 27 of the steps taken.

2. The documents attesting to act, fact, status, capacity or qualification needed for a procedure's preliminary fact-finding activities shall be acquired *ex officio* when they are in the possession of the authority conducting the procedure or are held institutionally by other public authorities. The authority conducting the procedure shall have the power to request of the parties concerned only those elements necessary for seeking the documents.

3. Likewise, the officer responsible for the procedure shall verify *ex officio* those facts, statuses, capacities or qualifications that the same authority conducting the procedure or other public authority is bound to certify.

### **Section 19 (Declaration of an Activity's Commencement)**

1. Every authorisation, licence, non-new-right-creating concession, permit or permission of whatever denomination, including applications for the registration on registers or rolls required for the exercise of entrepreneurial, commercial or artisanal activities, the issue of which depends exclusively upon verification either of legal requisites and conditions or of administrative measures of general application and no limitation or overall quantitative restriction or specific instrument of sectoral programming has been provided for in relation to the issue of such authorisation documents, with the sole exception of measures issued by the authorities responsible for national defence, public security, immigration, asylum, citizenship, the administration of justice, financial administration (including documents concerning systems for the collection of revenue, including revenue deriving from gaming), the protection of health and of public safety, of the cultural and landscape heritage and of the environment, as well as the measures required by Community legislation, shall be substituted by a declaration made by the interested party and supported, including by way of self-certification, by the certifications and attestations required by law. The authority with competence shall have the power to request information or certification relating to fact, status, capacity or qualification only in those cases where these are not certified in documents already in the possession of the same authority or cannot be acquired directly from other public authorities.

2. The activity that is the subject of the declaration may be commenced upon expiry of thirty days from the date on which the declaration was presented to the competent authority. Concomitantly with commencement of the activity, the interested party shall communicate such fact to the competent authority. In cases where the declaration of an activity's commencement has as its subject the running of installations producing goods or services or the provision of services referred to in EC Directive 2006/123 of the European Parliament and Council, dated 12 December 2006, including those acts requiring registration on registers or rolls or official lists having the effect of qualification or in any event being required for such purposes, the activity may be commenced from the date on which the declaration is presented to the authority with competence.

3. In cases where an absence of the legitimating conditions, modes of action or facts is verified, the competent authority shall, within thirty days of receipt of the communication referred to in subsection (2) or, in the cases envisaged in the final sentence of the same subsection (2), within thirty days of the date on which the declaration was presented,

adopt measures (containing a statement of reasons) prohibiting continuation of the activity and removing its effects unless, where such action is possible, the party concerned takes steps to make the said activity and its effects comply with the legislation in force within a timeframe established by the authority that shall be no less than thirty days in any event. The competent authority's power to take decisions to protect its own position, in accordance with sections 21-quinquies and 21-nonies, shall remain unaffected, however. In those cases where the law provides for the acquisition of opinions from specific offices or bodies, the timeframe for the adoption of measures prohibiting continuation of the activity and removing its effects shall be suspended, until the opinions have been acquired, for up to a maximum of thirty days. Upon expiry of the said thirty days, the authority shall have the power to adopt its own measures independently of the opinion's acquisition. The suspension shall be communicated to the party concerned.

4. Those legal provisions in force providing for timeframes other than those referred to in subsections (2) and (3) for the commencement of an activity and for the competent authority's adoption of measures prohibiting continuation of an activity and removing its effects shall remain unaffected.

5. Every dispute regarding the application of subsections (1), (2) and (3) shall be attributed to the exclusive jurisdiction of the administrative court. The related judicial review action, which may be brought by any affected party within the timeframes prescribed by law, may also concern the formal assent occurring by virtue of the "silence-equals-assent" rules provided for by section 20.

## **Section 20 (Silence-equals-assent [*Silenzio assenso*])**

1. Without prejudice to the application of section 19, in procedures initiated by interested parties seeking the issue of an administrative measure, the silence of the competent authority shall be equivalent to a measure allowing the application, without the need for further applications or formal warnings, if the same authority does not communicate a measure refusing the application to the party concerned within the timeframe referred to in subsection (2) or subsection (3) of section 2, or does not proceed pursuant to subsection (2) below.

2. Within thirty days of presentation of the application referred to in subsection (1), the authority with competence may call a services conference in accordance with Chapter IV, also taking account of the subjective legal position of the parties with conflicting interests.

3. In the cases where an authority's silence is equivalent to the allowing of an application, the authority with competence shall have the power to take decisions to protect its own position, pursuant to sections 21-quinquies and 21-nonies.

4. The provisions of the present section shall not apply to instruments or procedures concerning cultural or landscape heritage, the environment, national defence, public security, immigration, asylum and citizenship, health or public safety, to the cases in which Community legislation requires the adoption of formal administrative measures, to the cases in which the law qualifies an authority's silence as refusal of an application or to those instruments and procedures established by one or more decrees of the President of the Council of Ministers upon the proposal of the Minister for the Civil Service, in agreement with the Ministers with competence.

5. Section 2(7) and section 10-*bis* shall apply.

## **Section 21 (Penalty-establishing Provisions)**

1. With the declaration or with the application referred to in sections 19 and 20, the interested party must declare the existence of the required conditions and legal prerequisites. In the case of lying declarations or false statements, neither subsequent modification of the activity and its effects in such a way as to comply with the law nor the amnesty provided for by the same sections shall be permitted and the declarant shall be punished with the penalty provided for by article 483 of the Criminal Code, unless the fact constitutes a more serious offence.

2. The penalties currently provided for in cases where an activity is conducted without the authority's formal assent or in a manner not consonant with it shall also apply to those who commence an activity in accordance with sections 19 or 20 in the absence of the required requisites or in a manner that is against the legislation in force, in any event.

2-*bis*. The powers of oversight, prevention and control provided for by the laws in force and relating to activities requiring the formal assent of public authorities shall not be affected, even if the activity has been commenced in accordance with sections 19 or 20.

## **Chapter IV-*bis***

### **EFFECTIVENESS AND INVALIDITY OF ADMINISTRATIVE MEASURES. REVOCATION AND WITHDRAWAL**

#### **Section 21-*bis* (Effectiveness of Measures limiting the Legal Position of Private Parties)**

1. Measures limiting the legal position of private parties shall become effective vis-à-vis each addressee upon communication to the same, which may also be effected in the manners established for service on untraceable persons in the cases provided for by the Code of Civil Procedure. Should personal communication be impossible or appear particularly onerous on account of the number of addressees, authorities shall make provision by way of suitable forms of publicity to be established on each individual occasion by the same authority. Those measures limiting the legal position of private parties that are not penalty-establishing in nature may contain an immediate effect clause. Such clause must include a statement of reasons. Those measures limiting the legal position of private parties that are preventive and urgent shall be immediately effective.

#### **Section 21-*ter* (Enforceability)**

1. Public authorities may enforce the performance of duties towards them in the cases and using the methods established by law. Measures creating duties shall indicate the timeframe for and manner of performance by the party under the duty. Should the party concerned not comply, public authorities may, after giving formal warning, carry out enforcement in the circumstances and in accordance with the modes of action provided for by law.

2. For the purposes of ensuring performance of obligations concerning sums of money, the provisions governing State credit enforcement shall apply.

### **Section 21-*quater* (Effectiveness and Executability of Measures)**

1. Effective administrative measures shall be executed immediately, unless the law or the measure itself provides otherwise.

2. The effectiveness or the execution of an administrative measure may, for serious reasons and for the time that is strictly necessary, be suspended by the same organ that issued it or by another organ so empowered by the law. The timeframe of the suspension shall be stated explicitly in the instrument providing for it and can be extended or deferred only once, as well as reduced, when unexpected events so require.

### **Section 21-*quinquies* (Revocation of Measures)**

1. For subsequently arising reasons of public interest or in cases where concrete situations change or the original public interest is re-assessed, administrative measures having continuing effect may be revoked by the organ that issued them or by another organ so empowered by the law. The revocatory instrument shall establish that the revoked measure shall not be capable of producing further effects. If the revocation adversely affects the parties directly concerned, the authority shall have the duty to compensate them. Disputes regarding the determination and payment of compensation shall fall within the exclusive jurisdiction of the administrative court.

*1-bis.* Where the revocation of an administrative measure with either continuing or instantaneous effect has an impact on contractual relations, the compensation paid by the authority to the affected parties shall be quantified solely in relation to actual damage and shall take account both of the contracting parties' knowledge or possibility of knowing that the revoked administrative measure was contrary to the public interest and of any possible contribution on the part of the contracting or other parties to the erroneous assessment of such measure's compatibility with the public interest.

### **Section 21-*sexies* (Withdrawal from Contracts)**

1. The public administration's withdrawal from contracts shall be permitted in those cases provided for by law or by the contract.

### **Section 21-septies (Nullity of Measures)**

1. Administrative measures that lack essential elements, are vitiated by an absolute lack of jurisdiction or have been adopted in breach or in avoidance of a judgement, as well as in the other cases expressly provided for by law, shall be null and void.

2. Issues regarding the nullity of administrative measures that breach or avoid a judgement shall fall within the exclusive jurisdiction of the administrative court.

### **Section 21-octies (Voidability of Measures)**

1. Administrative measures that have been adopted in breach of the law or are vitiated by excess of power or by lack of specific jurisdiction shall be voidable.

2. A measure that is adopted in breach of rules governing procedure or the form of instruments shall not be voidable if, by virtue of the fettered nature of the measure, it is evident that the provisions it contains could not have been other than those actually adopted. In any event, an administrative measure shall not be voidable on the grounds of failure to communicate the commencement of a procedure if the authority shows at trial that the content of the measure could not have been other than that actually adopted.

### **Section 21-nonies (Ex Officio Annulment)**

1. When there exist grounds in the public interest for so doing, an administrative measure that is unlawful in accordance with section 21-octies may be annulled *ex officio* by the organ that issued it or by other organs so empowered by the law, within a reasonable timeframe and taking account of the interests of the addressees and parties with conflicting interests.

2. The possibility of validating voidable measures, when there exist grounds in the public interest for so doing and within a reasonable timeframe, shall remain unaffected.

## Chapter V

### ACCESS TO ADMINISTRATIVE DOCUMENTS

#### Section 22 (Definitions and Principles regarding Access)

1. For the purposes of the present chapter:

- a) “right of access” shall mean the right of interested parties to inspect and take copies of administrative documents;
- b) “interested parties” shall mean all private parties (including those having interests that are public or diffuse) who have a direct, concrete and currently existing interest corresponding to a legally protected situation that is linked to the document to which access is requested;
- c) “parties with conflicting interests” shall mean all those parties who have been identified or are easily identifiable on the basis of the nature of the document requested and whose right to privacy would be compromised by exercise of the access right;
- d) “administrative document” shall mean every graphic, film-based, electromagnetic or other kind whatsoever of representation of the content of instruments, including internal instruments and those not relating to a specific procedure, that are held by a public authority and concern activities of public interest, independently of whether the substantive law governing them is public law or private law; and
- e) “public authority” shall mean all natural or juristic persons governed by public law and natural or juristic persons governed by private law, in the limited context of those of their public-interest activities that are governed by national or community law.

2. In consideration of its important public-interest objectives, access to administrative documents shall constitute a general principle underpinning administrative action, with the aim of guaranteeing its impartiality and transparency and fostering participation.

3. All administrative documents shall be accessible, with the exception of those referred to under section 24, subsections (1), (2), (3), (5) and (6).

4. Information in the possession of a public authority that is not in the form of an administrative document shall not be accessible, save as provided for by Legislative Decree no. 196, dated 30 June 2003, governing access to personal data by the person to whom the data refer.

5. The acquisition of administrative documents by public parties that does not fall within the scope of section 43(2) of the Law consolidating the provisions in Laws and Regulations governing administrative documentation, referred to in Decree no. 445 of the President of the Republic, dated 28 December 2000, shall be guided by the principle of loyal institutional co-operation.

6. The right of access shall be exercisable for as long as the public authority has the duty to hold the administrative documents to which access is being requested.

### **Section 23 (Scope of the Access Right's Application)**

1. The right of access referred to in section 22 shall be exercised *vis à vis* authorities, independent or special agencies, public bodies and public service providers. The right of access *vis à vis* independent regulatory authorities shall be exercised within the framework of their respective internal rules, in accordance with the provisions of section 24.

### **Section 24 (Access Right Exceptions)**

1. The right of access shall not apply:

a) in relation to documents having State-secret status pursuant to Law no. 801, dated 24<sup>th</sup> October 1977, as subsequently amended, and in the cases of secrecy or disclosure prohibition expressly provided for by law, by the Government Regulation referred to under subsection (6) or by public authorities pursuant to subsection (2) of the present section;

b) in taxation procedures, in relation to which the specific rules governing them shall remain unaffected;

c) with regard to public administrative action that is directed towards the issue of measures having a normative, general administrative, planning or programming function, in relation to which the specific rules governing their framing shall not be affected; or

d) in selection procedures, in relation to administrative documents containing information of a psychometric nature regarding third parties.

2. Individual public authorities shall identify those categories of document created by them or, in any case, at their disposal, that shall be withdrawn from access pursuant to subsection (1).

3. Access applications made with the aim of generally monitoring the work of public authorities shall not be admissible.

4. Access to administrative documents may not be denied in cases where it is sufficient to have recourse to the power to postpone.

5. Documents containing information connected to the interests referred to in subsection (1) shall be deemed secret solely within the limited scope of such connection. To such end and where appropriate, public authorities shall also establish, in relation to every category of document, the timeframe during which such documents shall be withdrawn from access.

6. The Government may, by way of a Regulation adopted pursuant to section 17(2) of Law no. 400 dated 23 August 1988, provide for cases in which administrative documents may be withdrawn from access:

a) when, outside the circumstances governed by section 12 of Law no. 801 dated 24 October 1977, their disclosure may cause a specific and identified injury to security and national defence, to the exercise of national sovereignty or to the continuing and proper conduct of international relations, with particular reference to the circumstances provided for by treaties and their related implementing legislation;

b) when access may prejudice the processes of framing, deciding or implementing monetary and currency policy;

c) when the documents concern the structures, resources, equipment, staff and actions strictly instrumental to the safeguarding of public order, to the prevention and suppression of crime (with particular reference to methods of investigation, the identity of information sources and the security of the property and persons involved) or to judicial police activities and the conduct of investigations;

d) when the documents concern the private life or privacy of natural persons, legal persons, groups, enterprises or associations, with particular reference to their concrete epistolary, health-related, professional, financial, industrial or commercial interests, even if the related data have

been supplied to the public authority by those very persons to whom they refer; or

e) when the documents regard the on-going activity of national collective labour bargaining or internal documents linked to execution of the related mandate.

7. Applicants must nevertheless be guaranteed access to those administrative documents the knowledge of which is necessary for protecting or asserting their legal interests. In the case of documents containing sensitive or judicial data, access shall be permitted to the extent that it is strictly indispensable and according to the conditions provided for by section 60 of Legislative Decree no. 196 dated 30 June 2003, in the case of data capable of revealing state of health or sex life.

## **Section 25 (Ways of exercising the Access Right and Appeals)**

1. The right of access shall be exercised by examining and taking a copy of administrative documents, in the ways and subject to the limitations indicated by the present Law. The examination of documents shall be free of charge. Without prejudice to the provisions currently in force governing tax-stamps, as well as document search and identification fees, the issue of copies shall be subject only to reimbursement of the reproduction costs.

2. Requests for access to documents must contain a statement of reasons. They must be addressed to the public authority that created the document or holds it permanently.

3. Access may be denied, postponed or restricted in the cases and to the extent established by section 24. The reasons for such denial, postponement or restriction must be stated.

4. Upon expiry of thirty days from the date of a request without result, the request shall be deemed refused. In cases of either expressly or tacitly denied access or postponement of the same pursuant to section 24(4), the requesting party shall have the right to appeal to the regional administrative court pursuant to subsection (5) or, within the same timeframe and in relation to the instruments of municipal, provincial or regional authorities, to ask the Ombudsman with competence in that territorial jurisdiction, where appointed, for the said decision to be reconsidered. Should such figure not have been established, competence

shall lie with the Ombudsman with competence for the immediately higher territorial jurisdiction. As regards the instruments of the State's central and decentralised administrative branches, such request shall be forwarded to the Commission for Access referred to in section 27, as well as to the authority objecting to access. The Ombudsman or the Commission for Access shall make his/her or its finding within thirty days of the application's presentation. Once such timeframe has expired fruitlessly, the appeal shall be deemed refused. If the Ombudsman or the Commission for Access deems the denial or the postponement to be unlawful, they shall inform the requesting party of such fact and shall communicate it to the authority holding the document. If the latter does not issue a measure confirming and stating the reasons for its decision within thirty days of receipt of the communication from the Ombudsman or the Commission, access shall be permitted. Should the person requesting access have applied to the Ombudsman or the Commission, the timeframe referred to in subsection (5) shall run from the date of the requesting party's receipt of the communication of the outcome of his/her application to the Ombudsman or to the Commission itself. If access is denied or postponed for reasons concerning personal data referring to third parties, the Commission shall make provision, after prior consultation with the *Garante* for the Protection of Personal Data, who shall state his conclusions within ten days of the request, and whose opinion shall be deemed given should such period expire without result. Should a procedure referred to in Section III of Chapter I of Title I of Part III of Legislative Decree no. 196 dated 30 June 2003 or in sections 154, 157, 158, 159 or 160 of the same Legislative Decree no. 196 of 2003, relating to the public processing of personal data by a public authority, involve access to administrative documents, the *Garante* for the Protection of Personal Data shall ask the Commission for Access to Administrative Documents for its mandatory but non-binding opinion. The request for an opinion shall suspend the timeframe for the *Garante*'s finding until the opinion has been acquired but for no more than fifteen days in any event. Upon expiry of such timeframe without result, the *Garante* shall take his/her own decision.

5. Appeals may be brought, within thirty days, to the regional administrative court against administrative decisions regarding the right of access and in the cases provided for by subsection (4). Such court shall make a ruling in chambers within thirty days of expiry of the timeframe for lodging an appeal, after hearing counsel for the parties who made the request. In actions where appeals are brought pursuant to Law no. 1034 dated 6 December 1971, as subsequently amended, the appeal may be proposed by way of an application presented to the Presiding Judge and

lodged with the office of the specific section to which the appeal is allocated, after prior service on the authority or parties with conflicting interests. It shall be decided by way of a preliminary disclosure order made in chambers. The court's decision may be appealed within thirty days of notification of the same, before the Council of State, which shall reach its decision according to the same criteria and within the same timeframes. Disputes concerning access to administrative documents shall fall within the exclusive jurisdiction of the administrative court.

*5-bis.* In trials regarding access, the parties may act in person without the aid of counsel. The authority may be represented and defended by one of its own employees, provided such person has the rank of senior public servant, authorised by the body's legal representative.

6. The administrative judge shall order production of the requested documents, where the prescribed conditions are satisfied.

### **Section 26 (Publication Duty)**

1. Without prejudice to the provisions governing publications in the Official Journal of the Republic of Italy contained in Law no. 839 dated 11 December 1984 and its related implementation rules, those directives, programmes, instructions, circulars and every other instrument that generally provides for the organisation, functions, goals or procedures of a public authority or which establishes the interpretation of legal rules or lays down provisions for their application, shall be published in the manner provided for by that body's internal rules.

2. The annual reports of the Commission referred to in section 27 shall likewise be published in the above-mentioned forms and, generally, maximum publicity shall be given to all provisions implementing the present Law and all initiatives directed at defining the right of access and making it effective.

3. Upon the publication referred to in subsection (1), freedom of access to the documents indicated in the aforesaid subsection (1) shall be deemed achieved, provided that such publication is complete.

### **Section 27 (Commission For Access to Administrative Documents)**

1. The Commission for Access to Administrative Documents is hereby established within the Presidency of the Council of Ministers.

2. The Commission shall be appointed by decree of the President of the Council of Ministers, after prior consultation with the Council of Ministers. It shall be presided over by the undersecretary of State at the Presidency of the Council of Ministers and shall comprise twelve members, namely, two Senators and two Deputies, nominated by the Presidents of their respective Houses of Parliament, four persons chosen from the staff referred to in Law no. 97 dated 2 April 1979, after nomination by the respective self-governing bodies, two tenured professors of law and one member chosen from senior public servants appointed by the State or by other public bodies. The head of the structure at the Presidency of the Council of Ministers providing organizational support for the Commission's functioning shall be a member by right. The Commission may avail itself of a number of experts not exceeding five persons, appointed in accordance with section 29 of Law no. 400 dated 23 August 1988.

3. The Commission shall be renewed every three years. As regards the parliamentary members, new appointments shall be made in the case of the expiry or early dissolution of Parliament during the course of the three-year period.

4. From the year 2004 onwards, the remuneration to be paid to the members and experts referred to in subsection (2) shall be provided for by decree of the President of the Council of Ministers, in agreement with the Minister of Economy and Finance and within the limits of the ordinary budget allocations for the Presidency of the Council of Ministers.

5. The Commission shall take the decisions provided for by section 25(4). It shall ensure implementation of the principle that public administrative action is to be fully knowable, whilst observing the restrictions established by the present Law. It shall draw up an annual report on the transparency of public administrative action, which it shall transmit to both Houses of Parliament and to the President of the Council of Ministers. It shall make proposals to the Government regarding amendments to the texts of Laws and Regulations that may serve to achieve the widest-ranging guarantee of the access right referred to in section 22.

6. All authorities shall have the duty to transmit to the Commission, within the timeframe it assigns, the information and documents it requests, with the exception of those having state-secret status.

7. In the case of prolonged failure to carry out the duty referred to under section 18(1), the Commission referred to under the present section shall take the steps provided for therein.

**Section 28. (Amendment of Section 15 of the Consolidation Law referred to in Decree no. 3 of the President of the Republic dated 10 January 1957, regarding Civil Service Secrecy)**

1. Section 15 of the Consolidation Law containing provisions governing the Staff Regulations for state civil servants, adopted through Decree no. 3 of the President of the Republic dated 10 January 1957, shall be substituted by the following:

*“Section 15 (Civil Service Secrecy). – 1. Employees must preserve civil service secrecy. They must not transmit information regarding administrative measures or activities, whether ongoing or completed, or news that has come to their knowledge by virtue of their duties, to persons who are not entitled to it except in the circumstances and in the ways provided for by the rules governing the right of access. Employees responsible for an office shall, within their individual fields of competence, issue copies of and extracts from instruments and documents ex officio in those cases that are not prohibited by the office’s internal rules”.*

## **Chapter VI**

### **FINAL PROVISIONS**

**Section 29. (Scope of Application)**

1. The provisions of the present Law shall apply to state authorities and national public bodies. The provisions of the present Law shall likewise apply to wholly or prevalently publicly-owned companies, limited to when they carry out administrative functions. The provisions contained in sections 2-*bis*, 11, 15 and 25 (5), (5-*bis*) and (6), as well as those of Chapter IV-*bis* shall apply to all public authorities.

2. Within their respective fields of competence, the regions and the local authorities shall regulate the subject-matters governed by the present Law in observance both of the constitutional system and of the guarantees for citizens with regard to administrative action, as such guarantees are established by the principles laid down by the present Law.

*2-bis.* The provisions of the present Law concerning the public administration's duties to guarantee the participation of affected parties in procedures, to identify an officer responsible for such procedures, to conclude them within the pre-established timeframe and to guarantee access to administrative documentation, as well as those relating to the maximum duration of procedures, shall pertain to the essential levels of benefits and service provision referred to in article 117(2)(m) of the Constitution.

*2-ter.* The provisions of the present Law concerning both the declaration of an activity's commencement and the "silence-equals-assent" [*silenzio assenso*] principle shall likewise pertain to the essential levels of benefits and service provision referred to in article 117(2)(m) of the Constitution, without prejudice to the possibility of establishing, by way of understandings reached during the unified Conference referred to in section 8 of Legislative Decree no. 281 dated 28 August 1997, as subsequently amended, further cases in which such provisions shall not apply.

*2-quater.* When regulating the administrative procedures falling within their fields of competence, the regions and local authorities may not establish lesser guarantees than those ensured for private parties by the provisions relating to the essential levels of benefits and service provision referred to in subsections (*2-bis*) and (*2-ter*), but they may provide for higher levels of protection.

*2-quinquies.* Regions with special charters and the autonomous provinces of Trent and Bolzano shall adapt their legislation to the provisions of the present section, in accordance with their respective charters and their related implementation rules.

### **Section 30 (Acts of Official Notice of Notorious Facts)**

1. In all the cases in which a Law or a Regulation provides for acts of official notice of notorious facts or for professional certifications of

another denomination attested by witnesses, the number of witnesses shall be reduced to two.

2. When personal qualifications or capacities, status or facts known directly by an interested party are to be proved, public authorities and enterprises providing services of public utility are forbidden to require acts of official notice of notorious facts in place of the declaration substituting acts of official notice of notorious facts provided for by section 4 of Law no. 15 dated 4 January 1968.

**Section 31.** *(Repealed by section 20 of Law no. 15/2005)*