

Italy

Law No. 99 of 23 July 2009

Provisions for the development and internationalisation of firms, with particular reference to energy

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Article 25

(Delegating tasks to the Government in the nuclear field)

1. Within six months of the entry into force of this Law, the Government is authorised to adopt, in compliance with the regulations on environmental impact assessment and the notification of pertinent procedures, one or more legislative decrees recasting the rules for the siting on national territory of nuclear power generating plants, fuel fabrication plants, storage systems for spent fuel and radioactive waste, repositories for radioactive materials and wastes, as well as procedures for establishing measures regarding the compensation to be provided and paid to the populations concerned. The decrees shall be passed in accordance with the procedures and guidelines set out in *Article 20 of Law No. 59 of 15 March 1997*, and subsequent amendments, and in compliance with the guiding principles and criteria specified in paragraph 2 of this Article, at the proposal of the Minister for Economic Development, in conjunction with the Minister for the Environment, Land and Sea and the Minister of Infrastructure and Transport, subject to the opinion of the Unified Conference referred to in *Article 8 of Legislative Decree No. 281 of 28 August 1997*, and subsequent amendments, and further to the opinion of the Parliamentary Committees responsible for nuclear matters and the financial consequences thereof. The Parliamentary Committees shall issue an opinion within sixty days of the draft of the legislative decrees being sent to them. The said decrees shall also set out the licensing procedures and subjective requirements applicable to the construction, operation and decommissioning of the plants mentioned in the opening sentence to this paragraph.

2. The delegation of tasks referred to in paragraph 1 shall be exercised in accordance with the following principles and criteria:
- a) provision must be made for the possibility of declaring sites to be areas of national strategic interest requiring special forms of oversight and protection;
 - b) high levels of security meeting the requirements for the safeguard of the health of the population and the environment must be specified for sites;
 - c) direct benefits to residents, local authorities and firms operating on the territory surrounding the site must be established at the expense of the firms involved in the construction or the operation of plants and structures which shall be prohibited from passing on such expense to end users;
 - d) provision must be made for procedures which the holders of licences to carry out activities must adopt with regard to the disposal of radioactive waste and irradiated nuclear materials and the dismantling of plants at the end of the life cycle;
 - e) technical and scientific data from public research bodies, including the Institute for Environmental Protection and Research (ISPRA) and universities, must be acquired;
 - f) procedures must be laid down for the exercise of the Government's powers of substitution in the event of failure to meet the necessary agreements with the various local bodies involved, in accordance with the provisions of *Article 120 of the Constitution*;
 - g) provision must be made whereby the construction and operation of plants for the generation of nuclear power, radioactive waste safe management or the dismantling of nuclear plants at the end of the life cycle, and all related activities, are considered to be activities of compelling interest to the state and, as such, subject to a single licence, issued at the request of the applicant and subject to compliance with the Unified Conference referred to in *Article 8 of Legislative Decree No. 281 of 28 August 1997*, and subsequent amendments, and with the decree issued by the Minister for Economic Development, in conjunction with the Minister for the Environment, Land and Sea and the Minister of Infrastructure and Transport;
 - h) provision must be made for the single licence to be issued through a single procedure in which the administrations concerned shall participate and which shall be carried out in compliance with the principles of administrative streamlining and the procedures set out in *Law No. 241 of 7 August 1990*; this licence must include the declaration of public utility, must state that the works are urgent and cannot be postponed and, where appropriate, must include the declaration of non-transferability and posting of the expropriation order for the assets contained therein; the single licence replaces all and any administrative measures, authorisations, concessions, licences, permits, deeds of consent and administrative deeds, regardless of their denomination, with the exception of the procedures for the environmental impact assessment (EIA) and strategic environmental assessment (SEA) with which compliance is required under the legislation in force, thereby conferring entitlement to construct and operate infrastructure in accordance with the approved project;
 - i) provision must be made for approvals of requirements and technical specifications applicable to nuclear power plants which have already been granted within the past ten

years by the competent authorities of member countries of the OECD Nuclear Energy Agency (NEA), or by the competent authorities of states with which bilateral agreements for technological and industrial co-operation in the nuclear sector have been signed, to be considered valid in Italy, subject to the approval of the Nuclear Safety Agency;

- l) provision must be made for responsibilities regarding safety and radiation protection inspections which are also designed to ensure that maximum transparency prevails in dealings with citizens and local administrative bodies, to be charged to nuclear power plant operators who may also avail themselves of the support and guidance of experts of comparable European safety organisations, and capable of being carried out within specific time frames that are compatible with the complex planning of activities;
 - m) instruments providing financial and insurance cover against the risk of failure to meet construction deadlines for reasons independent of the will of the licence holder must be specified;
 - n) procedures which the operators of nuclear power plants must follow to set up a “decommissioning” fund must be put in place;
 - o) provision must be made wide-ranging and detailed information to be given to the general public in appropriate formats, and particularly to persons involved in nuclear activities, with the aim of creating suitable conditions for the performance and management of plants;
 - p) sanctions must be put in place to punish breaches of the provisions of legislative decrees;
 - q) provision must be made for a timely information campaign, within the limits of the budgetary resources available for that purpose, to inform the Italian population about nuclear energy, with particular reference to its safety and low cost.
3. In hearings before administrative legal bodies with regard to procedures for the planning, approval and performance of works, infrastructure and production plants relating to the nuclear energy sector and related expropriation, occupation and easement activities, the provisions of *Article 246 of the Code of public contracts for works, services and supplies, referred to in Legislative Decree No. 163 of 12 April 2006*, shall apply.
 4. In paragraph 4 of *Article 11 of Legislative Decree No. 79 of 16 March 1999*, the following text has been inserted after the words: “renewable sources of energy”: “nuclear energy produced on the national territory”.
 5. Provisions made to correct and integrate the legislative decrees mentioned in paragraph 1 may be issued, in compliance with the procedures, principles and criteria mentioned in paragraphs 1 and 2, within one year from their entry into force.
 6. Implementation of this Article must not give rise to new or greater burdens on public finances. The relevant obligations shall be fulfilled with the human, instrumental and financial resources available under current legislation.
 7. In *Article 3 of Legislative Decree No. 52 of 6 February 2007*, the following text is to be inserted after paragraph 2: “2-bis. The financial guarantee mentioned in sub-paragraph d) 1) of paragraph 2 shall be set out in a decree issued by the Minister for Economic Development, in

conjunction with the Minister of Economy and Finance, after hearing the Minister for the Environment, Land and Sea.”

Article 26

Nuclear energy

1. The decision by the CIPE (Interministerial Economic Planning Committee), which must be adopted within six months of the entry into force of this Law and subject to the opinion of the Unified Conference referred to in *Article 8 of Legislative Decree No. 281 of 28 August 1997*, and subsequent amendments, at the proposal of the Minister for Economic Development, after hearing the Minister for the Environment, Land and Sea and after hearing the competent Parliamentary Committees, shall specify the type of nuclear power plant which can be built on the national territory. The Unified Conference shall express its opinion within sixty days of receiving a request; the opinion shall be considered to have been acquired after said period.
2. The decision by the CIPE, at the proposal of the Minister for Economic Development, shall set out, without placing new or additional burdens on public finances or reducing public revenues, criteria and measures capable of encouraging the creation of consortia for the construction and operation of the plants referred to in paragraph 1 established by power generation operators and by industrial parties established in consortia.

Article 29

Nuclear Safety Agency

1. The Nuclear Safety Agency is hereby established. The Agency shall carry out the functions and tasks of a national authority for the technical regulation, oversight and licensing from a safety standpoint of activities relating to the peaceful use of nuclear energy, the management and disposal of radioactive waste and nuclear materials produced by both power generating plants and medical and industrial activities, radiation protection as well as the functions and tasks relating to the oversight of the construction, operation and safeguard of nuclear power plants and materials, including their infrastructure and logistics.
2. The Agency shall comprise the structures of the current Nuclear, Technological and Industrial Risks Department of ISPRA and the resources of ENEA (National Agency for New Technologies, Energy and Sustainable Economic Development) which are currently in charge of the activities that will fall within the scope of the Agency.
3. The Agency shall carry out the functions specified in paragraph 1 without placing new or additional burdens on public finances or reducing public revenues and within the limits of the human, instrumental and financial resources available under the current legislation referred to in paragraph 17.
4. The Agency shall monitor nuclear safety and radiation protection in compliance with current legislation and procedures at the national, EU and international level, by making use of the most effective and efficient technologies available in accordance with the priorities and directions of national energy policy and in compliance with the right to health and the environment and in pursuance of the precautionary principles suggested by EU bodies. The Agency shall present an

annual report on nuclear safety to Parliament. The Agency shall maintain and develop relations, and also enter into co-operation agreements, with comparable agencies in other countries and with the European and international organisations that can assist it in the performance of its assigned tasks and duties.

5. The Agency is the sole national authority responsible for nuclear safety and radiation protection. In particular:
- a) licences issued by public administrations with regard to the activities referred to in paragraph 1 are subject to the prior opinion of the Agency which shall be mandatory and binding;
 - b) the Agency shall be responsible for environmental oversight and verification with regard to the management of radioactive waste;
 - c) the Agency shall carry out inspections of national nuclear facilities and their infrastructure in order to ensure that the activities do not generate risks for the general public and the environment and that operating conditions are complied with;
 - d) when carrying out their duties, the Agency's inspectors shall be authorised to enter facilities and consult documents and participate in the tests requested;
 - e) for the purposes of checking the safety and the guarantees of quality, the Agency shall ask the persons responsible for the design, construction and operation of nuclear facilities, as well as the pertinent infrastructure, to provide the Agency with data, information and documents;
 - f) the Agency shall draw up and propose regulations, standards and technical procedures and shall publish reports on new technologies and procedures, in compliance with EU and international legislation relating to nuclear safety and radiation protection;
 - g) the Agency may impose requirements and corrective measures, issue warnings to licence-holders and, in the event of non-compliance with its measures or in the event of failure, on the part of the said persons, to produce the required documents and issue access passes to plants, or to comply with requirements related to the performance of inspections, or in the event that the information or documents obtained are not truthful, the Agency may impose, provided that the licence-holder's action does not constitute an offence, administrative fines ranging from a minimum of EUR 25 000 to a maximum of EUR 150 million, may also order that the activities covered by the licences be suspended, and may suggest to the competent authorities that they revoke the said licences. The provisions of *Article 16 of Law No. 689 of 24 November 1981*, and subsequent amendments, shall not apply to fines. Fines imposed by the Agency shall be used to fund the operation of the Agency and shall be paid into the single treasury opened in the name of the Agency with the State treasury pursuant to *Article 1(1) of Law No. 720 of 29 October 1984*. The Agency shall submit an annual report on total receipts from fines to its supervisory body and to the Ministry of Economy and Finance. The ordinary funding it receives annually from the state budget referred to in paragraphs 17 and 18 of this Article shall consequently be reduced commensurately. The Agency shall remit to the State budget, both within the same financial year and also subsequent to the start of its ordinary activity, any sums received from the payment of fines in excess of the amount of annual ordinary funding it receives under current legislation;

- h) the Agency shall provide the public with transparent information regarding the impact on the general public and the environment of ionising radiation arising from the operation of nuclear power plants and the use of nuclear technologies under both ordinary and extraordinary circumstances;
 - i) the Agency shall design and verify the procedures which the holders of licences to operate or dismantle nuclear power plants, or to keep and hold safe radioactive material, must follow for the emplacement of radioactive waste and irradiated nuclear materials and the dismantling of plants at the end of the life cycle, in compliance with the best international standards established by the International Agency for Atomic Energy (IAEA);
 - l) the Agency is empowered to propose to other institutions that they instigate punitive measures.
6. In the performance of its functions the Agency may, subject to establishing the appropriate agreements, and provided that it does not place new or additional burdens on public finances or reduce public revenues, avail itself of the collaboration of regional environmental agencies.
 7. For the performance of activities relating to the tasks and functions of the Agency, the operators concerned shall pay a charge based on the costs actually incurred to carry out the services, in accordance with the decree of the Minister of the Economy and Finance, in conjunction with Minister for Economic Development and the Minister for the Environment, Land and Sea, having heard the opinion of the competent Parliamentary committees.
 8. The Agency is a collegial body made up of a Chairman and four Members. The Members of the Agency shall be appointed by Presidential decree, at the proposal of the President of the Italian Council of Ministers, subject to a decision by the Council of Ministers. The President of the Italian Council of Ministers shall appoint the Chairman of the Agency, two Members shall be appointed by the Minister for the Environment, Land and Sea, and two by the Minister for Economic Development. Before the Council of Ministers makes its decision, the competent Parliamentary Committees shall express their opinion and may organise a hearing of the persons whose names have been put forward. In no case may appointments be made without the approval of the above Committees. The Chairman and Members of the Agency selected shall be persons of unquestioned moral character and independence, proven professionalism and must possess high qualifications and skills in the nuclear technology sector, the management of technological plants, nuclear safety, radiation protection, environmental protection and health and safety. The office of Agency Member is incompatible with the holding of an elected political office; likewise, persons with interests of any type that conflict with the functions of the Agency shall not be appointed. The Government shall submit an annual report to Parliament on the nuclear safety measures put in place by the Agency.
 9. The Chairman of the Agency shall be the legal representative of the Agency and shall convene and chair its meetings. In order for meetings to be valid, the presence of the Chairman and a quorum of at least two Members are required. The decisions of the Agency shall be taken by a majority vote of those present.
 10. The Chairman and the Board of Auditors are bodies of the Agency. The Director-General shall be appointed collectively and unanimously by the Members of the Agency and shall be responsible for the management, co-ordination and oversight of its structure. The Board of Auditors, appointed by the Minister of Economy and Finance, shall be made up of three serving

Members, one of whom shall act as Chairman and shall be chosen from among the Directors of the Department for National General Accounting of the Ministry of Economy and Finance, and two Deputy Members. The Board of Auditors shall monitor, pursuant to Article 2403 of the Civil Code, compliance with the legislation and shall make sure that the Agency is managed with all due diligence.

11. The fees payable to the Members of the Agency and its bodies shall be determined by decree of the President of the Italian Council of Ministers, in conjunction with the Minister of Economy and Finance, the Minister for the Environment, Land and Sea and the Minister for Economic Development. The said decree shall also specify the location of the headquarters of the Agency. The expenditure arising from implementation of the provisions of this paragraph shall be covered by the funding currently available to ISPRA and ENEA pursuant to paragraph 18.
12. The bodies of the Agency and its members shall remain in office for seven years.
13. Under penalty of dismissal, the Chairman, Members of the Agency and the Director-General may not carry out, either directly or indirectly, any professional activity or consultancy, hold the post of managing director or employee of a public or private entity, nor may they hold other public offices of any nature, including elective offices or offices of representation in political parties, nor have direct or indirect interests in enterprises which operate in the sector. Employees of public administrative bodies shall be relieved of their duties or placed on leave, in all cases without pay, for the entire duration of their office.
14. For a period of at least twelve months after being discharged from their office, the Chairman, Members of the Agency and the Director-General may not, either directly or indirectly, collaborate with, provide consulting services to or work for firms operating in the sector for which they were formerly responsible, nor with related associations. Any breach of this ban, unless the act constitutes an offence, shall be punished by an administrative fine equal to a yearly payment of the amount received. An administrative fine equal to 0.5 percent of turnover, and in all cases of no less than EUR 150 000 and no more than EUR 10 million, shall be imposed on any entrepreneur who violates such a ban; in more severe cases, or when the unlawful conduct has been repeated, the entrepreneur's licence shall be revoked. The maximum and minimum limits of such fines shall be reviewed in line with the annual variation in the consumer prices index for families of workers and employees, determined by the ISTAT (Italian National Institute of Statistics).
15. Within three months of this Law entering into force, under a decree issued by the President of the Italian Council of Ministers, at the proposal of the Minister for the Environment, Land and Sea and of the Ministry for Economic Development, in conjunction with the Minister of Economy and Finance and the Minister for Public Administration and Innovation, the Agency's Statute, establishing the criteria governing the organisation, operation, regulation and oversight of the Agency in accordance with the institutional tasks specified in the Law, shall be approved.
16. Within three months of the date of issuance of the decree referred to in paragraph 15, and in accordance with the criteria it lays down, the regulations governing the organisation and internal operation of the Agency shall be approved by a decree issued by the President of the Italian Council of Ministers, at the proposal of the Minister for the Environment, Land and Sea, in conjunction with the Minister for Economic Development, the Minister of the Economy and Finance and the Minister for Public Administration.

17. The Minister for the Environment, Land and Sea shall issue a decree specifying the staff resources, up to a maximum of 50 employees, which will be transferred to the Agency from the Nuclear, Technological and Industrial Risks Department of ISPRA. The Minister for Economic Development shall issue a decree specifying the staff resources, up to a maximum of 50 employees, which will be transferred to the Agency from ENEA and its subsidiaries. Staff shall continue to work under the legal and economic conditions that they enjoyed at the time of the transfer. Under a decree issued by the Minister of the Economy and Finance, in conjunction with the Minister for Public Administration and Innovation, the Minister for the Environment, Land and Sea and the Minister for Economic Development, the funding currently awarded to the transferring administrations, needed to cover the expenditure arising from implementation of the provisions of this paragraph, shall be transferred to the Agency ensuring in all cases that there is no variation in expenditure by making a commensurate reduction in the expenditure authorisations specified in paragraph 18. The same decree shall provide for commensurate reductions in the number of staff employed by the transferring administrative bodies.
18. In the event of delays in the start of the ordinary activity of the Agency and the ensuing inflow of resources arising from the fees which the Agency is authorised to charge and collect for the services referred to in paragraph 5, as well as the charges relating to the Agency's operation which are set at EUR 500 000 for 2009 and at EUR 1 500 000 in both 2010 and 2011, a provision of EUR 250 000 is made for the year 2009 and EUR 750 000 for both 2010 and 2011, subject to a commensurate reduction in the authorised expenditure specified in *Article 38 of Legislative Decree No. 300 of 30 July 1999*, and subsequent amendments, as recalculated in Table C in the annex to *Law No. 203 of 22 December 2008*, amounting to EUR 250 000 for the year 2009 and EUR 750 000 in both 2010 and 2011, subject to a commensurate reduction in the authorised expenditure specified in *Law No. 282 of 25 August 1991*, as recalculated in Table C in the annex to *Law No. 203 of 22 December 2008*.
19. With regard to the administration and accounts of the Agency, the provisions of the regulations mentioned in *Presidential Decree No. 97 of 27 February 2003* shall apply. The budget forecasts, related adjustments and final accounts shall be submitted to the Ministry of Economy and Finance. The annual report on the financial management of the Agency shall be approved by 30 April of the following year and shall be subject to verification by the Court of Auditors. The budget and annual report on financial management shall be published in the Official Journal.
20. Until the date of publication of the regulations mentioned in paragraph 16, the nuclear safety functions transferred to the Agency under this Article shall continue to be performed by the Agency's Nuclear, Technological and Industrial Risks Department for the protection of the environment and for technical services which are already governed by *Article 38 of Legislative Decree No. 300 of 30 July 1999*, and subsequent amendments, or by the organisational structures at ISPRA, which may have been specified in the meantime under the decree referred to in *Article 28 (3) of Decree-Law No. 112 of 25 June 2008*, converted, with amendments, from *Law No. 133 of 6 August 2008*. This does not apply to deeds adopted and proceedings initiated or concluded by the above-mentioned Department or by the organisational structures mentioned in the previous sentence up to the same date.
21. The Agency may be wound up for serious and substantiated reasons, relating to the proper functioning of the Agency or the pursuit of its institutional goals, by Presidential decree, at the proposal of the President of the Italian Council of Ministers, in conjunction with the Ministry for the Environment, Land and Sea and with the Ministry of Economic Development. In such an event, an extraordinary commissioner shall be appointed by decree issued by the President of

the Italian Council of Ministers, for a period not exceeding eighteen months, who shall perform the functions of the Chairman and Members of the Agency with the assistance of two Deputy Commissioners if necessary.

22. The Minister of Economy and Finance is authorised to issue decrees to make any budget adjustments that may be required.