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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**RULES
FOR THE RESOLUTION
OF CONFLICTS OF INTEREST
IN ITALY**

(The «Frattini Law»)

Text finally voted by the Chamber of Deputies on 13 July 2004

SECTION 1
(Personal scope)

1. Persons holding government office shall, in the performance of their duties, devote themselves solely to the public interest and refrain from taking measures and participating in joint decisions in situations where there is a conflict of interest.
2. For the purposes hereof, persons holding government office shall be understood to mean the Prime Minister, ministers, deputy ministers, junior ministers and special government commissioners, as provided for in Section 11 of Law No 400 of 23 August 1988.
3. The regions and the autonomous provinces of Trento and Bolzano shall make provision for compliance with the principle set out in paragraph 1.

SECTION 2
(Disqualification)

1. Persons holding government office may not, in the course of duty:
 - a) hold public office or occupy posts, other than their parliamentary office and the posts provided for in Section 1, which are not inherent to the duties attached to their parliamentary office or government post, with the exception of the posts referred to in Section 1, paragraph 2, of Law No 60 of 13 February 1953;
 - b) occupy posts, hold office or perform any other duties in public-law undertakings, including profit-making concerns;
 - c) occupy posts, hold office or perform managerial tasks or any other duties in profit-making companies or other business undertakings;
 - d) carry out an occupational activity of any kind or do any work in a self-employed capacity, on behalf of public or private undertakings, in an area connected with the government office in question, even if such activity or work is unremunerated; persons holding government office may receive fees for such services only if they were provided before they took office; moreover, they may not occupy posts, hold office or perform managerial tasks or any other duties in professional societies or associations;
 - e) have any kind of public-sector job;
 - f) have any kind of private-sector job.
2. Individual entrepreneurs shall arrange to appoint one or more authorised managers within the meaning of Articles 2203 to 2207 of the Civil Code.

3. The posts and duties referred to in paragraph 1 shall lapse when the person in question is sworn in to the office provided for in Section 1 and, in any event, when he or she actually takes office; persons holding such posts or office may not receive any remuneration or benefit therefrom while in government office. The activities referred to in paragraph 1 shall also be prohibited abroad.

4. The disqualification provided for in paragraph 1, sub-paragraph d, shall constitute a temporary debarment to practising the profession in question and, as such, shall be governed by the rules laid down by the professional association concerned. The disqualification provided for in paragraph 1, sub-paragraphs b, c and d, shall continue for 12 months after the person concerned has left government office in the case of public-law undertakings, including profit-making concerns, and profit-making companies operating primarily in sectors connected with the office held.

5. Public-sector and private-sector employees shall be afforded extended leave or be subject to such similar arrangements as are provided for in the rules governing the job from which they come, in accordance with those rules, with effect from the date on which they are sworn in and, in any event, from the date on which they actually take office. Persons holding government office shall not, however, be penalised in terms of professional status or career advancement on account of the time spent on extended leave or off the staff register for that purpose.

SECTION 3 (Conflicts of interest)

1. There is a conflict of interest within the meaning of this law when a person holding government office is involved in the introduction of a measure, if only through having proposed it, or fails to take a measure that should have been taken, while he or she is disqualified under Section 2, paragraph 1, or when the measure or omission has a specific, preferential effect on the assets of the office-holder or of his or her spouse or relatives up to the second degree, or of companies or other undertakings controlled by them, within the meaning of Section 7 of Law No 287 of 10 October 1990, to the detriment of the public interest.

SECTION 4 (Abuse of a dominant position and liability)

1. The provisions of Section 3 of Law No 287 of 10 October 1990 designed to prevent and punish the abuse of a dominant position shall remain applicable.

2.

3. The prohibition of acts or behaviour designed to establish or maintain, or having the effect of establishing or maintaining, a dominant position, within the meaning of Section 2 of Law No 249 of 31 July 1997 **and of Section 14 of Law N° 112 of 3 May 2004¹**, shall continue to apply.

¹ *Paragraph so amended in pursuance of article 1 of Law Decree n. 233 of 6 September 2004, as modified when made into a law.*

4. Violation of the provisions referred to in paragraph 2 shall be punished, even when it takes place by virtue of recourse to measures introduced by the holder of government office, the company under his or her authority or that of his or her spouse or relatives up to the second degree, or a company or other undertaking controlled by them, within the meaning of Section 7 of the above-mentioned Law No 287 of 10 October 1990.

4. Notwithstanding the provisions hereof, the civil, criminal, administrative and disciplinary provisions in force shall remain applicable provided the relevant requirements are met.

SECTION 5

(Declaration by the parties concerned)

1. Persons holding government office shall, within 30 days of taking office, declare to the Anti-Trust Authority provided for in Section 10 of Law No 287 of 10 October 1990 disqualification situations covered by Section 2, paragraph 1, hereof which exist on the date on which they take office.

2. Persons holding government office shall also, within 60 days of the date referred to in paragraph 1, provide information concerning their own assets, including shareholdings; the information they are obliged to communicate under this paragraph includes assets held during the three months preceding their taking office.

3. The declarations provided for in paragraphs 1, 2, and 4 shall also be made to the Broadcasting Authority provided for in Section 1 of Law No 249 of 31 July 1997, as amended, when the disqualification concerns the audiovisual, multi-media or publishing, including electronic publishing, sector, and the information on the assets in question concerns those sectors.

4. Persons holding government office shall, in accordance with paragraphs 1 and 2, declare any subsequent changes in the information concerning their assets as previously supplied, within 20 days of the events giving rise to those changes.

5. Within 30 days of receipt of the declarations referred to in this Section, the Anti-Trust Authority and the Broadcasting Authority shall check the credentials in accordance with Sections 6 and 7.

6. The declarations referred to in this Section shall also be made by the spouse and relatives up to the second degree of the person holding government office.

SECTION 6

(Responsibilities of the Anti-Trust Authority in respect of conflicts of interest)

1. The Anti-Trust Authority shall ascertain the existence of disqualification situations, as provided for in Section 2, paragraph 1, ensure that the various resulting debarments are observed and, in cases where they are not, take steps to make sure that:

- a) the competent authority or that overseeing the company or undertaking removes the person concerned from his or her post or from office or ensures that the post or office lapses;
- b) the public-sector or private-sector employment contract in question is suspended;

c) the person concerned is struck off professional registers; a request to this effect shall be made to the professional associations concerned in the case of matters within their remit.

2. The authorities and other bodies responsible shall arrange for the measures referred to in paragraph 1 to be taken in the light of a request to this effect from the Anti-Trust Authority.

3. In order to ascertain whether situations of conflicts of interest within the meaning of Section 3 exist, the Anti-Trust Authority shall examine, monitor and verify the consequences of the actions of persons holding government office in order to ascertain whether they have any specific, preferential effect on the assets of the latter, of their spouses or relatives up to the second degree, or of companies or undertakings controlled by them, within the meaning of Section 7 of Law No 287 of 10 October 1990, to the detriment of the public interest, in accordance with Section 3 hereof.

4. The obligation to report any facts of criminal relevance to the competent judicial authority remains.

5. The Anti-Trust Authority, having first specifically assessed whether the admissibility conditions have been met, shall automatically check the credentials. To this end, it shall liaise and co-operate with government bodies, consult the other independent administrative bodies responsible and obtain the information needed to carry out the tasks provided for herein, subject to the restrictions laid down by law.

6. In the performance of the tasks referred to in this Section, the Anti-Trust Authority shall avail itself of the powers provided for in Law No 287 of 10 October 1990, as appropriate.

7. The participation of the person concerned in the procedure provided for in this Section shall be guaranteed in accordance with Law No 241 of 7 August 1990, as amended, without prejudice to Section 14, paragraph 3, of Law No 287 of 10 October 1990.

8. When an undertaking under the authority of a person holding government office or that of his or her spouse or relatives up to the second degree, or companies or other undertakings controlled by them, within the meaning of Section 7 of Law No 287 of 10 October 1990, operate in such a way as to take advantage of measures introduced in a situation of conflict of interest within the meaning of Section 3, and there is proof that those concerned were aware of the conflict of interest, the Anti-Trust Authority shall enjoin the company to refrain from any conduct designed to take advantage of the measure in question, or to take steps to put a stop to the infringement or, if possible, to take remedial measures. If the company fails to comply by the deadline, the Authority shall inflict a fine according to the seriousness of the conduct, the maximum amount of which shall be proportional to the pecuniary advantage actually obtained by the company.

9. Once the checks referred to in paragraphs 1, 3 and 5 have been carried out, or the penalties, if any, referred to in paragraph 8 have been inflicted, the Anti-Trust Authority shall submit a reasoned report to Parliament, addressed to the Speakers of the Senate and the Chamber of Deputies. The report shall give details of the privileged situation, the way in which it distorts the market and, in general, its consequences and any penalties inflicted on the companies concerned.

10. Within 90 days of the entry into force of this law, the Anti-Trust Authority shall decide on the investigation procedures and verification criteria for the activities it is required to monitor under this law and the internal organisational changes required.

SECTION 7

(Responsibilities of the Broadcasting Authority in respect of conflicts of interest)

1. The Broadcasting Authority shall check that companies operating in the sectors referred to in Section 2, paragraph 1, of Law No 249 of 31 July 1997 that are under the authority of persons holding government office or their spouses or relatives up to the second degree or controlled by them, within the meaning of Section 7 of Law No 287 of 10 October 1990, do not act in such a way as to provide, contrary to the provisions of Law No 223 of 6 August 1990, Law No 249 of 31 July 1997 and Law No 28 of 22 February 2000, preferential support for a person holding government office.
2. In the performance of the tasks referred to in this Section, the Broadcasting Authority shall introduce the procedures, avail itself of the powers and inflict the penalties provided for in the statutory provisions referred to in paragraph 1. Section 6, paragraphs 4, 5 and 7, shall apply to the Broadcasting Authority.
3. Should it be ascertained that action has taken place in violation of the provisions referred to in paragraph 1, the Broadcasting Authority shall enjoin the company to refrain from the contested conduct and, where possible, take the necessary remedial measures. If the company fails to comply within the deadline, the Broadcasting Authority shall inflict on the company that has given preferential support to the person holding government office the penalties provided for in the statutory provisions referred to in paragraph 1. The fines provided for therein may be increased by up to a third, according to the seriousness of the violation.
4. Once the checks referred to in paragraph 1 have been carried out or any penalties have been inflicted under paragraph 3, the Broadcasting Authority shall, if a company operating in the media sector has behaved in one of the ways provided for in paragraph 1, submit a reasoned report to Parliament, addressed to the Speakers of the Senate and the Chamber of Deputies. The report shall indicate the substance of the preferential support provided to the person holding government office in the performance of his or her duties and the way in which it was provided, the remedial measures the company has been ordered to take, the consequences of the privileged situation and any penalties inflicted.
5. The Broadcasting Authority shall, within 90 days of the entry into force of this law, decide on investigation procedures and verification criteria for the activities it has been asked to monitor under this law and the internal organisational changes required.

SECTION 8

(Obligation to report back)

1. The Anti-Trust Authority and the Broadcasting Authority shall submit to Parliament a six-monthly report on the progress of the monitoring and supervisory activities referred to herein.
2. Should the declarations referred to in Section 5 not have been made or prove to be untrue or incomplete, an offence has been committed under Article 328 of the Criminal Code if the holder of government office does not comply with a specific request from the competent authority within the deadline set by that authority, which may not be less than 30 days. If

they have ascertained irregularities, the Anti-Trust Authority and the Broadcasting Authority shall, in accordance with their respective remits, submit a documented report on them to the competent judicial authority and the Speakers of the Senate and the Chamber of Deputies.

SECTION 9

(Increasing the staff of the Anti-Trust Authority and the Broadcasting Authority)

1. The staff registers referred to in Section 11 of Law No 287 of 10 October 1990 and Section 1, paragraph 18, of Law No 249 of 31 July 1997 shall each be supplemented by 15 people for the purpose of the tasks assigned to the Anti-Trust Authority and the Broadcasting Authority under this law. The authorities may also make use, subject to a limit of 15 people each, of any staff placed at their disposal following the current reorganisation and amalgamation of public authorities and other public bodies or placed in positions of command or in similar positions in accordance with the relevant regulations, in which case the authorities concerned shall have to bear only the extra pay due to such staff. The required professional profiles shall be determined by Prime Ministerial decree.
2. In accordance with the professional profiles specified in the Prime Ministerial decree referred to in paragraph 1, the Anti-Trust Authority may arrange to take on ten members of staff over and above those provided for in the organisation chart, as set out in Section 11, paragraph 1, of Law No 287 of 10 October 1990, subject to a corresponding cut of 10 fixed-term private-law contracts, provided for in paragraph 4 of that Section, on condition that the operation is financially neutral and does not engender extra costs.
3. For the purposes laid down in this Section, the Anti-Trust Authority shall be authorised to spend 1,462,000 EUR a year as from 2004 and the Broadcasting Authority 1,462,000 EUR a year as from 2004. The total cost of 2,924,000 EUR a year as from 2004 shall be met by a corresponding reduction in the appropriation entered, for the purposes of the three-year budget for 2004-2006, under the estimated current income head of the "Special Fund" in the Ministry of Economic Affairs and Finance budget estimate for 2004, with partial recourse for the purpose to the appropriation earmarked for that Ministry.
4. The Minister for Economic Affairs and Finance shall be authorised to make the necessary changes to the budget by decree.

SECTION 10

(Transitional provisions)

1. The provisions of Section 2 shall take effect 30 days after the adoption of the decisions provided for in Section 6, paragraph 10, and Section 7, paragraph 5.
2. The Anti-Trust Authority and the Broadcasting Authority shall exercise their responsibilities, as provided for respectively in Section 6, paragraphs 1 to 9, and Section 7, paragraphs 1 to 4, as from the 30th day following the adoption of the decisions provided for in Section 6, paragraph 10, and Section 7, paragraph 5.

3. When this law is first applied, the declaration referred to in Section 5, paragraph 1, shall be made by persons holding government office within 30 days of the date on which the provisions referred to in Section 2 take effect, in accordance with paragraph 1.

4. When this law is first applied, persons holding government office shall provide the information referred to in Section 5, paragraph 2, within 60 days of the deadline referred to in paragraph 3.