

The Bolkestein Directive and Beach Concessions' Holders: An Endless Italian Summer Saga

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While tourists are heading to Italian beaches and coasts for their summer breaks, the European Commission has been busy repeatedly warning both current and previous Italian governments about the need to comply with European regulations (i.e., Article 258 TFEU and the Service or Bolkestein Directive). Indeed, beach concessions in Italy seem to fail to meet the basic criteria of equality, transparency and fair competition. Italy has not taken any decisive actions to comply with EU legislation so far, to the point of considering the Bolkestein Directive inapplicable, arguing that Italian beaches are not a scarce resource. Yet, since European and national courts, institutions and agencies are supporting the need to comply with the EU laws, in conflict with the government, the result is a confusing and uncertain legal context.

- Such an ambiguous legal framework is pushing Italian civil society organisations and some political actors to raise the bar demanding free access to privately managed beaches, as concessions have been declared as expired by national courts. As things stand, any tourist could rightfully claim the right to enter and set up freely for some relaxing time on any Italian beach managed by private concessions.
- Political convenience, the need for electoral support, the fear of economically damaging concessions' holders, as well as the involvement of criminal organizations in the beachside service providers business, have all contributed to delay any reform aimed at liberalizing such market.
- To avoid fines, the current Meloni's government, after attempting to extend concessions until the end of 2024, might soon be forced to align national legislation with European laws, as already outlined by Italian judges and courts. Yet, the path seems still long and unpredictable.

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1 The Long-Standing Dispute Between Italy and Brussels Over Tourist-Recreational Concessions

Tourism in Italy generates around 5-6% of the national GDP, with a value of 98 billion euro, and accounts for 6% of the workers.¹ While such percentage is set to growth, as in the post-covid years, the number of tourists has been annually increasing, when it comes to beach holidays, Italy is undergoing a real revolution. Coasts and beaches are normally state-owned properties that can be managed for profit by private actors through concessions provided by national, regional or local administrations. To date, there are approximately 6.592 companies operating in the balneary sector in Italy, with 44.134 direct and indirect employees.² Yet, in no other EU country the management of such concessions has reached the same magnitude of conflict. According to the Italian Court of Auditors, from 2016 to 2020 the Italian public administration received around 97 million euros each year from its 12.166 concessions.³ This means that, with an average revenue of 260 thousand euro, those companies are paying only 7.603 euros a year for their concessions.⁴ Considering the convenience with which the concession holders can manage their business, it is evident that they have no interest in changing the national rules or having the Europeans ones applied, especially since the latter would be at their disadvantage.

As defined in the Civil Code, beaches in Italy are State-owned maritime properties⁵, whose administration and grant concession to third parties have been often delegated to regions and municipalities. While such authorizations to private actors should be of fixed terms, this condition has never been respected.⁶ On the contrary, holders administer their concessions as family properties, transferring the business from one generation to the next. In particular, until 2010, the Italian regulatory framework provided the so-called “preferential right” to incumbent holders of concessions, giving them an advantage over new competitors upon authorizations’ renewals. Yet, in 2009 such a practice was formally amended, as preferential treatments toward outgoing concessionaires infringed Article 49 TFEU as well as the Directive 2006/123/EC.⁷ Specifically, Article 49 TFEU prohibits discriminations or restrictions to EU nationals willing to establish or manage companies in the territory of another Member State. Secondly, the Directive 2006/123/EC – often referred as the Bolkestein or Service Directive, from Frits Bolkestein, former European Commissioner for Internal Market, aims at promoting economic growth and jobs creation by boosting a competitive services single market through the removal of barriers to their free movement. More specifically, paragraphs 1 and 2 of Article 12 are particularly relevant to maritime concessions, as they require impartial and transparent selection procedures for potential candidates when the number of authorizations is limited due to the scarcity of available natural resource or technical capacity. Furthermore, the same Article explicitly prohibits automatic renewal of authorizations, or any advantages offered to incumbent holders. To date, not only has Italian national legislation been failing to provide fair and transparent tenders, but, over the past decade, the

¹ Pagella Politica, (2023), [Il turismo sta davvero trainando l'economia?](#); Nomisma, (2023), [Gestione e Valorizzazione del demanio costiero: da Nomisma uno studio sui modelli gestionali](#)

² Openeconomics, (2023), [Il turismo in Italia](#); Nomisma, (2023), [Gestione e Valorizzazione del demanio costiero: da Nomisma uno studio sui modelli gestionali](#)

³ Corte dei Conti, (2021), [La gestione delle entrate derivanti dai beni marittimi balneari](#);

⁴ Enrico Marro, (2024), [Balneari, il governo taglia il canone del 4,5%: minimo a 3.225 euro. Il fatturato medio è di 260 mila](#), Corriere della Sera; Rossana Arcano, Massimo Bordignon, Alessio Capacci, (2023), [La triste saga delle concessioni balneari](#), Università Cattolica del Sacro Cuore.

⁵ [Article 822 of the Italian Civil Code](#)

⁶ See: Article 50 of Presidential Decree No. 616/1977; Article 105(2)(l) of Legislative Decree No. 112/1998.

⁷ European Parliament(2017), [Italian State Beach Concessions and Directive 2006/123/EC, in the European context](#).

number of beach concessions and associated business activities along Italy's coastlines has risen by 25%.⁸ The absence of any national legislation restricting the number of concessions that can be issued has resulted in a limited number of free beaches that citizens can enjoy without having to pay for services. Indeed, although access to the sea should be granted to everyone for free, in practice, some concession holders might ask tourists and vacationers to pay for simply entering the beach they manage. Generally, free access beaches represent less than half of the Italian coastline, a figure that drops to almost 30% for Liguria, Emilia Romagna and Campania.⁹

2 The European Commission and National Authorities' Role

To unblock such an anticompetitive concessions' business, back in January 2009, the Commission initiated a first infringement procedure against Italy, assessing the incompatibility of the Italian Navigation Code and of Article 9(4) of Regional Law No. 22/2006 of Friuli Venezia Giulia – which stipulated that the “right of preference” had to be considered when allocating concessions – with Treaty law (notably Article 43 TEC, currently 49 TFEU) and Article 12 of the Bolkestein Directive.¹⁰ At the time, the Commission urged the Italian government to align national legislation with the EU standards.¹¹ Yet, it was only after a second letter, sent on 5 May 2010, that Italy removed the “right of preference” from its national law and this led to the closure of the procedure in February 2012.¹² Nonetheless, the story was not over. Italy's repeated disregard for EU legislation prompted the Commission in 2020 to launch a second infringement procedure against the country with a letter of formal notice dated December 3, 2020.¹³ Not only did the Italian government automatically renew existing concessions for six years after cancelling the provisions that unfairly favoured concession holders, but in 2018 the expiration deadline was extended until December 31, 2033, by Prime Minister Conte's government. Although in 2022 Draghi's government anticipated the expiration of concessions to December 31, 2023 (Law 118/2022) after acknowledging the rulings of the Italian Council of State,¹⁴ the same law also foresaw the possibility of a technical extension for one additional year. Finally, in 2022, the Milleproroghe Decree issued by current Prime Minister Meloni's coalition government postponed the expiration of concessions to December 31, 2024, providing for the possibility of further deferment until 2025. Again, the Commission took the process further. On November 16, 2023, a reasoned opinion was delivered to the Italian government, emphasizing Italy's need to comply with EU legislation.¹⁵

Yet, the issue around beach concessions in Italy is subject of controversy not only at the EU level but also within Italy. National bodies such as the Italian Competition Authority (AGCM), the Italian Council of State (Italy's highest administrative court) as well as the Constitutional Court have adopted a stance aligning Italian case laws with the rulings of the Court of Justice of the European Union, notably its judgment issued on 14 July 2016.¹⁶ As early as 2007, AGCM highlighted the anti-competitive effects of the

⁸ Unioncamere, (2022), [Negli ultimi 10 anni +25% per le attività che gestiscono le spiagge italiane](#). *Comunicato stampa*. Available

⁹ Legambiente, (2022), [Rapporto Spiagge. La situazione e i cambiamenti in corso nelle aree costiere Italiane](#)

¹⁰ Sara Gobbato, (2018), *European Procurement & Public Private Partnership Law Review*, EPPPL, Vol. 13, No. 1, pp. 61-63; Infringement Procedure No. 2008/4908; European Commission, letter of 29 January 2009, C(2009) 0328.

¹¹ European Parliament, (2017), [Italian State Beach Concessions and Directive 2006/123/EC, in the European context](#).

¹² European Commission, (2010), letter of 5 May 2010, C(2010) 2734.

¹³ Infringement Procedure No. 2020/4118. European Commission, (2020), letter of 3 December 2020, C(2020) 7826.

¹⁴ Consiglio di Stato, (2021), Decision No. 17/2021; No. 18/2021.

¹⁵ European Commission, (2023), Reasoned Opinion, C(2023) 7231. See: Camera dei Deputati, (2013), [Atti di Controllo e Indirizzo](#), pp 8235.

¹⁶ The latter concerned the joined cases *Promoimpresa and Melis*, where, having first specified that concessions can be considered authorizations within the meaning of the Services Directive, the Court asserted that EU laws “precludes any

“right of preference”, specifying that automatic renewals of concessions discouraged improvements in services and favoured collusive behaviours.¹⁷ More recently, in 2017, it expressed similar concerns about concessions being awarded for excessively long periods.¹⁸ The Council of State’s rulings in 2021 confirmed the illegitimacy of Italian law on the matter.¹⁹ Since Meloni’s Milleproroghe decree failed to comply with these rulings, a new decision of the Council of State on March 1, 2023 asserted that the provision establishing the extension of concessions had to be disregarded by any state authority.²⁰ Lastly, in April 2024, the Council of State confirmed that concessions expired on December 31, 2023.²¹ The most recent ruling comes from the Constitutional Court, which on June 24, 2024 declared that the renewal of beach concessions in Sicily violates the Bolkestein Directive and is thus illegitimate.²² Given Italy’s divergence from EU legislation, acknowledged both by EU and national institutions, questions arise regarding the factors driving Italy’s persistent resistance to liberalizing beach concessions. A deeper examination of whose interests are at stake and which actors are supporting which stances allows us to shed light on the complex dynamics behind Italy’s coastal management.

3 Unravelling Interests Behind Italian Legislation

The beach concessions battle which has unfolded in Italy is certainly related to precise political and economic reasons. Italian governments have persistently resisted pro-competitive reforms over the past decade, justifying their positions in different ways. Right-wing political forces, for instance, have traditionally advocated for the interests of bathing establishments, highlighting the economic harm that competitive tenders could entail for the current concession owners and their enterprises. Currently, Prime Minister Giorgia Meloni has gone so far in justifying Italy’s non-compliance with EU standards to establish, in 2022, a Technical Advisory Committee on Maritime State Property Concessions. The Committee was tasked with assessing whether beach resources are really scarce in Italy as a way to undermine the applicability of Article 12 of the Bolkestein Directive. Yet, the conclusions of the Committee – which argued that only 33% of the Italian coastlines are occupied by privately managed beaches, and that, as a consequence, beaches do not represent a scarce natural resource – were rejected by the Commission as well as by other political actors. As pointed out to the Commission by MEP Rosa d’Amato (The Greens/EFA) in December 2023, this percentage was calculated by including inaccessible coastline areas in the computation rather than focusing solely on beaches suitable for bathing, as it should have been the case.²³

Yet, support for coastline enterprises comes from both the centre and the left-wing parties. It is precisely because of such cross-party support that concessions holders have been able to endure in their anti-competitive management of beaches, despite the clear contrast with the EU legislation and Italian court rulings. On the one hand, the general fear by politicians is to indeed alienate part of their electorate. On the other, it certainly does not help that part of the concessions are managed by mafia

national measure which permits the automatic extension of existing authorizations of State-owned maritime and lakeside property for tourist and leisure-oriented business activities, without any selection procedure for potential candidates”. Additionally, the automatic extension of existing concessions was found to be precluded under Article 49 TFEU, insofar as those concessions are of “certain cross-border interest”.

¹⁷ AGCM, (2008), [Bollettino, No. 39/2008](#).

¹⁸ AGCM, (2017), [Bollettino, No. 27/2017](#)

¹⁹ Consiglio di Stato, Decision No. 17/2021; No. 18/2021.

²⁰ Consiglio di Stato, Decision No. 2192/2023.

²¹ Costituzionale, (2024), Decision No. 3940/2024.

²² Corte Costituzionale, (2024), [Decision No. 109/2024](#).

²³ European Parliament, (2023), [Mapping of beach concessions in Italy](#).

organizations. According to data from reports by the Anti-Mafia Investigative Directorate, several beach concessions, even in the most popular areas, are often managed by mafia organizations and criminal clans. Their interest in holding this business is due to the extremely lucrative gains it generates thanks to the negligible costs of state concessions, as well as the opportunity to launder illicit money.²⁴ Yet, the number of pro-competition advocates across Italy is growing, encompassing members of the governmental opposition, national business associations, consumer organizations, as well as civil society organizations. In particular, the Radical Party on the one hand, but also the Association Free Sea (Mare Libero), have been in the first lines, advocating for the legitimate right to freely access the Italian beaches and conducting demonstrative actions such as entering some of Italy's most luxury and popular shores, claiming their right to simply stand or sit on the beach without paying for any service or collateral cost, given that concessions have expired at the end of 2023. Of course, this is generating infuriating reactions from concessions holders, who, however, have no right for having those people removed by the police. The battle for freeing Italian coasts and beaches started long ago, yet it seems summer 2024 will be the eye of the storm.

4 What Lies Ahead?

Although the Commission's actions have so far proved ineffective in triggering a comprehensive reform of Italy's concession allocation system, if nothing they have contributed to raising public awareness of the issue. Certainly, the new Commission will need to take further steps regarding the ongoing infringement proceeding. It may refer the matter before the CJEU, and even request penalties to be imposed on Italy. At the same time, civil society actions will be increasingly important in pushing the government from the bottom to change its policies and comply with EU regulations. Recent pressures exerted by Italian Prime Minister Giorgia Meloni on the leader of LEGA, Matteo Salvini, to abandon the idea of introducing reparations for incumbent concessionaires losing their authorizations, signify a certain level of government's unwillingness to escalate the controversy with EU institutions. It remains to be seen whether Prime Minister Meloni's nuanced position on the matter is merely a matter of "political opportunism", given the high political stakes during this crucial time for the European institutions following European elections. Conversely, it could also be the case that Italy eventually gives in to Brussels' pressures and amends its national legislation in compliance with the EU rules, thereby avoiding fines. Nevertheless, such an ambiguous legal framework, whereby concessions provided by public authorities have been declared expired by national courts and their extensions should be disregarded by any state authority, could result in a revolution across the Italian coasts during the summer. Indeed, as things stand, any tourist could rightfully claim the right to enter and set up freely for some relaxing time on any Italian beach, including the most luxurious and notoriously expensive ones currently managed by private actors.

²⁴ Luca Germano, Giuseppe Montalbano, Andrea Pritoni, (2023), Still waiting for the "liberal revolution"? The Italian pro-competition law and the cases of taxi licences and beach concessions. *Contemporary Italian Politics*, 16(1), 74–91; Direzione Investigativa Antimafia, (2022), [Relazione del Ministero degli Interni al Parlamento](#).



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