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Beach concessions: according to the Council of State, tenders can no longer wait; where things stand

When must tenders for beach concessions be launched? And what protections are owed to outgoing concession holders? The Council of State answers these crucial questions in judgment No. 6539 of 18 August 2026 (Seventh Section), returning to one of the most hotly debated issues of recent years: the renewal of state-owned maritime concessions. The ruling, which examines the lawfulness of the reassignment procedures launched by a Municipality, provides significant guidance both on the timing for calling tenders and on the recognition of compensation payable to outgoing concession holders.

Beach concessions: Municipalities can (and must) call tenders

Under the regulatory framework currently in force, as set out in judgments No. 17 and No. 18 of 2021 of the Plenary Assembly (Adunanza Plenaria) and subsequently incorporated into Article 3 of Law No. 118/2022, state-owned maritime concessions for tourist and recreational activities ceased to have effect on 31 December 2023. As a result, according to the prevailing view in the administrative case law, extensions ex lege must be disapplied as contrary to the Bolkestein Directive and, from 31 December 2023, new awards must be made through impartial and transparent selective procedures, in line with the principles of the Bolkestein Directive.

ÈIt is against this background that the Council of State held lawful a Municipality's resolution to launch tender procedures for the award of new concessions, on the basis that the existing concessions had expired.

30 September 2027 is not an extension, but a final deadline

The judgment clarifies, in particular, the scope of the 30 September 2027 deadline: this date does not give outgoing concession holders a right to continue operating until its expiry, but instead marks the maximum time limit for the transitional phase needed to reassign the concessions through tender. By that date, authorities are required to fulfil the competition obligations imposed by the Bolkestein Directive in the sector of state-owned maritime concessions for tourist and recreational use, including in respect of stretches of coastline already occupied by previous concession holders.

The principle set out by the Council of State is clear: Municipalities must promptly launch tender procedures and complete them as quickly as possible. Where a given authority completes the tender before the final deadline and the new concession holders are in a position to take over, existing concessions may (and indeed must) end even before 30 September 2027. That date therefore represents a maximum limit, geared towards the transition to the new arrangements, and not a deadline that necessarily applies to every concession.

The Council of State also reaffirms that the prohibition on granting authorities calling tenders pending the adoption of uniform criteria at national level, already provided for under Article 4, paragraph 4-bis, of Law 118/2022, must be regarded as superseded. The six-month time limit for adopting the relevant ministerial decree has in fact expired without result, with the consequence that the provision must be treated as tamquam non esset.

Compensation is not an automatic right for the outgoing concession holder

The Council of State's judgment also clarifies that compensation in favour of outgoing concession holders is to be regarded as merely contingent and free from automatic entitlements, flat-rate calculations or generalisations. Indeed, its recognition is not an automatic right for the concession holder, but is conditional on proof of the existence of "investments made and not yet depreciated" at the end of the concession, a burden that falls entirely on the outgoing concession holder. The judges of Palazzo Spada also rule out the possibility that the absence of the ministerial decree on the criteria for quantifying compensation could constitute an obstacle to launching tenders for the award of state-owned maritime concessions for tourist and recreational purposes. In other words, regulatory inertia does not justify a corresponding postponement of the competitive procedures.

Between procedures already launched and issues still to be resolved

Some Municipalities have already launched the procedures for reassigning state-owned maritime concessions, while others are still finalising the preparatory measures and selection criteria.

While the principle of the need for reassignment through tender can now be considered settled (at least as far as administrative case law is concerned), the next area of debate will mainly concern the specific arrangements for carrying out the procedures, in the absence, at present, of a national standard tender notice.

Early experience at municipal level shows approaches that are not entirely uniform. Some authorities – including, by way of example, Cervia (RA) and Viareggio (LU) – have already adopted resolutions setting out guidelines or policy measures aimed at defining in advance the arrangements for the selective procedures for awarding state-owned maritime concessions; others have gone straight to publishing the selective procedures – among them Lavagna (GE), Zoagli (GE), Recco (GE) and Ginosa (TA) –; others still have launched consultation processes with operators and trade associations.

Emilia-Romagna's experience falls into this latter category: the region has promoted a dialogue with coastal Municipalities, trade associations and trade unions aimed at defining shared guidelines. This initiative highlights the potential role of regional coordination in containing the risk of fragmented practices and in promoting greater uniformity in the management of concessions along the coastline.

Issues that remain open

With the principle of the need for reassignment through competitive procedures now settled, as far as administrative case law is concerned, numerous aspects relating to the practical structuring of the tenders remain to be clarified.

Of particular importance among these are the quantification of any compensation due to outgoing concession holders, the determination of the duration of the new concessions, the identification of the participation requirements and evaluation criteria, the weight to be given to the qualitative and economic elements of the bids, and the recognition of the investments proposed by competitors. There is also the need to coordinate with regional and municipal planning instruments for state-owned maritime land, together with the need for sufficiently uniform criteria.

It is therefore the content of the tender notices on which the next debate is set to focus.

Contatti

Leonardo De Vecchi
leonardo.devecchi@lcalex.it

Federica Paleari
federica.paleari@lcalex.it