

23 May 2008

THE "ALITALIA'S DECREE"



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The Law Decree n. 80 of April 23, 2008 (published on the Official Gazette of April 24, 2008) "urgent measure to ensure the public air transport" ("**Decree**"), despite its title which seems to be related to the public air transport in general, is aimed at addressing the crisis of Alitalia, the largest Italian air carrier which is controlled by the Italian Government.

In the Decree the Italian Government provides Alitalia with a Euro 300 ("**Loan**") mln loan to be repaid within the shortest of (i) the date when the Treasury will have transferred its whole interest in Alitalia (ii) December 31, 2008 ("**Repayment Term**").

It is worth noticing that the Decree provides that any act, payment and security put in place by Alitalia from April 23, 2008 until the Repayment Term are deemed to be equivalent, as per their effects, to those provided under article 67 of the Italian bankruptcy law. This article provides that acts, payments and security over the debtor's assets are not clawed back provided that these have been entered pursuant to a plan which appeared to be capable of turning around the company from its liabilities and ensuring the rebalancing of its financial situation and on which a "reasonableness" opinion was given by an expert.

It appears that the Decree provides the exclusion from claw back of acts payment and security put in place by Alitalia from April 23, 2008 and within the Repayment Term.

The Decree motivates the Loan and the above exclusion as an extraordinary and urgent measure to preserve public order and territorial continuity in order to maintain Alitalia's service for the time necessary to the new Government, after the general political election, to take all the initiatives necessary for the turn around and the privatisation of Alitalia.

The Decree has already been challenged as state aid by other airline companies.

Furthermore, if Alitalia will become insolvent and the defendant in claw back action will seek protection under the Decree, the Decree could also be challenged before the Constitutional Court (which is in charge to verify, upon request made by a judge, whether a law provision is in breach of the principles of the Italian Constitution).

The exclusion from claw back in favour of Alitalia may represent a clear inequality of treatment if compared to the claw back ordinary rules applicable to any other debtor. Such exclusion could be hardly justifiable on the mere basis of public order and territorial continuity indicated above.

Finally, please note that under Italian law, a law decree although immediately applicable and effective upon its publication on the Official Gazette, must be converted into law within a 60-day term since its publication. The lack of conversion implies the loss of any effect ever produced by the law decree. Moreover, during its conversion into law, decree may be subject to amendments eventually having an impact also on its past effects. With specific respect to the Decree the mentioned 60-day term elapses on 23 June 2008.

Constitutional and competition law issues are likely to jeopardize the full conversion into law of the Law Decree according to its current version. However, should its content be fully confirmed and the Law Decree and its conversion law not challenged on unconstitutional grounds, it can be argued (subject to the above possible successful challenges) that any act, payment and security carried out by Alitalia within December 31, 2008 will not be subject to claw back actions.

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