

## EXPLANATORY NOTES TO ART.53, PARA. 16-TER OF LEGISLATIVE DECREE 165/2001

Art. 53, para. 16 of legislative decree 165/2001: “**Employees** who in the last three years of office have exercised **authoritative or negotiation powers on behalf of public administrations referred to in art. 1, para. 2**, cannot perform, in the three years following the termination of their public contract, any working or professional activity for **private subjects** benefiting from the activity of the public administration carried out by means of these powers. Contracts entered and assignments bestowed in violation of the provisions of this paragraph shall be null and void, and private subjects who entered or bestowed them are prohibited from negotiating with public administrations for the following three years, with the obligation to return any ascertained related compensation received.”

1. According to art. 21 of legislative decree 39/2013, “only for purposes of enforcement of the prohibitions as defined by art. 53, para. 16-ter of legislative decree 165 dated March 30, 2001, and subsequent amendments, also subjects holding one of the assignments as defined by the above mentioned decree are considered **employees** of public administrations, including external subjects with whom the administration, public body, or private body controlled by the State establishes an employment or a consulting contract. These prohibitions apply from the date of termination of the assignment.”

Assignments as defined by legislative decree 39/2013:

- (i) assignments and positions in private or funded bodies: president with direct management proxies, managing director, executives, and positions performing regular consulting services for the body;
- (ii) top management administrative positions: top management, including secretary general, head of department, director general or equivalent positions in public administrations and private bodies controlled by the State, and conferred to subjects internal or external to the appointing administration or body and not involving exclusive tasks of administration and management;
- (iii) internal executive positions: management positions, by whatever name they may be known, involving exclusive tasks of administration and management, and management positions in the scope of direct collaboration tasks assigned to executives or other employees, including staff categories as per art. 3 of legislative decree 165 dated March 30, 2001, holding positions in the appointing administration or in other public administrations;
- (iv) external executive positions: executive positions, by whatever name they may be known, involving imply exclusive tasks of administration and management, and management positions in the scope of direct collaboration tasks assigned to subjects with non-executive positions or in any case not employees of public administrations;
- (v) director of public bodies and private bodies controlled by the State: president with direct management proxies, managing director and equivalent positions, or any other policy-making authority, by whatever name they may be known, of public bodies and private bodies controlled by the State.

According to the Italian National Anti-Corruption Authority (ANAC), see ANAC document AG/02/2015/AC of 02/05/2015, employees with **authoritative and negotiation powers** are those who effectively exercise the above-described powers on behalf of the public administration. Namely, these are employees issuing administrative measures on behalf of the administration and carry out legal negotiations with contract stipulation in their capacity of legal and economic representatives of the body.

This category includes, for example, managers and individuals with executive tasks pursuant to art. 19, para. 6 of legislative decree 165/2001 or pursuant to art. 110 of legislative decree 267/200, and top management positions assigned with specific powers of representation outside the body.

**According to art. 1, para. 2 of legislative decree 165/2001, all State administrations are public administrations**, including institutions and schools of any types and level, and training institutions, State companies and administrations with autonomous order, regions, provinces, municipalities, mountain communities and their consortia and associations, universities, independent public housing institutes, chambers of commerce, industry, craft trades, agriculture and their associations, all non-economic national, regional, and local authorities, national health system administrations, companies and bodies, ARAN (National agency for representation in public administration negotiations), and agencies listed under

legislative decree 300 dated July 30, 1999. Until a comprehensive revision of the regulations of the sector, the measures as defined by this decree continue to be applied also to the CONI [Italian National Olympic Committee].

In its Address 3/2015, ANAC clarified that the definition of **private subjects** must be interpreted as broadly as possible given that it also includes formally private subjects, either affiliate or controlled by the State.