

COUNTRY REPORT: ITALY
Italian Environmental Law Developments in 2012

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Economic Policies and Environmental Law

The recent shift of Italy towards a green economy over the last three years has been confirmed in 2012. In a period of economic recession, the *2012 GreenItaly Report*¹ shows that increasing investments are being made by Italian companies in the green economy and to improve the environmental efficiency of production systems. This is occurring in a context of the pursuit of a more environmentally sustainable conversion of mainstream industries (from chemistry to pharmaceutical, from wood and furniture to high tech, from tanning to boating, the food industry, the paper industry, textiles, construction, and electronics and services).

About 23 per cent of the companies in the industrial and tertiary sector invested in green technologies, reflecting a greater inclination to innovation and exports. Thus, the green economy is recognized as an important opportunity for growth in the economic system. Given this perspective, renewable energies have an important role to play. According to the Ministry of Economic Development, energy consumption using renewable energies is expected to exceed the target of 17 per cent set in 2020. This trend should ensure renewable energies account for 38 per cent of energy consumption in 2020. Photovoltaic power represents the main renewable energy used in Italy and this is promoted by State incentives.² The *2012 GreenItaly Report* shows that the increase in renewable energy

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¹ This is a joint report by the Unioncamere (the public body which represents all the Italian Chambers of Commerce) and Symbola Foundation for Italian Quality, under the patronage of the Ministry of the Economic Development and the Ministry of the Environment. The report has been presented in Rome on the 5th November 2012.

² The new installations of renewable energy for the year 2011 were: wind 1 GW; bioenergy 500 MW; water energy 200 MW. According to the Independent Energy Authority, at the end of 2011, the cumulative power of renewable sources was 41.4 GW. Comparing to the previous year, this value is equivalent to an increase of 36.7 per cent of the renewable energy.

production is due, in a large part, to the generous incentives granted to the 'green' electricity producers.³

Despite the green economy's opportunities, there was a decrease in investment by companies in 2011. This reduction can be mainly ascribed to the economic crisis that influenced companies' investments in new technologies.

Recently, two ministerial decrees have been adopted concerning photovoltaic incentives. The *Ministerial Decree* of 5 July 2012 (the Ministry of Economic Development) has introduced the Fifth Energy Grant,⁴ providing incentives for photovoltaic power. The new elements of the Fifth Energy Grant can be summarized as follows:

- a change from system feed in premium to a system feed in tariff (FIT) for energy plants lower than 1MW;
- a different tariff allocation for energy plants higher than 1MW; and
- the provision of different access mechanisms to incentives based on the technical features of the plants and the inscription in special registers.

At the same time, the Ministry of Economic Development adopted the *Ministerial Decree* of 6 July 2012, implementing the *Legislative Decree* No. 28/2011 of 3 March 2011 concerning the promotion of renewable energies.⁵ The Decree provides incentives to promote electric energy produced by renewable sources other than photovoltaic. The Decree provides a different tariff system: the feed in tariff (for power plants less than 1MW) and the premium tariff (for power plants higher than 1 MW). The Decree provides different access mechanisms for incentives: (i) direct access for certain types of plants identified by the legislator; (ii) inscription in special registers; and (iii) participation in competitive bidding within a reverse auction.

³ In Italy the promotion of renewable energies has taken place through the Green Certificates and the administered price mechanism. Referring to the last one, in Italy there is an incentive tariff applied to the energy produced (*feed-in premium*). Furthermore, Law No. 244/07 of 24 December 2008 (the *Finance Law*) has introduced the all-inclusive tariff (*feed-in tariff*) for small power plants (less the 1MW) that has represented an alternative to the Green Certificates.

⁴ The Energy Account is the incentive mechanism introduced to promote photovoltaic power in Italy. The *First Energy Account* was introduced by the *Legislative Decree* No. 387/03 of 29 December and implemented by a *Ministerial Decree* of 28 July 2005 by the Ministry of Economic Development. The Energy Account introduces the principle according to which the incentive is an income statement contribution and not an installation plant funding.

⁵ The Italian Independent Energy Authority (AEEG) has criticized the choice of not subsidizing the biomass energy preferring other renewable energies. The Authority observed that in Italy the biomass energy is more sustainable than wind and photovoltaic. Indeed, the wind energy and the photovoltaic power need a supply chain to import the plant components.

A report by the Italian Court of Auditors (*Corte dei Conti*) has confirmed the growth of the renewable energy sector in Italy. The Court has underlined the close connection between energy policy and the environment, especially the impact on natural resources. At the same time, the Court of Auditors has emphasized the great benefits of renewable energies in addressing political and economic problems.⁶

The analysis of incentive regulations shows that Italian environmental law in 2012 is characterized by an economic approach to environmental regulation⁷. Many laws adopted to deal with the economic situation by supporting the Italian economy contain environmental provisions. An example is the *Law Decree* No. 5 of 9 February 2012 (then transformed into Law No. 5 of 4 April 2012) which introduces the Unified Environmental Authorization (UEA) concerning administrative simplification for small and middle enterprises.⁸

The UEA sits alongside other instruments for environmental protection like Environmental Impact Assessment (EIA), Strategic Impact Assessment (SIA) and Integrated Environmental Authorization (IEA). The UEA replaces various environmental communication, notification and authorization acts, simplifying the relationship with public administration. The UEA can be considered as an application of a 'right to administrative simplification'. It means that public bodies must adapt their procedures to the needs of the enterprise, as well as safeguarding the protection of the public and environmental interests.⁹

Italy will have to incorporate the new *European Directive* 2010/75/EU, concerning integrated pollution prevention and control, by 7 November 2013. This will involve modifying the *Legislative Decree* No. 152/06 of 3 April 2006 (commonly referred as the *Environmental Code*) on integrated pollution prevention and control. The transposition of the *Directive*

⁶ Court of Auditors, *Energie rinnovabili, risparmio ed efficienza energetica nell'ambito della politica di coesione socio-economica dell'Unione Europea*, Special Report, 20th January 2012, www.corteconti.it.

⁷ See generally on Italian environmental law: J. Bermejo, Latre, *Italia: In Trienio de Renuncias en la Protección Ambiental*, in F. Ramón (ed), *Observatorio de Políticas Ambientales* (2012) Pamplona, Editorial Aranzadi, 143; and D. Amirante & C. Petteruti, 'Droit et Politique de l'environnement en Italie', (2009) 2 *Revue Européenne de Droit de l'Environnement*, 185.

⁸ The *Ministerial Decree* of 18 April 2005 (referring to directive 2003/361/EC about the definition of small and middle companies) identifies the small and middle companies with those having no more of 250 workers and an annual turnover not higher than 50 million of euros (or an annual budget not higher than 43 million of euros). The Unified Environmental Authorization is applied to all the plants that are not subjected to the Integrated Environmental Authorization.

⁹ This right to administrative simplification in environmental procedures can be gathered from the *Law Decree* No. 5 of 9 February 2012. Section IV of the *Law Decree* refers to the administrative simplification about the environmental regulation. A. Muratori, 'Decreto Semplificazioni: In Arrivo l'Autorizzazione Ambientale Unica' (2012) 3 *Ambiente & Sviluppo*, 205.

represents a good chance to improve IEA¹⁰ and to solve some problems of regulatory coordination.

The Economic Approach to Waste Management in Government Regulations

Italian environmental law in 2012 also reflects an economic approach with regard to waste management. The Government adopted the *Law Decree* No. 2 of 25 January 2012 (transformed into the Law No. 28 of 24 March 2012) at the beginning of 2012. It introduces extraordinary environmental measures. These measures relate to the emergency of waste management, including the prohibition on non-biodegradable bags and the extension of the provisions concerning by-products to material likely to end up as landfill. Referring to the extension of the notion of 'by-product', article 3 of the Decree justifies the provision with "the need ... to encourage the resumption of the infrastructure of the country". Once again the legislator refers to economic growth problems to justify laws concerning the environment. Indeed, article 3 of the Decree extends the notion of by-product to filling material, according to the provision of articles 184 *bis* and 185 of the *Legislative Decree* No. 152/06 of 3 April 2006.¹¹ In addition, the notion of by-product includes the excavated earth and rocks. In this regard, according to the qualitative standards of *Ministerial Decree* No. 161 of 10 August 2012 (adopted by Ministry of Environment), the excavated earth and rocks can be considered as by-product and not as waste.¹²

It is interesting to note that this Decree has been considered as being among measures for economic recovery. The adoption of the *Ministerial Decree* No. 161 was requested by the *Law Decree* No. 1 of 24 January 2012 (passed into Law No. 27 of 24 March 2012) concerning "Urgent provisions for competition, infrastructure development and

¹⁰ The Integrated Environmental Authorization (introduced by the *Directive* 96/61/EC on the integrated pollution prevention and control) is an authorization given after an impact assessment on the environment of a certain activity. This authorization replaces the other environmental authorizations, simplifying the administrative procedures.

¹¹ Article 184 *bis* of the *Legislative Decree* No. 152/06 of 3 April 2006 outlines the characteristics of the by-product. Article 185 of the same Decree refers to the cases of exclusion of the waste discipline. Therefore, if the conditions of articles 185 and 184 *bis* are met, the filling material can be considered as by-product. However, *Law Decree* No. 2 of 25 January 2012 provides for the issuing of a ministerial decree which will clarify the characteristics of the filling material to be considered as by-product.

¹² The *Ministerial Decree* No. 161 of 10 August 2012 qualifies the excavated earth and rocks as by-product under the following conditions: i) the excavated earth is indirectly produced during the realization of a work; ii) it can be reused in the work or in a different work without other treatment; and iii) it respects the quality standards fixed by the Decree.

competitiveness". At the same time, the Ministry of Environment considered the law concerning excavated earth and rocks as one of the measures for a sustainable growth.¹³

At the same time, the application of the monitoring system for dangerous waste (commonly referred to as SISTRI) has been suspended. Despite the law requiring the monitoring system to be introduced in 2009, it is not yet operational. The *Law Decree* No. 83 of 22 August 2012 (transformed into the Law No. 134 of 7 August 2012), commonly referred to as "Growth Decree",¹⁴ provided for the suspension of the system until 30 June 2012.

Economy and Environment: A Difficult Balance

The troubled economic situation raises a series of problems for the country's environmental choices. The danger is that economic needs prevail systematically over environmental needs. The role of the courts in this context is very important. In fact, the contribution of judges to the enforcement and interpretation of Italian environmental law has always been very important.

The criminal judges have recently ordered the closure of a major Italian plant, the steelwork ILVA Ltd. of Taranto. ILVA's managers and owners have been accused of environmental damage and environmental law violations, relating to air pollution and exhaust standards. The steelwork plant provides employment for local citizens and is important to the Italian economy as a whole. Notwithstanding, the judges decided that it was necessary to close the plant to protect the health and the environment against pollution. The court order has potential to create serious problems for the employees as the owners of the steelwork plant have threatened to close the plant permanently.

For this reason, the Italian Government adopted a law decree, commonly referred to as "Save-ILVA Decree", ratifying the appointment of a supervisor to manage the plant. The Decree provides that the supervisor must address measures for stopping pollution.

The Decree introduces the notion of "*plants of national strategic interest*" by a decree of the President of the Council of the Ministers. The Decree provides that the Minister of Environment, in its review of the integrated environmental authorization, can authorize the

¹³ Ministry of Environment, *The Measures for a Sustainable Growth*, 21 September 2012. On the sustainable growth see: V. Pepe, *Fare ambiente. Teorie e Modelli Giuridici di Sviluppo Sostenibile* (2008) Milano, Franco Angeli.

¹⁴ The Decree provides different economic and financial measures to restart the growth of the country.

continuation of production for a period not exceeding 36 months. This authorization is subject to the condition that the requirements contained in the review provision of the integrated environmental authorization are fulfilled. The Decree provides that the most adequate protection of the environment and health, according to the best available technology, must be applied.