

Recent Developments Environmental Legislation

Update 2008

Massimiliano Montini

ENVIRONMENTAL PROTECTION (IN GENERAL)

Legislative Decree No. 4 of 16 January 2008 (Ord. Suppl. No. 24 to GU No. 24 to 29 January 2008)

The Legislative Decree No. 152/2006, adopted by the Italian Government in April 2006 in order to re-organize the national environmental legislation, has been partially modified through various legal acts after its original publication (thanks to its article 3(2) of Legislative Decree 152/2006 which provided for a right of modification to be exercised by the Government up until December 2007).

First of all, a series of Ministerial and Inter-ministerial Decrees, aimed to the effective implementation of the Legislative Decree No. 152/2006 had been initially issued (2 May 2006), but very soon (26 June 2006) it was declared invalid because of a failure to follow the correct procedure for its approval. It started from there a tortuous *iter* for a shift on the entry into force of some parts of the Legislative Decree No. 152/2006, which lasted until the adoption of a final Decree containing some consolidated modifications to the initial legislative text.

The Government finally approved on 21 December 2007 the Legislative Decree containing the consolidated modifications to Legislative Decree No. 152/2006, namely the Legislative Decree No. 4/2008, the so-called "*Decreto Correttivo Unificato*", which was published on the Ordinary Supplement No. 24 to *Gazzetta Ufficiale* No. 24 of 29 January 2008. The new Decree is in force from 13th of February 2008.

The main changes introduced by the new Legislative Decree, concern the environmental impact assessment (EIA), strategic impact assessment (SIA), air and waste sectors. In the EIA/SIA matter, for instance, it provides for a reduction, up to 150 days, of the period necessary for the provision of the obligatory opinion from the competent EIA/SIA Commission. Moreover, it establishes a duty to perform a SIA for every plan and programme, in line with the pertinent EC legislation. As far as the water field is concerned, it reintroduces the definition of "direct discharge" into the water and it lifts the possibility to make use of the "silence-consent" procedure with regard to the authorizations for water discharges. In the waste matter, along with a bureaucratic simplification for the small industries, it revises the Italian legislation to make it more consistent with the EC law requirements.

Law No. 133 of 6 August 2008 (Ord. Suppl. No. 196 to GU No. 195 of 21 August 2008)

Art. 8 of Law No. 133 of 6 August 2008 of financial matters (which converted into law Decree No. 112 of 25 June 2008) provides for the establishment of ISPRA - Institute for Environmental Protection and Research - under the supervision of the Italian Ministry for Environment, Land and Sea. ISPRA performs the duties formerly discharged by various other institutions, namely:

- the former APAT, Italian Agency for Environmental Protection and Technical Services;
- the former INFS, National Institute for Wildlife;
- the former ICRAM, Central Institute for Scientific and Technological Research applied to the Sea.

CLIMATE CHANGE

Deliberation of CIPE (Inter-ministerial Committee for Economic Planning) No. 135 of 11 December 2007 (GU No. 310 of 29 December 2007)

With the CIPE Deliberation No. 135/2007 a revision of the national guidelines on greenhouse gases reduction was approved. The Deliberation in question launches a greater comprehensive programme for updating the CIPE Deliberation No. 123/2002, with the aim of updating and revising the existing provisions by 31st March 2008. Such a process should foresee the adoption of all the necessary measures to better reach the Kyoto Protocol commitments, without other emission reduction obligations posed on those sectors already covered by the EC emission trading scheme. The additional measures will have to be identified with a priority in the transport, civil, agricultural and eco-efficiency sectors. The financial resources which are needed in order to achieve the above listed Kyoto Protocol commitments should also be indicated there.

Ministerial Decree of 28 February 2008 (Ministry for the Environment, Land and Sea) (Ord. Suppl. No. 275 to GU No. 291 del 13 December 2008)

This Ministerial Decree contains the approval of the National Plan for CO₂ reduction assigned to relevant installations pursuant to EC Directive 2003/77 (EU ETS - Emission Trading Scheme), for the commitment period 2008-2012.

Legislative Decree No. 51 of 7 March 2008 (GU No. 82 of 7 April 2008)

The Ministerial Decree modifies the Legislative Decree 216/2006, which implemented the EC Directive 2003/87 in Italy, and re-organises the system of institutions in charge for the implementation of the EU ETS - Emission Trading Scheme in Italy. Such an implementation system is based on National Committee, participated by the Italian Ministry for Environment, Land and Sea and the Italian Ministry for Economic Development, whose functioning is now completely re-organised. The National Committee is also assisted by APAT (now ISPRA) for technical support on all environmental issue and by the GSE (Board for Management of the Electric Grid) for technical support on all issues related to electricity transmission.

The new Decree should also increase the recourse to JI and CDM projects for all installations subject to the EU ETS, pursuant to EC Directive 2004/101 (Linking Directive).

GREEN INCENTIVES

Law No. 210 of 30 December 2008 (GU No. 2 of 3 January 2009)

Law No. 210 of 30 December 2008 which converted into law the Legislative Decree No. 172/2008 extending the green incentives (so called CIP 6 incentives) scheme foreseen for energy production from renewable energy sources to waste incineration, assuming that a fixed percentage of 51% of the overall household waste is composed by organic waste.

This extension seems to be in contrast with the definition of renewable energy sources provided by EC Directive 2001/77.

Law No. 2 of 28 January 2009 (Ord. Suppl. No. 14 to GU No. 22 of 28 January 2009)

Law No. 2 of 28 January 2009 confirmed the possibility to a tax deduction of 55% (through a 5 year period) of the expenses for energy efficiency interventions in public and private buildings, subject to the technical guidelines established by the Law and the competent authorities. The admissibility of the various types of energy efficiency interventions had been originally determined by Law No. 296/2006 and by Ministerial Decree of 19 February 2007 (Ministry of Economic Planning).

Ministerial Decree of 28 February 2008 (Ministry for Economics and Finance) (GU No. 239 of 11 October 2008)

This Ministerial Decree contains provisions for the application of a reduced excise duty on the so-called bio-diesel (mix of conventional diesel with diesel from organic sources), in application of article 22-bis of Legislative Decree 504/1995.