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National Report - Italy

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1) General remarks

The Italian legislative framework (in the environmental field, but not only) is increasingly characterised by an over-regulation. Such an over-regulation, coupled with continuous amendments and modifications, seriously hampers the effectiveness of the law. An illustration of this trend is provided, for instance, by the 45 pieces of legislation (!) adopted in the energy sector at (the solely) national level in the year 2012
The unfortunate outcome of this trend is a permanent state of "legal uncertainty", which puzzles citizens and business, slows down the public administration's work, limits or prevents investments (also in environmental friendly activities) and makes difficult the every-day job of national courts.

2) Liability for environmental crimes

In 2011, Italy implemented the European Directive 2008/99/EC on the protection of the environment through criminal law, by integrating the legislation on companies' criminal liability with the introduction of a number of environmental offences, such as illegal waste management, omission of polluted sites' clean up duties, violation of air emission legislation (Legislative Decree No. 231/2001, as lastly amended in 2012).
The legislator, instead of identifying as criminal offences specific types of behaviours having a detrimental effect on the environment, decided to make reference to existing environmental offences, extending their subjective field of application from persons to companies. In other words, some of the existing offences – already existing as administrative violations that could be committed by persons – have been included among the offences applicable to the new companies' criminal liability regime. This "upgrading" has been made regardless of any evaluation of the concrete negative effects of those offences on the environment. A relevant implication of such approach is that the violation of formal duties (such as communications to the competent authorities in specific cases) is now treated in the same way of the violation of substantial ones (such as the duty to clean up polluted sites). As a consequence, the violation of mere formal duties entails the application of criminal liability for the relevant company.
With specific regard to the violations pertaining to the duty to clean up a polluted site, it is worth noting that, for the application of such offence, it is crucial to determine when a site can be classified as "polluted" pursuant to Italian law. Such issue is of a particular interest for companies having premises in Italy, since one of the criminal penalties provided by the Decree consists in the seizure and the possible confiscation of the site. The law, in fact, establishes that a Court is entitled to seize the assets of a company which is not fulfilling its clean up duties.
Normally, just when a site is "officially" declared polluted on the basis of the law and the company liable for the clean up omits to fulfil its duties, such company can be held liable pursuant to the provisions of Legislative Decree No. 231/2001. However, such a recurrent interpretation of the relevant legislation (and related consequences) has been threatened in 2010 by a decision of the Supreme Court (Corte di Cassazione, section III, decision 6 October 2010 n. 35774) which stated that there might be a violation of the duty to clean up even in case that the subject liable for the clean up, due to his/her omission, does not allow the ascertainment of the existence of a contamination in a potentially polluted site. In other words, when a person does not follow the procedure established by the relevant legislation, which is aimed at ascertaining the pollution of a site and to carry out the necessary clean up activities, the said person can be considered liable for violation of his/her clean up duties, in the same way of someone who does not clean up a site officially classified as contaminated.

3) Climate change

In recent years, Italy has promoted a trend towards the reduction of GHG emissions mainly through economic instruments and a large use of economic incentives and support schemes. As an example, one may refer to the recent Decree 11 January 2013 (issued by Ministry for Economic Development) which, in order to foster CO_2 reduction, provides for incentives for the purchasing of new low-emitting vehicles (i.e. electric, hybrid, LPG and gas powered vehicles). Such incentives range from 15% to 20% of the overall cost of the vehicle, up to certain maximum caps fixed by the Decree itself.

4) Energy

4.1) Energy strategy

In March 2013 (by way of Ministerial Decree 8 March 2013), Italy has approved the new "National Energy Strategy. This is a long-awaited comprehensive planning document, since the previous National Energy Plan" dated back to 1975 and been lastly amended in 1988. The National Energy Strategy is a "strategic planning act" ("*atto di indirizzo strategico*"), which contains the main guidelines for the energy sector. Although formally inspired by the goal of meeting (and overcoming) the EU "20-20-2020" environmental and climate change targets, the National Energy Strategy has been harshly criticised in its contents by environmental NGOs (Greenpeace, WWF, Legambiente) as well as by several stakeholders. In particular, the main critic concerns the foreseen (partial) shift of focus of the national support schemes from renewable energies to regasification plants. In fact, the National Energy Strategy promotes *inter alia* the enhancement of the domestic fossil fuel production by 24 millions BOE (barrel of oil equivalent) of gas and 57 millions BOE of oil per year.

4.2) Renewable energies

In order to promote the achievement of the national renewable energy target set by Directive 2009/28/EC (which is 17% on total consumption for Italy) the so-called "regional burden sharing" for renewable energy consumption has been adopted, by means of Ministerial Decree 15 March 2012. With such an act, the national target contained in Directive 2009/28/EC has been shared between all the Italian Regions. Moreover, the said Ministerial Decree foresees "trajectory targets" to be reached before the 2020 deadline.

4.3) Energy efficiency

In late 2012, a new regime concerning incentives for the promotion of energy efficiency and thermal energy from renewable sources was introduced (see Ministerial Decree 28 December 2012). In particular, the Decree provides for incentives to the public administration to perform energy efficiency interventions on existing buildings (i.e. substitution of existing heating plants with condensing heating plants or plants using heat pumps fed with renewable energy). Until the entry into force of the aforementioned Ministerial Decree, the national support scheme for the promotion of energy efficiency on existing buildings, namely a 55% tax deduction (50% in special cases such as solar cooling interventions), was designed only for citizens, companies and other non-public entities. These national support schemes are funded through an additional tax on the general gas bills.

Ministerial Decree 28 December 2012 also updated the national energy saving targets (up until 2016) as follows: year 2013 4,6 Million toe, year 2014 6,2 Million toe, year 2015 6,6 Million toe, year 2016 7,6 Million toe. Such targets should be met through energy efficiency measures taken by the main electricity and gas distributors. Alternatively, those subjects may comply with their energy efficiency duties by purchasing energy efficiency titles (so-called "white certificates"), that correspond to energy efficiency measures already performed by other subjects (mainly by dedicated Energy Services Companies – ESCO).