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RECENT DEVELOPMENTS – ITALY

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Policy and legislative developments

ENVIRONMENTAL POLLUTION/"ILVA CASE"

Ilva is an important steel plant in South Italy (Taranto), which has recently been at the centre of an alleged "environmental disaster" with criminal relevance, concerning dumping of dangerous substances and atmospheric pollution. In July 2012, the competent criminal Court of Taranto ordered the confiscation of six plants in the Ilva complex, together with many tonnes of products. Furthermore, the Court ordered the arrest of the top management of Ilva, accused of having corrupted representatives of public institutions in order to cover up the environmental and health risks caused by their plants.

Against the confiscation ruled by the criminal Court, the Italian Ministry for the Environment issued the so-called "Save Ilva Decree" (Law Decree of 3 December 2012, transposed into Law No. 231 of 24 December 2012). On the basis of such a decree and the related Integrated Environmental Authorisation approved by the Ministry under the IPPC rules, Ilva was allowed to re-start its productive activities after the environmental reclamation of the industrial site under the supervision of an ad-hoc appointed responsible person ("garante").

The Court of Taranto contested the Government's decree and made a complaint to the Constitutional Court denouncing a conflict of competence and the unconstitutionality of the decree. The Constitutional Court ruled against both complaints, therefore Ilva was allowed to continue its production.

Employment issues have clearly played a relevant role in the Ilva judicial matters. That's why Ilva represents a good (bad) example of integration between health, environment, work and social issues. In fact, last year, after a new confiscation of the plant, a new decree, namely Law Decree No. 61 of 2013, was issued with the aim of contrasting the persistence of serious environmental and health hazards arising from the infringement of the EIA procedure measures. Such a decree put Ilva under special administration, appointing an extraordinary commissioner, in charge of designing an "industrial plan" to comply with the EIA provisions, and subtracting the management powers from the holders of the company for a maximum period of 36 months.

On 14 March 2014, by means of new Decree (DPCM) pursuant to article 1, paragraphs 5 and 7 of Law Decree No. 61 of 2013, a new industrial plan was eventually approved. It will allow Ilva's environmental cleanup, requiring 3 billion euros until 2016 and 4,1 billion until 2020, to be financed by bank loans and capital increase. The industrial plan is, in fact, divided into two parts: the first part will last until the end of the special administration (2016) and it focuses on the environmental and security issues; the second part, lasting until 2020, deals with the financial recovery and the future growth of the company. The decree contains very significant and restrictive provisions, such as the complete elimination or, at least, the substantial reduction of coke from the productive circle as well as the re-opening and the closing of some sectors of the plant. Moreover, it contains an annex concerning the protection of the environment and health through the implementation of EIA provisions. The new industrial plan has been welcomed by various

authorities and associations, but the company and the State will need a few more months to precisely identify how and who will finance the plan and to make it fully operative.

ENVIRONMENTAL CRIMES/WASTE/"TERRA DEI FUOCHI CASE"

In December 2013, the Italian Government adopted Law Decree No. 136, then converted into Law No. 6 of February 2014, which introduced the crime of illegal waste incineration. Anyone who sets fire to abandoned wastes or to stored uncontrolled waste in non-authorised areas is punished with the arrest from two to five years. As far as dangerous waste is concerned, the arrest is provided for a period from three to six years.

The ratio of such a decree is grounded on the reiterated mafia (rectius, "Ecomafia") practice of illegally disposing of toxic waste in the areas located between Naples and Caserta. Waste is usually unloaded at night and covered with earth with the help of bulldozers. Sometimes waste is buried up to 20 or 30 meters deep, sometimes is hidden in the countryside, where mounds of illegal and hazardous waste used to be periodically set alight (this is why the area has been nicknamed the "Land of Fires", that is *Terra dei fuochi* in Italian). The pollution arising from such an illegal practice affects land, groundwater and air, with severe consequences on health, food production (for instance mozzarella) and local economy. ARPAC, the Campania environmental agency, has found more than 2.000 contaminated sites, but it is not always easy to find the exact areas where waste has been buried over the years.

Before the crime of illegal waste incineration had been introduced in article 256-bis of the Law Decree No. 152 of 2006 (the so-called "Italian Environmental Code") by means of the mentioned Decree Law No. 136 of 2013 converted into Law No. 6 of 2014, the Italian Government, in November 2012, appointed a special commissioner responsible for coordinating the competent authorities in order to remedy the situation and, on 11 July 2013, fifty-seven municipalities between Naples and Caserta signed the "Land of Fires Agreement", with the aim to collaborate against these illegal practices. Moreover the Government also decided in early January 2014 to send the army to Campania to fight the eco-mafia.

Before the introduction of the mentioned crime, some illegal conducts were already punished by art. 255 of Decree No. 152 of 2006 concerning the abandonment of waste, or by art. 256(1) of the same Decree sanctioning companies that dispose of waste by burning it, but the related penalties were not adequate, thus criminal conducts were not properly punished. Moreover, offences concerning burning of waste such as the ones of *Terra dei Fuochi* were already punished by article 6 of Decree No. 210 of 2008/210, which, however, applied only when an emergency state had been preliminarily declared by the relevant authority and only if urban waste was involved. On the contrary, the new crime introduced in 2014, applies to every kind of waste abandoned or illegally stored and the emergency state represents just an aggravating circumstance.

Relevant case-law

GMOs case-law

The Lazio Regional Administrative Court (*Tribunale Amministrativo Regionale*, TAR) has recently confirmed the banning of the cultivation of genetically modified crops in the Italian fields, rejecting the appeal of the owner of the farm "in Trois", Mr. Fidenato, who has for a long time tried, in vain, to obtain permission for sowing a variety of genetically modified maize, MON810.

The case started in 2010, when he began a cultivation of MON810 maize in the Pordenone province in the North of Italy, without the required authorisation arising from the Legislative Decree No. 212 of 2010, art. 1. When Mr. Fidenato appealed against the decision of the Court of Pordenone banning the cultivation, this Court requested for a preliminary ruling to the Court of Justice of the European Union (Article 267 of the EU Treaty), which ruled in favour of Mr. Fidenato (Case C-542/12), as no authorization is actually needed under EU law since the cultivation of MON810 corn has been preliminarily approved by Decision CE/294/98 of the European Commission.

As a result, Mr. Fidenato has continued his genetically modified cultivation, even if a large majority of Italians (at least 76%, according to Greenpeace) opposes GMO food for its possible risk concerning health and the environment. In fact it is commonly believed that genetically modified crops can harm the local produce that have been part of the Italian culture for centuries.

In 2013, the risk for the environment and health was also stressed through a series of checks conducted by the relevant authority in the Mr. Fidenato's surrounding fields, where GMOs contaminants were found in high percentages. Moreover, a law decree, jointly issued by the Ministry of Health, the Ministry of Agricultural Policy and the Ministry for the Environment (*Decreto interministeriale* 12 July 2013), specifically banned the cultivation of MON810 maize, not allowing its cultivation in Italy until the adoption of the measures provided for in article 54 of Regulation CE 178/2002 (and in any case not later than eighteen months from the date of adoption of the law decree).

Regarding the mentioned Regulation CE 178/2002, which establishes the European Food Safety Authority (EFSA, located in Parma, Italy) and lays down the general principles and requirements of food law and the procedures concerning food safety, article 54 disposes measures to be adopted in case of emergency, stating that "The Member State may maintain its national interim protective measures until the Community measures have been adopted". Therefore, Mr. Fidenato made his attempt to overturn the ban on planting MON810, bringing a proceeding to the Regional Administrative Court to obtain the annulment of the inter-ministerial decree above mentioned. Opposing Mr. Fidenato's request there were also many leading associations working in the fields of agriculture and environment, such as Coldiretti, Greenpeace, Legambiente, and Slow Food. The Court, however, on 9 April 2014 upheld the national ban on the planting of Monsanto's MON810 maize, also on the basis of the precautionary principle.

Moreover, the original authorization held by Monsanto, based on the mentioned CE/294/98, had already expired seven years before and the cultivation of MON810 was continued because of the implementation of Directive CE/53/2002, which established a catalogue (containing also MON810 maize), where all the agricultural plant species allowed in the European territory are listed (Common catalogue of varieties of agricultural plant species). Notwithstanding Mr. Fidenato's complaints concerning the alleged breach of EU law (more precisely, of Directive CE/53/2002 containing the Common catalogue of varieties of agricultural plant species), the Regional Administrative Court ruled that the case does not concern the authorisation itself, being rather an emergency measure, correctly adopted by the competent Ministries in application of the precautionary principle, with the aim of protecting the environment and health of the population from GMOs related risks.