

**AVOSETTA ANNUAL MEETING:
“FREE ACCESS TO ENVIRONMENTAL INFORMATION”**

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RECENT DEVELOPMENTS: ITALY

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Relevant recent new legislation

New Act of Environmental Crimes (“Ecoreati”) (Draft Law No. S.1345-B): The Italian Parliament approved on 19 May 2015 a long-awaited Act, currently under publication, which introduces into the Italian Criminal Code a new title on environmental crimes (“*Delitticontrol’ambiente*”). Thus, environmental crimes, which so far have been punished through the provisions on the “general” crimes provided for in the Criminal Code, by means of an extensive judicial interpretation, from now on will be punished through a series of *ad hoc* prescriptions on environmental protection.

The new title of the Criminal Code introduces five new crimes, namely environmental disaster, trafficking of nuclear materials, environmental pollution, hindrance to environmental monitoring and omitted remediation. Among the positive outcomes of the new piece of legislation, the following ones are to be mentioned: the profit deriving from the mentioned crimes has to be confiscated; the statute of limitation is modified for such types of offences (the maximum duration of the criminal law proceedings is increased for these crimes); penalties are reduced in case the offender acts in order to avoid further consequences or to remedy the damage.

Among the features that may limit the scope of the new piece of legislation, it has to be mentioned that both the environmental disaster crime, as well as environmental pollution crime, may be punished only in case that they have been committed in the absence or not in conformity with a permit (“*abusivamente*”). To this respect, it is feared that such condition could exclude from punishment the consequences of any environmental harmful (industrial) activity on the mere basis that it has been duly authorised and has been performed within the realm of the permit given.

Law No. 116/2014 and law No. 164/2014 on streamlining of existing legislation: these two new legislative acts were introduced in 2014 to revise and streamline the existing legislation in many sectors, with a view to boost economic recovery. They affect *inter alia* the scope of environmental protection legislation.

In particular, the “streamlining” trend concerns the process of landscape authorisations: firstly by introducing a streamlined authorisation procedure for minor interventions on existing buildings; secondly, by introducing the “silent consent” rule, with regard to the compulsory opinions to be given from the *Soprintendenza* (the main authority in charge with landscape protection), whose opinions are now considered to be “positive” ones if they are not rendered within 60 days from the date of the request.

In addition, the “streamlining” trend also refers to the construction of waste incineration plants, which from now on will be considered installations of a “strategic national interest” and will be subject to a more lenient and speedy expropriation procedure. This innovation is accompanied by the decision on the Government to promote the construction of a greater number of incineration plants throughout the national territory, which may be somehow “obliged” to receive waste also from other Regions.

Relevant recent case-law

Consigliodi Stato, Branch IV, Decision No. 839 of 19 February 2015:with reference to the scope of the judicial review which may be requested by environmental NGOs with regard to administrative acts related to environmental matters, the Supreme Administrative Court (*Consiglio di Stato*)enlarged such a notion, by including also administrative acts falling within the land planning sector in the realm of the environmental matters.

Consiglio di Stato, Branch III, Decision No. 605 of 6 February 2015: the Supreme Administrative Court (*Consiglio di Stato*)ruled that, pursuant to article 34 of EC Regulation No. 1829/2003,the farming of GMO maize MON 810 without the adoption of adequate management measures did not fulfil the requirements of the precautionary principle and, therefore, did provide an adequate protection to the environment and the biodiversity. As a consequence, in the case at stake, the Court upheld the adoption of an “emergency measure” taken at national level by the Italian Ministry of Health Protection, pursuant to article 34 of EC Regulation No. 1829/2003.

TAR Sicilia (Palermo), Branch I, Decision No. 461 of 13 February 2015: the Administrative Court of Sicily (*TAR Sicilia*) ruled that military areas, installations and infrastructures are not exempted from the application of national environmental legislation. In particular, the ruling concerns the construction of military infrastructures falling under the MUOS (Mobile User Objective System) project, whose authorisations have to comply with the national landscape protection law.