

Environment & Climate Change - Italy

New law on environmental crimes approved

Contributed by **B&P Avvocati**

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On May 19 2015 the Italian Senate gave final approval to a long-awaited law on environmental crimes (Draft Law 1345(B)). As a result, Italy has finally systematically codified its legislation on environmental crimes in line with the EU Environmental Crime Directive (2008/99/EC), which holds that member states must ensure that environmental crimes are punishable by "effective, proportional and dissuasive" penalties.

The new law features several new elements, including:

- a specific chapter on environmental crimes within the Criminal Code (Title VI-*bis*), which encompasses newly codified offences such as:
 - environmental pollution (Article 452-*bis*);
 - environmental disaster (Article 452-*quater*); and
 - the obstruction of checks carried out by public authorities in the environmental, occupational health and safety sectors (Article 452-*septies*);
- substantially aggravated penalties for the newly codified offences, which may be punished when committed through either malicious or negligent conduct;
- a more proportional penalty system based on the distinction between serious environmental offences, which are heavily penalised, and purely formal offences, which are less serious in nature and subject to a newly established regularisation mechanism.

While the definitions of new crimes are a welcome addition to the corpus of environmental legislation, the language used in their codification is not entirely beyond criticism. The law lists "any offence to public safety... depending on the number of parties offended or exposed to danger" among the types of unlawful conduct that may cause an environmental disaster. The language is arguably ambiguous and far from proportional, as it appears to include situations which may not necessarily be as serious as the general understanding of what is considered a disaster.

Another relevant example lies in the newly codified offence of failed land remediation (Article 452-*terdecies*), which reads that "any party... which fails to undertake remediation... shall be punished". It appears that the norm fails to outline the exact terms under which failure to remediate becomes relevant for unlawful conduct to take place. Consequently, any irregularity in the undertaking of a remediation procedure could theoretically constitute a criminal violation.

Italy's new law aims to codify environmental criminal law in more systematic terms, in line with its European counterparts. In this respect, the Italian legislature has taken a step in the right direction. However, judges will play a key role in ensuring that the new law is not limited by its sometimes imprecise formulations, but rather is applied in an effective and balanced manner, to respect the intention originally expressed by the European legislature.

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