

Environment - Italy

Combining precaution and proportion in environmental law

Contributed by **B&P Avvocati**

March 24 2014

The precautionary and proportionality principles are considered the most important provisions of the Environmental Code (Decree-Law 152/2006). However, these two principles often collide. The precautionary principle envisages that regulators act even where it is uncertain whether a specific process or substance is actually hazardous. The proportionality principle calls for the adoption of general balancing criteria for decisions affecting industrial and commercial processes.

Recent court decisions – the latest being Constitutional Court Decision 85/2013 – suggest that a compromise can be reached by considering the proportionality principle as a tool to define both the level and pace of the precautionary measures to be adopted for possible environmental risks. The proportionality principle sets the required level of precaution as aiming for the desired results to be achieved through the least costly measures possible. Further, it identifies the pace and speed of the precautionary measures by implying that they be adopted in a gradual way while considering the pre-existing situation.

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