

Environment & Climate Change - Italy

Primacy of international environmental standards upheld over EU norms

Contributed by **B&P Avvocati**

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Decision Comment

Following a recent Council of State decision, Italian industrial operators may see their requests for environmental permits rejected on the grounds of international standards that have yet to find recognition at European level.

Decision

With Decision 4588 of September 10 2014, the Council of State confirmed the conclusions reached by the Regional Administrative Tribunal (Decision 2/2013), whereby the operator of a poultry station was denied environmental integrated authorisation by local authorities on the basis of non-compliance with the ammonia emission limits prescribed by the US Environmental Protection Agency (EPA).

Although the activity was found to be in line with the best available techniques, the council held that its non-compliance with EPA limits posed "a risk, albeit a potential one, to the health of citizens and the environment".

In reaching this conclusion and endorsing the logic of the territorial court, the council explicitly upheld the 'precautionary principle', recalling the application of "specific, neither unreasonable nor merely presumptive, scientific evaluations" in order to justify the choice of local authorities based on the "high level of protection" implicit in the principle.

Interestingly, the council acknowledged that the precautionary principle constitutes "one of the foundations" of EU environmental policies, before going as far as asserting that, on the grounds of its "juridicalisation" and "justiciability", it must be intended as granting broad discretion to the authorities whenever applied. In doing so, the council rejected the plaintiff's claim that the choice to invoke the EPA limits was a glaring violation of the constitutional principles of equality and freedom of private economic initiative, in that it entailed differential treatment in relation to other operators – treatment which, according to the plaintiff, was wholly unjustified due to the lack of recognition of EPA standards in both Italy and the European Union.

Comment

The council decision has mixed consequences. From a preventive perspective, the choice to uphold the precautionary principle – a well-established pillar of environmental law and policy at international and EU levels – is consistent with previous court decisions. However, such rigour cannot and should not be irrespective of the territorial limits on the application of environmental protection standards in different jurisdictions, particularly where the added risk of creating potentially distorted effects in the regulation of industrial activities is considered. Therefore, there are likely to be new discussions on this issue, albeit with less extreme conclusions.

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