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## <T1>X. COUNTRY / REGION REPORTS

### <T2>8. Western Europe

#### <T3>H. Italy

Following a political crisis that led to the resignation of Romano Prodi's government in early 2008, a centre-right government headed by Silvio Berlusconi stepped in after general elections. In an opening speech to the Parliament, the new Environmental Minister called for a shift from 'ideologic' environmentalism to 'liberal' environmentalism, according to which environmental protection is a critical resource for economic development and can provide future business opportunities. Among the environmental priorities of the new government are renewable energies and nuclear energy (despite a ban on nuclear power resulting from a 1987 referendum), environmental taxation, and waste reduction (Italian Ministry for the Environment, Land and Sea, Press Release, 1 July 2008, <[http://www.minambiente.it/index.php?id\\_doc=1196&id\\_oggetto=2](http://www.minambiente.it/index.php?id_doc=1196&id_oggetto=2)>).

Against this background, Italy's performance related to environmental legislation in 2008 was marked by continued tensions with the European Union over the waste management crisis in Naples, negotiations on climate change and numerous infringements of environmental legislation. On the international scene, Italy supported several biodiversity-related developments. At the domestic level, the revision of the Environmental Code continued, notwithstanding the change in government.

#### <S1>(1) Multilateral Agreements and Processes

##### <S2>(A) Biodiversity

Italy hosted a series of meetings under the Convention on Migratory Species (CMS) in Rome which comprised: the ninth meeting of the Conference of the Parties (COP 9) to the CMS; the first Meeting of the Parties to the Gorilla Agreement; the seventh UN Environment Programme (UNEP)/Global Environment Facility (GEF) Siberian Crane Wetlands Project Steering Committee meeting; the thirty-fourth CMS Standing Committee meeting, the Aridland Mammals meeting; and the second Meeting to Identify and Elaborate an Option for International Cooperation on Migratory Sharks. In its national report to the CMS (Doc. UNEP/CMS/Inf.9.12.42), Italy identified the following obstacles to the protection of migratory bird species listed in Annex I: unsustainable environmental conditions in stop-over sites; illegal taking; disturbance due to direct/indirect human activities; and killing of 'look-alike' species. Obstacles in the conservation of marine species listed in Annex I include: illegal fishing, in particular the use of driftnets; loopholes in the fishing regulations; collision with ships; disturbance from unregulated whale-watching; and acoustic pollution.

Italy submitted its annual report to the Convention on International Trade in Endangered Species (CITES) in July 2008. There, it reported to have contributed with funding to an action plan on *Vicugna vicugna* in cooperation with TRAFFIC Europe, and the Governments of Argentina and Bolivia, and to a project for the conservation of *Ara rubrogenys*, in cooperation with the World Wide Fund for Nature (CITES, Twenty-third meeting of the Animals Committee, Regional Reports, AC23 Doc. 5.4). Italy also reported about its collaboration with TRAFFIC/WWF Italy for activities on and analysis of illegal timber trade, and supported, together with France and Spain, the CITES Secretariat in the organization of a Workshop on *Prunus africana* (Kenya, 2008). Furthermore, Italy reported

difficulties with CITES implementation in relation to measuring timber shipments (CITES, Seventeenth Meeting of the Plants Committee, Regional Reports, PC17 Doc. 5.4 (Rev. 1)).

Under the Ramsar Convention, Italy designated the site 'Lagustelli di Percile' (consisting of two closed Apennine lakes) as new Wetlands of International Importance (<[http://www.ramsar.org/archives/archives\\_bulletin081018.htm](http://www.ramsar.org/archives/archives_bulletin081018.htm)>). In addition, Italy completed the formalities for the removal of one of its Ramsar sites, 'Stagno di Molentargius,' from the Montreux Record of sites 'where changes in ecological character have occurred, are occurring, or are likely to occur.' This implies that rehabilitation actions have been taken to recover this area's natural conditions (Ramsar Convention Secretariat news, 2 July 2008 at <[http://www.ramsar.org/wn/w.n.italy\\_molentargius\\_montreux.htm](http://www.ramsar.org/wn/w.n.italy_molentargius_montreux.htm)>).

The thirty-second Session of the World Heritage Committee (Quebec City, 2008) welcomed the steps undertaken by Italy towards the development of a twinning program of exchange and cooperation between the World Heritage property of the Rice Terraces of the Philippines Cordilleras and the Cinque Terre property (Italy), and the commitment of Italy, together with the United Nations Foundation, the African World Heritage Fund, and Belgium to support the restoration of the outstanding universal value of the five properties of the Democratic Republic of the Congo (Doc. WHC-08/32.COM/24). The Committee further welcomed the cessation of mining activity that could have affected the natural property in the Aeolian Islands, and requested Italy, in collaboration with the World Heritage Centre and International Union for Conservation of Nature (IUCN), to ensure that mines will not be reopened in the future (*Ibid*, Decision 32 COM 7B.18). The Committee also requested Italy to take action, by 1 February 2009, to fully implement previous recommendations concerning, *inter alia*, setting a deadline for the removal of stockpiled pumice material, and putting in place appropriate management measures, including a thorough and comprehensive environmental impact assessment of the proposed enlargement of the port of Lipari and of the transit of cruise ships (Doc. WHC.07 /31.COM /24, Decision 31 COM 7B.24). Finally, the Committee inscribed the Swiss/Italian Rhaetian Railway in the Albula/Bernina Landscapes on the World Heritage List on the basis of criteria in part related to environmental values, namely the fact that it constitutes an outstanding technical, architectural, and environmental ensemble and embodies architectural and civil engineering achievements, in aesthetic harmony with the landscapes (Doc. WHC.08 /32.COM/ 24, Decision 32 COM 8B.38).

### <S2>(B) *Climate Change and Desertification*

In the framework of the international regime on climate change, Italy:

- established its national register for agricultural and forestry carbon sinks in April 2008;
- published its annual status report of the greenhouse gas inventory (Doc. FCCC/ASR/2008/ITA) on 19 June 2008; and
- approved the allocation of CO<sub>2</sub> emission quota for 2008-2012, which was implemented in November 2008.

To celebrate the World Day to Combat Desertification 2008, Italy organized an international workshop on 'The International Network of Traditional Knowledge: operational tools, best practices and project development on the appropriate use of resources to contrast climate change and desertification' (Florence, 13-14 June 2008), a workshop on 'Water and Agriculture: the future of crops and irrigation in Piemonte' (Turin, 16 June 2008), and a technical workshop in Palermo on 'Desertification in Sicily: activities, results and outcomes.'

It also produced a short video on 'Desertification in the world and in Italy' (available at <<http://www.unccd.int/publicinfo/june17/2008/menu.php?newch=175>>).

<S2>(C) *Aarhus Convention*

According to Italy's Implementation Report submitted to the Aarhus Convention Secretariat on 3 June 2008 (Doc. ECE/MP.PP/IR/2008/ITA), Italy strongly supported and provided leadership for the drafting, adoption, and application of the Almaty Guidelines on public participation in international forums. As a practical example, Italy committed to refocus the Regional Action Centre on Remote Sensing in the framework of the UNEP Mediterranean Action Plan, by extending its activities to environmental information and communication. At the domestic level, it was noted that the implementation of legal provisions on access to environmental information was not complete, arguably due to the high number of existing public authorities' difficulties with collecting environmental data at the central level. It was further reported that an institutionalized procedure for public participation in preparing national legislation still does not exist, although there are some *ad hoc* mechanisms for public involvement in legislative activities. With regards to public access to judicial remedies, it was noted that in practice there are often cases of judicial congestion. The procedures for inspection were reported to be complex and involving too many public authorities. Furthermore, despite some fragmented initiatives (e.g. free legal advice provided by local environmental protection agencies or other institutions), costs to access justice are still considered an obstacle, especially with regard to lawyers' fees.

<S2>(D) *Other Matters*

In 2008, Italy supported the conclusion of the Protocol on Integrated Coastal Zone Management under the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution during a meeting of the Barcelona Convention parties in Almeria (15-18 January 2008). Italy signed the Protocol as soon as it was adopted.

In addition, Italy ratified and implemented the 1995 Amendment to the Basel Convention on transboundary movements of hazardous waste (Decision III/1 of the COP-3 Basel Convention Conference of the Parties) through Law n. 175 of 15 October 2008 (published in the Official Gazette n. 263 of 10 November 2008).

<S1>(2) *Bilateral Cooperation*

In 2008, the following environmental activities related to Italian bilateral cooperation can be singled out:

- Italy sponsored a pilot project for research and development in Tunisia on water, heat, and electric energy from solar pond technology (Press Release, 31 December 2008, <[http://www.minambiente.it/index.php?id\\_doc=661&id\\_oggetto=3](http://www.minambiente.it/index.php?id_doc=661&id_oggetto=3)>);
- the Italian Minister of the Environment and the Albanian Ministry of Environment signed on 17 March 2008 a cooperation agreement (Press Release, 13 November 2008, <[http://www.minambiente.it/index.php?id\\_doc=653&id\\_oggetto=3](http://www.minambiente.it/index.php?id_doc=653&id_oggetto=3)>);
- the Italian Environmental Ministry renewed its participation in the Renewable Energy and Energy Efficiency Partnership (REEEP) promoted by the UK Government, to support renewable energy and energy efficiency in the Mediterranean basin (Press Release, 23 October, 2008, <[http://www.minambiente.it/index.php?id\\_doc=643&id\\_oggetto=3](http://www.minambiente.it/index.php?id_doc=643&id_oggetto=3)>); and

- Italy produced feasibility studies for Clean Development Mechanism (CDM) projects in Morocco (Press Release, 29 September 2008, <[http://www.minambiente.it/index.php?id\\_doc=635&id\\_oggetto=3](http://www.minambiente.it/index.php?id_doc=635&id_oggetto=3)>).

### <S1>(3) Relations with the European Community (EC)

According to the 2007 Environmental Policy Review released in 2008, Italy had the highest number of ongoing infringements of EU environmental legislation as of 31 December 2007, mostly related to nature protection and waste legislation (Doc. SEC(2008) 2150). On a positive note, the Review noted that Italy was the third highest area of organic farming within the EU. Continued soil erosion and its links with illegal constructions (and their depenalization through *ad hoc* legislation) were, however, noted with concern. The Review also concluded that the transposition of the Water Framework Directive and its implementation was still incomplete, and that air pollution in urban areas was a serious problem.

Overall, in 2008, two issues dominated the relationship between Italy and the EC: the continued waste crisis in Naples and the Italian surprise opposition to the European Union Carbon and Energy Package. The former issue is covered in the following section on infringement procedures.

With regards to the latter, during the EU Leaders Summit on 11-12 December 2008 in Brussels, Italian Prime Minister Berlusconi unexpectedly threatened to veto the EU Carbon and Energy Package unless Italian concerns for domestic industry were met. The Italian Environment Minister called for revisiting the package once its costs would have been fully assessed. EU Environment Commissioner Dimas was quoted as saying he was ‘astonished’ by Italian objections which were considered based on overestimated cost of compliance (<<http://www.planetark.com/dailynewsstory.cfm/newsid/50666/story.htm>>). Furthermore, Italy, with support from Germany, France, and the United Kingdom, proposed to reduce penalties for non-compliance in the proposed regulation on CO<sub>2</sub> from cars. During the negotiations on a directive on renewable energies, Italy requested a recalculation of national objectives that were considered too ambitious (<<http://www.ifri.org/files/Energie/Negotiatinov.pdf>>).

### <S2>(A) Implementation of EC Legislation

The following legal instruments were adopted in 2008 to implement EC legislation (<<http://www.camera.it/parlam/leggi/elelenum.htm>>):

- Ratification and implementation of the Lisbon Treaty of 13 December 2007 by Law n. 130 of 2 August 2008 (published in the Official Gazette n. 185 of 8 August 2008).
- Urgent measures for compliance with Community obligations and decisions of the European Court of Justice by Law n. 101 of 6 June 2008 (published in the Official Gazette n. 132 of 7 June 2008), which included norms to address four violations of EU environmental law, namely on water, waste and waste from electric and electronic appliances, fisheries, and end-of-life vehicles.
- Measures for compliance with Community obligations by Law n. 34 of 25 February 2008 (published in the Official Gazette n. 56 of 6 March 2008) – so-called ‘Legge comunitaria 2007,’ which delegates the government to adopt legal acts for the implementation of, among others: Regulation (EC) No 2173/2005 on Forest Law Enforcement, Governance, and Trade; EC Directive 2006/118 on the protection of groundwater against pollution and deterioration; and EC Directive 2006/121 amending



EEC Council Directive 67/548 on the approximation of laws, regulations, and administrative provisions relating to the classification, packaging, and labelling of dangerous substances in order to adapt it to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency.

- Ratification of the Association Agreement with Albania (12 June 2006) by Law n. 10 of 7 January 2008 (published in the Official Gazette n. 28 of 2 February 2008).
- Ratification of the Convention on the European Forestry Institute (28 August 2003) by Law of 19 December 2008.
- Implementation of EC Directive 2006/32 on energy end-use efficiency and energy services by Legislative decree n. 115 of 30 May 2008, which provided incentives to new constructions and renovations guaranteeing greater energy efficiency, and simplified bureaucratic procedures for the installation of solar or photovoltaic panels and micro-eolic structures.

The Ministry of Environment also issued a circular on 4 August 2008 (published in the Official Gazette n. 190 of 14 August 2008) to implement EC Directive 2003/4 on public access to environmental information, which was meant to repeal Decree n. 39 of 24 February 1997 on free access to environmental information (Press release, 1 September 2008, <[http://www.minambiente.it/index.php?id\\_doc=628&id\\_oggetto=3](http://www.minambiente.it/index.php?id_doc=628&id_oggetto=3)>). The legal effects of the circular are doubtful, however, as this type of instrument cannot repeal normative acts. Indeed, the Constitutional Court stressed that ministerial circulars cannot amend or repeal legislation, when condemning the practice of expanding through interpretative circulars the cases of post-factum authorisations of illegal constructions determined by *ad hoc* legislation (Decision n. 25197/08 of 20 June 2008).

#### <S2>(B) *Infringement Proceedings*

The European Court of Justice (ECJ) condemned Italy twice in matters related to waste management in 2008. In the case C-283/07, the Court condemned Italy for having legislatively excluded, *a priori* from the definition of waste, certain scrap waste intended for use in iron and steel activities and high-quality refuse-derived fuel. The Court reasoned that such waste *per se* is not sought as secondary raw material, and that the possible effective reuse of such waste would only occur after a considerable –possibly indeterminate– amount of time, which would imply the need for long-term storage of a potential source of environmental damage (C-283/07, *European Commission v Italian Republic* [2008] E.C.R. I of 22 December 2008). In the case C-368/07, the Court also condemned Italy for failing to prepare and adopt waste reception and handling plans for the ports of Trieste, Augusta, Brindisi, Reggio Calabria, Palermo, Mazara del Vallo, Chioggia, Venezia, Porto Cervo Marina e Marina di Portosole, thereby failing to fulfil its obligations under Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues (C-368/07, *European Commission v Italian Republic* [2008] E.C.R. I of 25 September 2008).

With regards to nature protection, in the case C-503/06, the ECJ condemned Italy for adopting and applying, for the region of Liguria, legislation authorising hunting of bird species protected under the Birds Directive, without setting any time limitation or ensuring that no other satisfactory solutions be available. In addition, Italian legislation failed to mention either the abstract reason or the specific grounds on which the waiver was considered necessary. The Court adopted the decision based on the lack of counterarguments presented by Italy (Judgment of 15 May 2008).

The Court removed from the register case C-218/08 concerning the alleged failure to

draw up external emergency plans for the establishments covered by the Directive on the control of major-accident hazards involving dangerous substances (Seveso II Directive) (C-218/08, Removal Order, 18 November 2008). The Commission also closed a case on the designation of special protection areas on the basis of progress achieved by Italy in 2007 in the implementation of a 2003 ECJ decision under the Birds Directive. (Doc. IP/05/56, European Commission Press Release). The Commission reported that Italy had designated the last outstanding sites and Italian regions had reached a satisfactory level of special protection areas (European Commission Press Release, Doc. IP/08/526, 3 April 2008).

The Italian Government brought an action against the European Commission on 11 August 2008 (Case T-305/08), challenging before the Court of First Instance the European Communities' emergency measures on fishing bluefin tuna by purse seiners in the Atlantic Ocean. The proceedings were removed from the register by order of the President of the Tribunal on 19 September 2008.

### <S2>(C) *Infringement Procedures*

In June 2008, the European Commission sent Italy a first written warning concerning Italy's failure to comply fully with an ECJ judgement of 2006, condemning it for not carrying out an environmental impact assessment of a new waste incinerator at Massafra, in the Puglia region, in violation of the Environmental Impact Assessment (EIA) Directive (Doc. IP/08/883, European Commission Press Release). An ex-post EIA of the incinerator had been launched since the date of the ECJ decision, but the Commission determined that it failed to provide for the effective public consultation required by the directive. Furthermore, the Commission sent Italy another first warning over the Lazio region's failure to adopt a waste management plan. The ECJ had already condemned Italy in June 2007 for lacking waste management plans for a number of regions and provinces (Doc. IP/08/705). The European Commission sent yet another first written warning to Italy for failing to issue new or updated permits for industrial installations already in operation within the 30 October 2007 deadline, in line with the Directive on Integrated Pollution Prevention and Control (Doc. IP/08/704).

In addition, the European Commission sent a final written warning over a river water abstraction project which was considered harmful to a valuable wildlife habitat within the EU's Natura 2000 network of protected sites (the 'Basso Trebbia' site). The latter was designated both as a Site of Community Importance under the EU Habitats Directive and as a Special Protection Area under the Birds Directive. The Italian authorities carried out an assessment of the water abstraction project's effects on the site which concluded that a certain 'minimum vital flow' of water in the river should be ensured to prevent damage. However, the authorisation granted to the project required the minimum vital flow to be respected only from 2009 onwards, thus allowing ecological damage from reduced water flows until then, in violation of the Habitats Directive (Doc. IP/08/883).

The Commission also sent a final written warning for the failure of a local authority to verify whether a strategic environmental assessment of a new land-use plan was needed. In the case of the land-use plan adopted for the municipality of Staranzano in Gorizia province, the decision of the competent authorities not to carry out a strategic environmental assessment was not based on the correct criteria (Doc. IP/08/883). In October 2007, the Commission sent Italy another final warning highlighting the lack of necessary emergency plans for more than 20 percent of installations storing or handling dangerous substances, in violation of the Seveso II Directive (Doc. IP/08/526).

Furthermore, the Commission brought an action against Italy on 10 June 2008 (case C-249/08) arguing that Italy failed to provide appropriate measures for the control, inspection, and surveillance of fishing activities within its territory and within maritime waters subject to

its sovereignty or jurisdiction. In particular, the action concerned lack of compliance with the provisions governing the retention onboard and use of drift-nets, and failure to impose dissuasive penalties against these infringements. The Commission added that the systematic infringement on a massive scale of its driftnet prohibition was 'directly attributable to the inefficiencies in the Italian system for monitoring compliance with that prohibition.'

The most publicized action brought against Italy by the European Commission in 2008 concerned the waste emergency in the Campania region. Already in January 2008, the EU Environment Commissioner Dimas declared before the European Parliament that the infringement procedure against Italy that started in June 2007 for breach of Community waste legislation would continue. He forcefully argued the most direct cause for the waste crisis was the lack of action and of political will to adopt the measures necessary for solving the waste management problem, which resulted from more than fourteen years of insufficient implementation of European waste legislation for which Italy had repeatedly been condemned by the ECJ (Doc. SPEECH/08/12 of 15 January 2008). On 3 July 2008, the Commission started a case before the ECJ (Case C-297/08) arguing that Italy failed to adopt, in respect of the Region of Campania, all the necessary measures to ensure that waste was recovered or disposed of without endangering human health and without harming the environment and, in particular, failed to establish an integrated and adequate network of disposal installations suitable to enable self-sufficiency in waste disposal.

#### <S1>(4) Domestic Developments of International Significance

##### <S2>(A) *Domestic Legislation and Initiatives of International Significance*

Among the most notable developments at the level of domestic environmental legislation was that the revision of the Environmental Code continued. During Prodi's government, two sets of modifications to the Code were adopted. Legislative Decree n. 4 of 16 January 2008 (published in the Official Gazette n. 24 of 29 January 2008) introduced additional corrections and integrations to the Environmental Code adopted in 2006 in the areas of EIA and strategic impact assessment, water, and waste. The decree reduced the deadline for providing the opinion of the EIA commission to 150 days, with the exception of particularly complex developments for which a deadline of twelve months could be envisaged. The decree also reintroduced the definition of direct discharges, and eliminated the possibility of considering silent consent in the procedures permitting discharges. With regards to waste, EU legal principles such as hierarchy in waste management (giving priority to waste reduction) were introduced, the norms condemned by the ECJ in C-283/07 were abrogated, and a new definition of sub-products was introduced. The decree also introduced simplified procedures on non-dangerous waste for companies with less than ten employees.

Legislative decree n. 63 of 26 March 2008 (published in the Official Gazette n. 84 of 9 April 2008) contained further integrations and corrections to the Environmental Code regarding landscape protection. The decree provided for environmental requirements for protected areas and wetlands, which cannot be deviated from by municipal urban plans. It further established that the authorizing power of regions can be delegated to provinces or to associations between municipalities, only if the latter can ensure an appropriate level of technical, scientific expertise and create an *ad hoc* system for the destruction of illegal buildings.

As the critical waste management situation in Naples and its region continued, two legal acts were adopted to address the emergency: Law n. 123 of 14 July 2008 (published in the Official Gazette n. 165 of 16 July 2008) and Law n. 210 del 30 December 2008 (published in the Official Gazette n. 2 of 3 January 2009) both introducing extraordinary measures to



address the waste management emergency in the Campania region and urgent environmental measures. The latter provided for economic incentives to occasional transport or disposal of waste during the emergency, with a view to promoting recycling, as well as to the construction of new incinerators. It also waived the norms applicable to dangerous waste for public authorities to address the phenomenon of illegal dumping and applicable rules on the collection and storing of waste, with a view to protecting public health and the environment. There is also provision for a pilot project on the traceability of waste in order to maximize its integrated management. In addition, the law provided for the removal of local entities that do not collaborate in the emergency measures, confirmed the exceptional use of the army, and supported a media campaign to raise awareness on waste recycling and the introduction of environmental education courses in schools. The government further committed to the development of a national plan for the incineration of urban waste resulting from recycling.

Other environmental acts adopted in 2008 include:

- Urgent measures for reviving the competitiveness of the agro-food sector (Law n. 205 of 30 December 2008, published in the Official Gazette n. 303 of 30 December 2008), which, among other things, excluded local forest management plans from the strategic impact assessment;
- Decree-Law n. 208/08 of 30 December 2008 containing extraordinary measures in the area of water resources and environmental protection (published in the Official Gazette n. 304 of 31 December 2008), which allowed, in the delays of the creation of hydrographic districts, the continuation of the activities of the existing basin authorities. It also mobilizes funds from the national budget for the continued operations of the technical commission to verify environmental impacts. It further contained scattered norms on environmental damage, the High Institute for Environmental Protection and Research, the tax on the disposal of urban waste, electric and electronic materials, and civil protection;
- Interministerial Decree n. 135 of 11 April 2008 (published in the Official Gazette n. 107 of 8 May 2008), which endorsed a Green Public Procurement Plan of Action, as called for by the financial law of 2007 (Law n. 296/06). It is expected that minimum environmental criteria for specific groups of products and services will be developed to facilitate green procurement  
([http://www.minambiente.it/index.php?id\\_doc=609&id\\_oggetto=3](http://www.minambiente.it/index.php?id_doc=609&id_oggetto=3)).

## <S2>(B) *Domestic Judicial Decisions of International Significance*

With regards to hunting, the *Corte di Cassazione* (the Italian Supreme Court) adopted a series of decisions according to which the prohibition to carry arms into protected areas extends to traveling with arms through protected areas (decision of 14 February 2008, n. 6985), and to carrying arms in pieces (decision of 20 June 2008, n. 25215). It further held that this prohibition applies not only to national parks, but also to natural parks, and to regional and inter-regional parks (decision of 23 July 2008, n. 30833).

With regards to waste, the *Corte di Cassazione* adopted decision n. 27074 of 4 July 2008, according to which, end-of-life vehicles should be considered waste when the owner is disposing of, intends to dispose of, or has the duty to dispose of them. It further considered waste those end-of-life vehicles that are meant for demolition even before being handed over to a centre of collection as well as those abandoned, even in private areas. In addition, the Court adopted decision n. 31462 of 29 July 2008, clarifying that the definition of sub-product implies that their use is certain as early as from the production phase, and occurs during the process of production or utilization as *ex-ante* identified and defined. Thus, the utilization of

the material must not necessarily occur in the same productive process from which it originated, but the utilization process must be *ex-ante* identified and defined.

On administrative acts violating environmental legislation, the *Corte di Cassazione* (criminal section) adopted a decision clarifying that administrative acts unduly authorizing conduct that actually constitutes environmental crimes must be considered ineffective, notwithstanding their procedural validity (decision n. 28274/08 of 14 May 2008). The *Corte di Cassazione* (criminal section), further held that the state of necessity cannot be invoked in the case of illegal constructions violating environmental law. Market mechanisms and social assistance were considered sufficient to fulfil the individual need for housing (thus there is no imminent risk), whereas the collective interest in the protection of landscape and the environment was considered prevailing in those areas that are subject to limits of construction (decision n. 35919 of 19 September 2008). Finally, the *Corte di Cassazione* held a mayor criminally liable for cutting ‘monumental trees,’ which had been designated as part of the national cultural heritage (decision n. 42893 of 24 October 2008).

In relation to issues of distribution of competence between the State and local authorities, the Constitutional Court stressed that forests have multiple environmental functions, to which an economic value is associated, and that regions are mandated only to deal with the economic aspects of sustainable forest management, which is in all events considered secondary to the conservation function of the State. Thus, regional competence over forests can only be exercised when guaranteeing the sustainability of forest ecosystems (judgement n. 105/08 of 18 April 2008). In addition, the Constitutional Court held that landscape conservation plans take precedence over sectoral territorial use planning, including in the latter category, protected area management plans (decision n. 180/08 of 30 May 2008).

#### <S1>(5) Concluding Remarks

Italy’s performance in the implementation of international and EC environmental law remains flawed in many respects. This negative trend may possibly be addressed by the continued reform of the Environmental Code; however that has a high price in terms of legal certainty at the national level.

Elisa Morgera