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POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**

Economic and Monetary Affairs

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The ILVA Industrial Site in Taranto

In-Depth Analysis for the ENVI Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

The ILVA Industrial Site in Taranto

IN-DEPTH ANALYSIS

Abstract

This in-depth analysis summarises information on the case of environmental non-compliance of the ILVA steel plant situated in Taranto, Southern Italy. It discusses the economic importance of the plant and the environmental and health impacts resulting from its operation. It also presents an overview of actions taken in relation to the plant by EU bodies and Italian authorities and courts so far.

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LIST OF ABBREVIATIONS

- CC** Criminal Code (of Italy)
- DPCM** Decree of the President of the Council of Ministers
- ELD** Environmental Liability Directive
- IED** Industrial Emissions Directive
- GDP** Gross domestic product
- GIP** *Giudice per le indagini preliminari*, Judge for the Preliminary Investigations
- GUP** *Giudice dell'udienza preliminare*, Judge of the Preliminary Hearing
- IPPC** Integrated Pollution Prevention and Control
- PCB** Polychlorinated biphenyl
- S.p.a.** Società per azioni

EXECUTIVE SUMMARY

The case of the ILVA steel plant of Taranto and its impacts has not only pre-occupied Italian society and authorities for more than two decades; given the size of the steel plant and the amount of pollution it has produced, the case has received significant attention from the EU institutions. The case illustrates the consequences of companies failing to comply with applicable permits and environmental legislation, and national authorities failing to enforce environmental standards. It also highlights the political and legal complexities involved in addressing a case of environmental non-compliance in a plant of ILVA's size, whose economic significance extends beyond the local level. The present in-depth analysis provides an overview of the history of the plant, and of the legal measures taken to address the company's failure to comply with applicable environmental legislation, as well as the environmental, economic and health impacts of the lack of environmental compliance.

The report shows the economic significance of the plant. The plant is an important employer in a region otherwise struck by high levels of unemployment; yet, as its production is used in other parts of Italy and internationally, its economic relevance extends beyond the region and even beyond Italy's borders. However, the pollution resulting from the plant's operation has been linked to higher than average incidence of some diseases as well as number of deaths in areas close to the plant; moreover, other sectors of the economy (e.g. local agriculture) have suffered adverse impacts.

Starting in 1990, Italian authorities and courts adopted various measures aimed at forcing the plant's operators to bring the plant into compliance with applicable environmental legislation, to punish those responsible for the poor environmental performance of the plant and to ensure that damages are remedied. However, the authorities and courts have not always agreed on the legal and political responses, leading to a series of sometimes contradictory decisions. The European Commission has also intervened by starting infringement proceedings on two separate occasions, one of which has resulted in a decision of the Court of Justice finding that Italy had failed to properly apply relevant EU legislation. Therefore, the case also illustrates the potential that the EU Commission has in stimulating Member States to ensure that companies comply with EU environmental legislation, but also the limits of that potential.

The in-depth analysis concludes by noting that the EP's options for action in a situation that is mainly within the enforcement competence of national authorities are somewhat limited. However, the EP could take the following steps:

- The EP should continue to monitor the situation, in particular with regard to compliance of the company with the renewed permit.
- The EP should carefully consider the implications of the ILVA case in relation to the potential need of harmonisation of rules on monitoring and inspection at the EU level, e.g. through a directive on the matter. The EP in this context should also consider experiences gathered with the implementation of the Industrial Emissions Directive which requires Member States to set up a system of environmental inspections for installations covered by the directive.

The report also suggests questions that an EP delegation could ask to various actors involved in the ILVA case.

1. INTRODUCTION¹

A brief history of the ILVA steel plant

The ILVA steel plant was opened in 1965 by the ILVA steel company, which was named Italsider for part of its existence. At the time of the construction of the plant, Italsider was a state-controlled company. The plant was constructed in the Southern Italian city of Taranto, which is located in the Apulia region of Italy. Taranto currently has about 200.000 inhabitants. The fact that a large-scale and emission-intensive industrial site was built very close to residential areas, has been attributed to the industrial development model prevailing at the time.

In 1995, the plant was sold to the Gruppo Riva, an Italian steel producing company in private ownership².

The plant is run by ILVA S.p.a. and a conglomerate of various companies controlled by ILVA S.p.a. (all belonging to Gruppo ILVA)³. Various of them have been declared insolvent in 2015 and are administered by external commissioners (see below, section 4.3).

The report is structured as follows: Section 2 provides an overview of the economic significance of the plant. Section 3 summarises the available information on the environmental, health and economic impacts of the plant's operation so far. Section 4 provides an overview of legal measures aimed at addressing the situation, both at the EU and the national level. Section 5 provides conclusions and recommendations, including suggestions on questions that Members of the EP could raise when visiting the region.

With respect to the methodology used for this in-depth analysis, it should be noted that the ILVA case is more a legal and political-economic topic than a subject of academic research. Consequently, most of the sources used are not academic texts, but general media articles as well as legal decisions taken by various actors. In addition, it should be noted that legal terms used in one jurisdiction, in this case the Italian one, would normally have a very specific meaning in that jurisdiction which cannot be easily conveyed through a mere translation. Where possible and pertinent, we therefore explain legal terms rather than just translating them; moreover, the legal term in Italian is often provided for readers familiar with the Italian legal system.

¹ The authors wish to thank Martin Nesbit (Institute for European Environmental Policy) for helpful comments on an earlier version.

² For more information on the group, see <http://www.rivagroup.com>.

³ For more information on the group, see <http://www.gruppoilva.com>.

2. ROLE OF THE ILVA PLANT FOR NATIONAL AND REGIONAL DEVELOPMENT

The ILVA steel plant is, according to the European Commission, the largest steel plant in Italy and in the EU. It has a capacity to produce 10 million tons of steel annually, which corresponds to 40% of Italian steel production. Most of the steel produced by the plant is transported as an input to factories in Northern Italy, but a significant part is also exported⁴. This means that the plant has a national and even international economic significance, not only a local one. This is also reflected in the considerable public attention that the case has received in Italy, with numerous media reports covering the legal and political developments surrounding the ILVA plant.

The local economic significance of the plant is evident from the fact that about 12.000 people are directly employed there. It is estimated that another 8.000 contractors are employed by the factory⁵ and more jobs indirectly depend on the plant (e. g. in the harbour of Taranto). The plant has been estimated, for example, to have contributed to 75% of Taranto's GDP in 2008 (Tonelli et al. 2013, 27). These data – while potentially not overly reliable – are particularly significant against the generally poor economic situation in Apulia and the lack of employment opportunities. In 2015, the unemployment rate in the city of Taranto was 15.5%, the one in the region of Apulia 19.8%⁶.

On the other hand, the environmental problems caused by emissions from the plant (see next section) also translate into a negative economic impact on other sectors of the local economy. Notably, authorities have repeatedly ordered cows and sheep owned by local farmers to be slaughtered, because the level of dioxins and PCB found in their milk or meat exceeded the permissible levels; certain types of farming have been prohibited near the plant⁷. The production of mussels has also been prohibited in certain areas⁸. Moreover, it has also been observed that the environmental pollution caused by the plant and the publicity around it might impede the development of the tourism industry in the region, which otherwise has favourable conditions for attracting tourists (Lucifora et al. 2015, 19).

⁴ In a press article in *Il Sole 24 Ore* business newspaper, it is indicated that among the 8 million tons of steel produced in 2011 by the Taranto plant, 5 million were used domestically, whereas the remainder was exported to other EU countries (2,5 million) and non-EU countries (0,5 million), see Matteo Meneghello, 'Corsa in salita per l'acciaio italiano', *Il Sole 24 Ore*, 28 May 2013 http://www.ilsole24ore.com/art/notizie/2013-05-28/corsa-salita-lacciaio-italiano-064031.shtml?uuid=AbhvITzH&refresh_ce=1.

⁵ Alberto Sisto, 'Italy to oversee running of steelmaker ILVA', *Reuters*, 4 Jun 2013, <http://uk.reuters.com/article/2013/06/04/uk-italy-ilva-idUKBRE9530AN20130604>.

⁶ Data elaborated by Urbistat based on ISTAT data, available at <http://www.urbistat.it/adminstat/it/it/classifiche/tasso-disoccupazione/province/puglia/16/2>.

⁷ 'Latte alla diossina, Asl Taranto ordina l'abbattimento di 64 bovini', *La Repubblica*, 27 January 2015, <http://bari.repubblica.it/cronaca/2015/01/27/news/diossina-105932022/>; Stephan Faris, 'Italy's Jobs-and-Pollution Showdown', *Bloomberg Business*, 13 December 2012, <http://www.bloomberg.com/bw/articles/2012-12-13/italys-jobs-and-pollution-showdown>.

⁸ The competent sanitary authority (ASL Taranto), in finding levels of PCB and dioxin exceeding the legal thresholds, with by-law (*Ordinanza*) of 22 July 2011, No. 1989 prohibited the harvest and movement of mussels in a part of the area of Mar Piccolo; see Apulia Region, Press release of 25 July 2011, available at <http://www.regione.puglia.it/index.php?page=pressregione&opz=printpdf&id=10957>.

3. POLLUTION CAUSED BY THE PLANT AND ITS IMPACTS

Generally speaking, steel production is a “dirty” industry. Pollution of air, soil, water and resulting negative health impacts on the local population and workers are not only a problem at the ILVA site, but also in other steel production sites. However, due to the technologies employed at the ILVA plant, the pollution caused by the ILVA plant is more significant than that caused by other steel plants; it has been argued that if the plant used the best available technologies, the negative environmental and health impacts could be significantly reduced (Tonelli et al. 2013, 27).

We present below an overview of the negative environmental and health impacts of the plant. We have used information from existing studies when available; however, in the context of this briefing it was not possible to cross-check the correctness of any of these data. One environmental impact of the plant that has not received much public attention is its contribution to climate change through CO₂ emissions. In 2014, the plant emitted 7.4 million tonnes of CO₂⁹. This puts the plant among the 30 largest emitters within the entire EU (among those covered by the EU emissions trading system).

3.1. Environmental impacts

Negative impacts of the plant’s operation on air quality have been noted. A survey produced in 2012 as part of judicial proceedings in the Court of Taranto (see below, 4.2) produced evidence in this regard. The survey shows that in 2010 ILVA emitted considerable quantities of dangerous substances in the air, such as mineral dust, nitrogen dioxide, sulphur dioxide, hydrochloric acid, benzene, dioxin (Sanna et al. 2012).

In particular, according to the survey, in 2010 the plant emitted over 4,000 tonnes of dust, 11,000 tons of nitrogen dioxide, 11,300 tonnes of sulphur dioxide, 7.0 tonnes of hydrochloric acid, 1.3 tonnes of benzene, 150 kg of Polycyclic Aromatic Hydrocarbons (PAH), 52.5 g of benzo(a)pyrene, 14.9 g of organic compounds, polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/F) and dioxin PCBdl (Sanna et al. 2012, 517). The negative environmental impacts stem from the actual production process (i.e. operating the furnace), including the “mineral parks” (i.e. storage areas for minerals used in the production process), from which dust is blown in the surroundings (Tonelli et al. 2013, 27f).

The survey also observes that in 2010 levels of emissions of dangerous substances by ILVA did not exceed the thresholds set out in national and regional legislation and complied with the terms of the permits in relation to emission levels. However, the lack of a continuing monitoring system of polluting substances constituted a violation of the applicable environmental legislation as such a monitoring system should have been introduced in the plant by 1999. Moreover, in the absence of such monitoring, it was difficult to establish whether thresholds were actually respected.

In 2008, hundreds of sheep were slaughtered after dangerous levels of dioxins were found in their meat and milk (Tonelli et al. 2013, 28). Possible links between level of dioxins and PCB in animal meat and industrial emissions were also addressed in the 2012 survey. The survey concludes that the levels of dioxins and PCB found in the slaughtered animals as well as in the soil of the surrounding area of the steel plant can be linked to the dust emissions resulting from the sintering activities carried out within the plant (Sanna et al. 2012, 521).

⁹ European Commission, ‘Verified Emissions for 2014’, available at http://ec.europa.eu/clima/policies/ets/registry/documentation_en.htm.

In terms of negative impacts of the plant's operation on the soil, the municipal authorities of Taranto in 2010 issued an order that prohibited children of the Tamburi neighbourhood (which is the neighbourhood closest to the plant) from playing outside, because the soil was contaminated with harmful substances emitted from the plant. In the beginning of 2015, restoration measures were initiated¹⁰.

3.2. Health

The above described environmental impacts translate into a negative impact on human and also animal health. The following describes how environmental pollutants resulting from the production process at ILVA cause negative health impacts:

"particulate matter smaller than 10 micrometres that are capable of penetrating deep into the respiratory tract and causing significant health damage), polycyclic aromatic hydrocarbons (PAHs) in particular the benzo(a)pyrene, dioxins and heavy metals that can be carcinogenic." (Tonelli et al., 2013, 27).

An epidemiological survey, also produced as part of the judicial proceedings in the Court of Taranto and dating from 2012, shows that the exposure to industrial emissions caused pathologies and mortality in the area (Biggeri et al. 2012). In particular, the epidemiological survey shows that 386 people living near the plant died between 1998 and 2010 (around 30 deaths per year) because of exposure to toxic emissions such as dioxins and carbon monoxide. Moreover, the survey showed 237 cases of malignant tumor diagnosed by hospitalization (18 cases per year) due to industrial emissions; 247 coronary events with recourse to hospitalization (19 per year) due to industrial emissions; 937 cases of hospitalization for respiratory diseases (74 per year) (most part among the children) due to industrial emissions (Lucifora et al. 2015, 16).

In 2012, the Apulia Region enacted a law (and an implementing regulation) on health and environmental protection in relation to industrial emissions in areas of high environmental risk. On these grounds, the Environmental Protection Agency of Apulia Region (ARPA Puglia) released a document on the assessment of health impacts caused by the ILVA plant in Taranto before the IPPC permit was issued (in particular, for the year 2010); the document also estimates the levels of health impacts in 2016 (i.e. after the implementation of IPPC permit). The assessment concluded that 80% of the cancer risk could be ascribed to benzo(a)pirene, a pollutant emitted by cokeries (ARPA Puglia 2013, ii). In relation to the estimation for 2016, the study concluded that once all the requirements of the new IPPC permit would be implemented, the cancer risk for the population living in the vicinity of the industrial area would be reduced by half (ARPA Puglia 2013, i).

The, at the time, Special Commissioner for ILVA presented, in response to the ARPA assessment, a technical report that heavily criticized both the methodology and content of the regulation and the way the assessment was conducted with regard to ILVA.

In particular, the fact was criticised that the regulation takes into account only industrial emissions of certain pollutants, while other sources should have been taken into account for the same pollutants (Boffetta et al. 2013, 2). This concerns in particular polycyclic aromatic hydrocarbons (PAH), as industrial emissions are only one of the sources (and in most cases the less relevant one) of PAH emissions, with the consequence that reliability of data is affected (Boffetta et al. 2013, 2). Another point of criticism concerns the selection of the

¹⁰ 'Ilva, via alla bonifica dei terreni inquinati del Tamburi', *La Repubblica*, Bari, 19 January 2015, <http://bari.repubblica.it/cronaca/2015/01/19/news/ilva-105301720/>. The measure consists in removing the contaminated soil and replacing it with new one.

pollutants that were taken into consideration and the use of epidemiologic data; this leads to a criticism of the overall assessment of negative health impacts caused by ILVA (Boffetta et al. 2013, 8-16).

In a study covering the period 1995-2009 and funded by the Ministry of Health (Studio SENTIERI), a group of Italian scientists analyses statistical health-related data concerning Italian polluted sites (Piratsu et al. 2011). In relation to the Taranto plant, this study shows a differential in both sexes as to total, cardiovascular, breathing, digestive apparatus and cancer (in particular stomach, larynx, lung) mortality/diseases. There are higher incidence levels among economically disadvantaged groups in Taranto and higher rates of hospitalization and mortality for certain pathologies among the inhabitants of the neighbourhoods closer to the industrial area such as Tamburi, Borgo, Paolo VI and Statte (Piratsu et al. 2011a, 134-137).

In particular, the following mortality patterns were observed in Taranto (Piratsu et al. 2011a, 134):

- a number of deaths resulting from cancer that is 10-15% above regional average for both genders;
- a number of deaths resulting from lung cancer that is about 30% above regional average for both genders;
- above regional average number of deaths from pleural cancer in both genders;
- a number of deaths resulting from serious respiratory diseases that is 50% (men) and 40% (women) above regional average;
- a number of deaths resulting from diseases of the digestive system that is 15% (men) and 40% (women) above regional average.

In 2012, an update of the SENTIERI study was released, concerning the years 2003-2009 (Comba et al., 2012). According to this update, in the period 2001-2008 lung cancer deaths in Taranto have increased by 5%: in the same period, the Italian average has decreased by 10% (Comba et al. 2012).

However, the SENTIERI study has been criticized by the authors who also compiled the technical report in response to the ARPA assessment; the criticism extends to the update for the period 2003-2009 and previous studies that the SENTIERI study builds upon. As to the update for the period 2003-2009, it has been argued that the diseases it takes into consideration are chronic ones; there is a long latency period between the first exposure to dangerous substances and the onset of such diseases and death. Mesothelioma, the only disease with a relevant differential in Taranto, is caused by exposures that occurred at least 30 years prior to the onset of the disease; other diseases, including lung cancer and respiratory diseases, are also attributable to exposures in a distant past (La Vecchia, Boffetto, 2013, 21). In addition, it has been argued that in the 1980s the mortality rate for all the diseases considered in the SENTIERI study (lung cancer, other cancers, respiratory diseases) exceeded the regional average by a more significant percentage than shown by data for more recent periods. Therefore, the critics argue that it is erroneous to attribute the current above the average disease/mortality rates in Taranto to occupational and environmental exposures occurred in the last two decades. According to them, the methodology and results of the SENTIERI study reveal mistakes and are incoherent; they hence suggest a different interpretation of the results of the SENTIERI study (La Vecchia, Boffetto, 2013, 21f.).

4. LEGAL SITUATION

4.1. Proceedings by the Commission

Below, we present a brief overview of the actions taken by the European Commission against Italy with regard to the ILVA plant. It should be noted that the documents that the Commission sends to governments in the course of infringement procedures are not published; nor is the response of the respective Member State government public. Therefore, we can only draw on press releases.

A first dispute between the European Commission and the Italian government related to the lack of implementation by Italy of the IPPC directive's¹¹ requirements for authorisation of existing installations. The ILVA plant did not have such an authorization. As a consequence, in 2011, the ILVA plant was the subject, along with other installations, of a decision of the European Court of Justice: in response to the infringement procedure initiated by the European Commission, the Court held that the Italian government had contravened the IPPC directive (the predecessor of the Industrial Emissions Directive (IED))¹². The reason was that the Italian authorities had not thoroughly reviewed whether existing authorisations for ILVA and several hundred other installations covered by the scope of the IPPC directive were actually in line with the requirements of the directive. Subsequently, the Ministry for the Environment issued an IPPC permit (*Autorizzazione Integrata Ambientale*) for the plant on 4 August 2011. This permit was revised by Decree of the Ministry for the Environment No. 547 of 26 October 2012 in order to ensure compliance with the IED and with the Commission Implementing Decision 2012/135/EU¹³.

The permit anticipates the adoption of best available techniques for steel production, as defined in Decision 2012/135/EU. A Guarantor for the Integrated Environmental Authorisation for the ILVA of Taranto (*Garante dell'autorizzazione integrata ambientale per l'ILVA di Taranto*) was instituted in December 2012 and appointed in January 2013. The Guarantor task was to monitor the implementation of the IPPC permit; in August 2013, the Guarantor was abolished and the corresponding tasks were attributed to the Special Commissioner for ILVA (see below, 4.2).

The European Commission in 2013 and 2014 sent official letters to the Italian government, requesting it to take measures to ensure that the Taranto steel plant operated in conformity with the Industrial Emissions Directive (IED)¹⁴. In its press release¹⁵, the Commission also stated that Italy had failed to comply with the "polluter pays" principle enshrined in the Environmental Liability Directive (ELD)¹⁶. This represented the first step of

¹¹ Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, OJ L 24, 29.1.2008, p. 8–29.

¹² Judgment of the Court (Seventh Chamber) of 31 March 2011 – Commission v Italy (Case C-50/10), only summary of decision published in English ; full text available only in French and Italian.

¹³ The IED was implemented in Italy by Leg. Dec. No. 46 of 4 March 2014, which amended Part II of the Legislative Decree No. 152 of 3 April 2006, containing the transposing provisions of the IPPC directive. Italy was late in transposing directive 2010/75/EU, as the deadline established by Art. 80 of the directive was 7 January 2013.

¹⁴ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334, 17.12.2010, p. 17–119.

¹⁵ European Commission, 'European Commission urges Italy to bring a steel plant in Taranto up to environmental standards', Press release, 26 September 2013, http://europa.eu/rapid/press-release_IP-13-866_en.htm.

¹⁶ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004, p. 56–75.

a further infringement procedure¹⁷.

In 2014, the Commission took the next step, issuing a so called “reasoned opinion”. The Commission held that the Italian authorities had failed to ensure that the ILVA plant operated in line with the requirements of the IED. In the view of the Commission, the installation’s operators had not complied with the conditions defined in the permit granted to ILVA by the Italian authorities. The Commission also noted deficiencies in waste management and insufficient protection and monitoring of soil and groundwater. In its press release, the Commissions observed that “dense particulate fumes and industrial dust are escaping from the plant, giving rise to potentially serious negative impacts on the health of the local population and on the state of the surrounding environment. Tests have shown heavy pollution of the air, soil, surface and ground waters both at the ILVA site and in nearby areas of the city of Taranto. The contamination of the Tamburi quarter of the city in particular can be attributed to the emissions from the steel plant”¹⁸.

The Italian government had two months to reply to the Commission’s reasoned opinion. According to the Commission’s register of infringement procedures¹⁹, the Commission has so far taken no further steps against Italy concerning the ILVA plant²⁰. If the Commission is not satisfied with the response from the Italian authorities or if there is no response it could, as a next step, refer the matter to the Court of Justice.

4.2. Proceedings at the national level

However, the plant has not only triggered action by the European Commission; the Italian authorities have also taken various measures in relation to the plant.

As far back as 1990, the Italian Council of Ministers declared the area of Taranto as an “area of high risk of environmental crisis”; this declaration was renewed in 1997. The Decree of the President of the Republic of 23 April 1998 established a plan for the environmental recovery of the area of Taranto. The decree mentions that ILVA represents the most relevant potential source of environmental impact in the area, as it is responsible for a preponderant part – in percentage – of the total usage of resources (water, energy) as well as of emissions in the atmosphere and watercourses and production of waste²¹.

In 2005, the managers of the ILVA steel plant of Taranto were found by the Supreme Court (*Corte di cassazione*) to have committed the crime of dangerous emissions of substances (“*Getto pericoloso di cose*”) under Article 674 of the Criminal Code, for having spread in the neighbouring areas of the steel plant a large quantity of mineral dust from the deposits existing in the area of the plant²².

Almost contemporaneously, another judicial trial started. In particular, on 12 May 2005 a trial was ordered by the Judge for the Preliminary Hearing of Taranto (*Giudice dell’udienza*

¹⁷ For an overview of the procedure see European Commission, Infringement procedure, http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm.

¹⁸ European Commission, ‘European Commission urges Italy to address severe pollution issues at Europe’s biggest steel plant’, Press release, 16 October 2014, http://europa.eu/rapid/press-release_IP-14-1151_en.htm.

¹⁹ The register can be searched using the case number of the ILVA case (20132177).

²⁰ In an overview of the case prepared for the EP’s Committee on Petitions dating from end of February 2015, the Commission indicated that it was still waiting for a reply from the Italian side to its reasoned opinion, see the overview at http://www.europarl.europa.eu/meetdocs/2014_2019/documents/peti/cm/1052/1052964/1052964en.pdf, p. 6.

²¹ D.P.R. 23 April 1998, Annex 1, p.170, in Official Journal of the Italian Republic (GURI) No. 280 of 30 November 1998, Supplement No. 196.

²² Corte di Cassazione, 28 September 2005, No. 38936, Riva, in *Giustizia penale*, II, 2006, p. 545. The punishment provided for by Art. 674 CC is imprisonment for up to one month or a fine of up to €206.

preliminare, GUP)²³ against the chief executive and managers of ILVA plant in Taranto for (among others) the following crimes: a) failure to adopt precautionary measures against accidents on workplaces; b) failure to comply with an order issued by the public authority (i.e. an injunction by the Mayor of Taranto to stop the activities of part of the coke plant); c) dangerous emission of substances (specifically, failure to prevent emissions of mineral dust and gas); d) damaging public goods (in relation to the emissions and their consequences on the soil). *U.I.L. Provinciale*, a trade union, and *Legambiente Puglia*, an environmental NGO, participated in the trial as civil parties. On 12 February 2007 the Court of Taranto (*Tribunale*) sentenced the chief executive and the technical manager of the plant (respectively to three years imprisonment and to two years and eight months imprisonment) for all the above mentioned charges. As an additional sanction, they were also prohibited from the industrial activity concerned and prevented from concluding contracts with the public administration for the period of the principal sanctions. Two more persons were sentenced to respectively one year and six months imprisonment and six and a half months imprisonment for crimes under c) and d). The court of Taranto also ordered payment of compensation for damages in favour of the civil parties²⁴. The Court of Appeal, in confirming the decision, reduced the sanctions; however, the extinction of the crimes was declared, as a definitive judicial decision had not been adopted within the time limit established by the Criminal Code (statute of limitation).

In 2010 the Prosecutor of Taranto (*Pubblico Ministero*) started new preliminary investigations under Article 434 of the criminal code relating to so called “environmental disaster” (a crime against public safety). It should be noted that until 2015, in Italy environmental crimes were almost exclusively misdemeanours (*contravvenzioni*), i.e. less serious crimes provided for in the environmental statutes (lately mainly in Legislative Decree No. 152 of 6 April 2006). The judiciary used provisions on felonies (*dilitti*), i.e. more serious crimes, against (among others) public safety to cover the most serious cases of environmental pollution (Vagliasindi 2012, 131-132). Law no. 68 of 22 May 2015 introduced provisions on felonies against the environment into the Criminal Code, including environmental pollution and environmental disaster; these felonies are in addition to the existing misdemeanours.

As part of the above mentioned investigations, the Judge for the Preliminary Investigations (GIP)²⁵ of Taranto ordered on 26 July 2012 the seizure (“*sequestro*”)²⁶ of the *area a caldo* of the steel plant. An approximate translation of *area a caldo* is “hot working area”; the term refers to the part of the steel plant that comprises the installations used for producing hot-rolled coils, as opposed to the cold areas in which the finishing work is undertaken. In the case of ILVA, the “hot working area” includes the mineral parks, blast furnace, the coke plant, the steel mill, the area for managing steel materials, and the agglomeration area. The order included a ban on using the above mentioned areas.

²³ In the Italian legal system, the Public Prosecutor (*Pubblico Ministero*, PM), upon completing the preliminary investigations, can formulate the charge and request the judge to go to trial. The preliminary hearing (*udienza preliminare*) is then held. The Judge of the Preliminary Hearing (*Giudice dell'udienza preliminare*, GUP) decides whether to dismiss the case or to go to trial.

²⁴ Tribunale di Taranto, 12 February - 20 April 2007, No. 408, Riva e altri. The full text of the decision can be read at <https://beppegrillotaranto.wordpress.com/la-sentenza-integrale-inedita-relativa-alla-nota-vicenda-ilva-di-taranto/>.

²⁵ In the Italian legal system, the public prosecutor (*Pubblico Ministero*, PM) is responsible for instituting criminal proceedings and leading the preliminary investigations (*indagini preliminari*); during this stage, a judge - the Judge for the Preliminary Investigations (*Giudice per le indagini preliminari*, G.I.P.) - guarantees the protection of individual rights, e.g. in validating the arrest of suspects and authorizing precautionary measures.

²⁶ In the Italian legal system *sequestro* (seizure) is a precautionary measure aimed at avoiding that the availability of something related to a crime aggravates the consequences of that crime or facilitates the commission of other crimes; the seizure order can allow the use of the seized good, normally under certain conditions.

At the same time the seizure order was issued, eight persons, including the chief executive of ILVA, his son and the former director of the plant, were arrested. As a reaction to the seizure order, ILVA's employees publicly protested, fearing job losses as a consequence of the judicial proceedings. These protests divided the trade unions and a tense debate between politicians and the National Association of Judges took place²⁷. On 7 August 2012, the Judge for the Revision of the precautionary measures of Taranto (*Tribunale del riesame*) allowed the use of the mentioned "hot working areas" of the plant pending the seizure, under the condition that situations endangering the neighbouring area and the population were removed. Judicial watchpersons were appointed to assure safety and to take any technical measure necessary to control possible risks.

On 26 November 2012 a new precautionary custodial order was issued against four persons, including the ILVA chief executive and his son²⁸. In addition, a new seizure order was issued, concerning the products manufactured while the above described areas of the plant were under seizure with a ban on activities (see *supra*).

The government enacted Law Decree No. 207 of 3 December 2012 which, in recognizing ILVA as a plant of national strategic interest, allowed ILVA to resume its steel production for a period not exceeding 36 months, even if the seizure of facilities had been ordered.

Yet, according to the law decree, the company had to modernise the plant to satisfy the requirements set out in the reviewed IPPC permit²⁹. It should be noted that on 26 July 2012 an agreement (*Protocollo di intesa*) had been signed by the government, the Apulia Region and the Province and Municipality of Taranto; the *Protocollo di intesa* budgeted EUR 336 million in order to allow urgent intervention for clean-up of Taranto³⁰.

On 27 December 2012, the Prosecutor of Taranto challenged the constitutionality of Law Decree No. 207, as the decree allowed ILVA to sell the products which had been seized on 26 November. The Constitutional Court (*Corte Costituzionale*) rejected the challenge on 9 April 2013, declaring it partially not admissible and partially ungrounded.

On 24 May 2013 the Judge for the Preliminary Investigations of Taranto (GIP) issued a seizure order of an equivalent of EUR 8.1 billion against Riva FIRE S.p.a. (the holding company) and Ilva S.p.a. This amount was considered equivalent to the cost savings realized by the Riva Group through failing to bring the plant into conformity with environmental requirements since 1995 (when Italsider had been acquired by the group). The seizure order did not prohibit continued production at the plant. Some time later, on 20 December 2014, the Supreme Court repealed the seizure and ordered the restitution of the seized goods³¹.

In the meantime, the government had intervened once more: Law Decree No. 61 of 4 June 2013 instituted a Special Commissioner for the ILVA plant, in charge of designing an "industrial plan" to comply with the IPPC permit³². The Law Decree establishes that the EUR 8.1 billion which had been seized in May of the same year had to be used by the Special Commissioner to assure compliance with the IPPC permit and to clean up the polluted area. The Law Decree also establishes that a plan of environmental and sanitary

²⁷ 'Storia giudiziaria dell'Ilva: le tappe della vicenda', *La vera Cronaca*, 24 July 2015, <http://www.laveracronaca.com/archivio/1758-storia-giudiziaria-ilva>.

²⁸ As the latter was abroad at the time, the Prosecutor requested a European arrest warrant on 10 December 2012.

²⁹ Law Decree No. 207 of 3 December 2012, converted with modifications into Law No. 231 of 24 December 2012.

³⁰ Protocollo di intesa per interventi urgenti di bonifica, ambientalizzazione e riqualificazione di Taranto, available at <http://www.governo.it/backoffice/allegati/68907-7918.pdf>.

³¹ Corte di Cassazione, 20 December 2013, No. 2658, available at www.penalecontemporaneo.it.

³² Law Decree No. 61 of 4 June 2013, converted with modifications into Law No. 89 of 3 August 2013.

protection measures and actions (environmental plan) should be adopted. The environmental plan was approved by Decree of the President of the Council of Ministers (DPCM) dated 14 March 2014.

The case was also taken to the international level: on 30 September 2012, a committee of citizens ("Taranto Futura") reported the serious pollution situation affecting the area of Taranto to the Public Prosecutor of the International Criminal Court in The Hague, alleging the violation of Articles 6 and 7 of the Statute of Rome (genocide and crimes against humanity, respectively). This claim was based on the above described judicial proceedings as well as the investigations for environmental disaster started in 2010³³.

4.3. Current state of affairs

On completion of the preliminary investigations started in 2010³⁴, the Prosecutor of Taranto on 10 March 2014 requested that 52 persons under investigation be committed for trial. The preliminary hearing followed. Numerous civil parties were admitted by the Judge of the Preliminary Hearing (GUP), including the Ministry for the Environment, municipalities, trade unions, environmental associations and NGOs, relatives of deceased employees of ILVA and common citizens, particularly those living in the Tamburi neighbourhood³⁵. The Judge for the Preliminary Hearing of the Court of Taranto (GUP) ordered on 23 July 2015 that 3 companies (ILVA S.p.a, Riva FIRE S.p.a. and RIVA FORNI ELETTRICI S.p.a.) and 44 persons should stand trial. Among these persons are the managers of the companies involved and some politicians (among others, the Governor of Apulia region and the Mayor of Taranto). The trial is scheduled to start on 20 October 2015.

The main charge is of participation in a criminal association aimed at the commission of crimes against public safety (the so-called "environmental disaster"; removal or omission of precautions against accidents at work; poisoning of food substances) and crimes against public administration (corruption; bribery; abuse of office)³⁶. In addition, the charges include: misdemeanors against the environment (concerning waste and landfills, air, water and the provisions on the prevention of major accidents); the offences under Article 635 CC on criminal damage ("Danneggiamento") and Article 674 CC on dangerous emissions of substances ("Getto pericoloso di cose"); murder, and injury by negligence, through violation of regulations on workplace safety.

As to the most recent government action, Law Decree No. 1 of 5 January 2015 placed ILVA S.p.a. under special administration³⁷. It also established that the environmental plan approved by DPCM of 12 March 2014 (see *supra*, 4.2) should be deemed respected if ILVA complied by 31 July 2015 with 80% of the prescriptions that the environmental plan required to be met by that date.

On 21 January 2015 a decree of the Ministry for Economic Development admitted ILVA S.p.a. to the extraordinary administration procedure, pursuant to the national legislation on industrial restructuring of large companies in a state of insolvency. This legislation applies to companies with at least 500 employees (large scale) and at least EUR 300 millions debts

³³ The denunciation is available at <http://tpress-emma.blogspot.it/2012/10/comitato-taranto-futurala-denuncia-al.html>.

³⁴ The preliminary investigations were completed on 30 October 2013.

³⁵ See 'Ilva, la vigilia di 'Ambiente svenduto': dopo tre anni in arrivo i verdetti della maxi inchiesta', *La Repubblica*, 19 July 2015, http://bari.repubblica.it/cronaca/2015/07/19/news/ilva_la_vigilia_di_ambiente_svenduto_dopo_tre_anni_in_arrivo_i_verdetti_della_maxi_inchiesta-119396248/.

³⁶ Carlo Ruga Riva, 'Il caso ILVA: profili penali-ambientali', 17 October 2014, para 3, <http://lexambiente.it/ambiente-in-genere/188-dottrina/188/10999-ambiente-in-genere-il-caso-ilva-profilo-penali-ambientali.html>.

³⁷ Law Decree of 5 January 2015, No.1, converted with modifications into Law of 4 March 2015, No. 20.

in the previous year (state of insolvency); once the state of insolvency is declared and the extraordinary commissioner is appointed, financial and corporate reconstruction or transfer of business can be pursued. The decree of 21 January 2015 appointed three extraordinary commissioners for the ILVA steel plant in Taranto³⁸. On 28 January 2015 the Court of Milan (civil section-insolvency) declared ILVA S.p.a. insolvent³⁹. The extraordinary administration aims to assure the continuation of business in view of a future transfer, with the declaration of insolvency being a necessary step to be taken to allow the extraordinary administration⁴⁰.

Two decrees of the Ministry for Economic Development dated 20 February 2015 and 17 March 2015 admitted to the extraordinary administration procedure other companies controlled by ILVA; on these grounds, insolvency for some of these companies was declared in March 2015⁴¹.

Daily emissions of the ILVA plant in Taranto can now be monitored via a link on the ILVA website⁴². On 23 July 2015 a hearing was held at the Italian Parliament, with ILVA presenting the state of progress concerning the Taranto plant compliance with the IPPC permit. According to the presentation, 80% of the requirements which were to be fulfilled by 31 July 2015 had actually been met. Therefore, according to the presentation, ILVA met the objective set out in the above mentioned Law Decree No.1 of 2015⁴³. The presentation stated that once in full compliance with the IPPC permit, the Taranto plant would have very high environmental standards. It concluded that the process of environmental re-launching would be better undertaken by leasing the ILVA site to an *ad hoc* company, able run the plant more efficiently⁴⁴. An ILVA press release of 15 September 2015 announces a new company organization with highly specialized management, which should support the achievements of ILVA's priorities and new industrial plan⁴⁵.

³⁸ Ministerial Decree of 21 January 2015.

³⁹ Tribunale di Milano, sezione civile-fallimentare, 28 January 2015, www.gruppoilva.com/amministrazione_straordinaria.aspx.

⁴⁰ See 'Ilva, il Tribunale di Milano certifica l'insolvenza', *La Repubblica*, 30 January 2015, http://www.repubblica.it/economia/2015/01/30/news/ilva_per_il_tribunale_di_milano_l_acciaieria_insolvente-106144502/.

⁴¹ The decrees and the decisions on insolvency can be read at www.gruppoilva.com/amministrazione_straordinaria.aspx.

⁴² By clicking on «Monitoraggio emissioni dello stabilimento ILVA di Taranto» at www.ilvagroup.com.

⁴³ See presentation for the hearing at the Chamber of the Deputies of 23 July 2015, p. 15, available at www.gruppoilva.com.

⁴⁴ See presentation for the hearing at the Chamber of the Deputies of 23 July 2015, p. 24. See also Matteo Meneghello, 'Special commissioner Gnudi expects the steel company Ilva to be profitable again in 2017', *Il Sole 24 Ore*, 16 January 2015, available at http://www.italy24.ilsole24ore.com/art/business-and-economy/2015-01-15/special_commissioner_gnudi_expects_the_steel_company_ilva_to_be_profitable_again_2017_194443.php?uuid=A_BbCoeC.

⁴⁵ ILVA press release of 15 September 2015, available at www.gruppoilva.com

5. CONCLUSIONS

The ILVA case is a particularly severe case of corporate non-compliance with applicable environmental legislation and the consequences for the environment and local population. It also shows the consequences of the failure of national authorities to implement in a timely manner legislation adopted to transpose EU environmental legislation. The ILVA case also reveals that it is not straightforward for authorities to find an adequate response to serious cases of environmental non-compliance, as there are pressures to take into account factors such as the economic situation in the region and beyond when considering such options as a (temporary) closure of a plant.

5.1. General recommendations

The EP's options for actions in a situation that is mainly within the enforcement competence of national authorities are somewhat limited. Yet, the EP could take the following steps:

- The EP should continue to monitor the situation, in particular with regard to compliance of the company with the renewed permit.
- The EP should carefully consider the implications of the ILVA case in relation to the potential need for harmonisation of rules on monitoring and inspection at the EU level, e.g. through a directive on the matter. The EP in this context should also consider experiences gathered with the implementation of Art. 23 of the IED, which requires Member States to set up a system of environmental inspections for installations covered by the directive and whether the requirements defined in the directive have been sufficient to ensure proper enforcement of the applicable environmental legislation by Member States.

5.2. Recommendations for the EP visit to Taranto

Questions that the EP delegation could ask when meeting are the following:

- To representatives of the company/the Special Commissioner: What progress has ILVA made towards bringing the situation of the plant in conformity with the terms of the IPPC permit ("autorizzazione integrata ambientale")? What steps has ILVA taken as to upgrading the plant to best available techniques? What further actions are planned?
- To representatives of civil society organisations and local authorities: What are your demands vis-à-vis the company and the competent authorities (e.g. compensation, clean-up of site)? Do you think the actions taken by authorities and courts are sufficient, e.g. are they adequate and proportionate to the character and amount of damage done?
- To representatives of the company/ the Special Commissioner: What are your plans for compensation of those who may have suffered a damage as a consequence of the pollution emanating from the ILVA steel plant?
- To representatives of various institutions: What is your view on the impacts of a closure of the ILVA plant on the region (including e.g. tourism), its inhabitants and the environment?

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NOTES

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