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# ENVIRONMENTAL LIABILITY

## CONTENTS

### ARTICLES

Stay inside when the wind blows your way –  
engaging environmental rights with human  
rights: *Fadeyeva v Russia*

Judgment of the European Court of Human Rights,  
9 June 2005

PHILIP LEACH

The Stockholm Convention on persistent  
organic pollutants and its implementation in  
Australia

PROFESSOR ZADA LIPMAN

Implementing the emissions trading  
directives: the Italian experience between  
commitment and breakaway

ENRICO CARAMORI

### BOOK REVIEW

### CURRENT SCENARIO

European Union

The Netherlands

South Africa

LAWTEXT  
PUBLISHING

# Implementing the emissions trading directives: the Italian experience between commitment and breakaway

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*'It isn't pollution that's harming the environment. It's the impurities in our air and water that are doing it.'*

James Danforth Quayle American politician, former US Vice-President

## 1 Introduction

The Earth Summit in Rio de Janeiro in 1992 opened the final decade of the previous millennium with much publicity and optimism about international environmental co-operation. The international politicians turned their attention to two truly global problems biodiversity and climate change that raised difficult issues of science, economics and politics. In due course the Summit shaped the Framework Convention on Climate Change, signed by more than 150 nations and which entered into force less than five years later. Tens of thousands of people were present in Rio for what appeared to many to be the creation of a new environmental order. Almost 15 years later, however, such optimism seems largely

misplaced. The climate change train has moved forward down the tracks, but it appears to be heading for derailment both in the first and the second commitment periods of 1997 Kyoto Protocol, set for 2008 and 2012, as almost all the main industrialised players (in particular in the EU, see graph below) in the scheme to reduce global warming are scheduled to fall widely short from their projected emissions reduction targets.

This article argues that the so far ineffective action on the part of the signatories to both the Kyoto commitments and the EU Emissions Trading System (EU ETS), seems to be proved by the fact that - regardless of the entry into force of the 1997 Kyoto Protocol and the Emissions Trading Directive

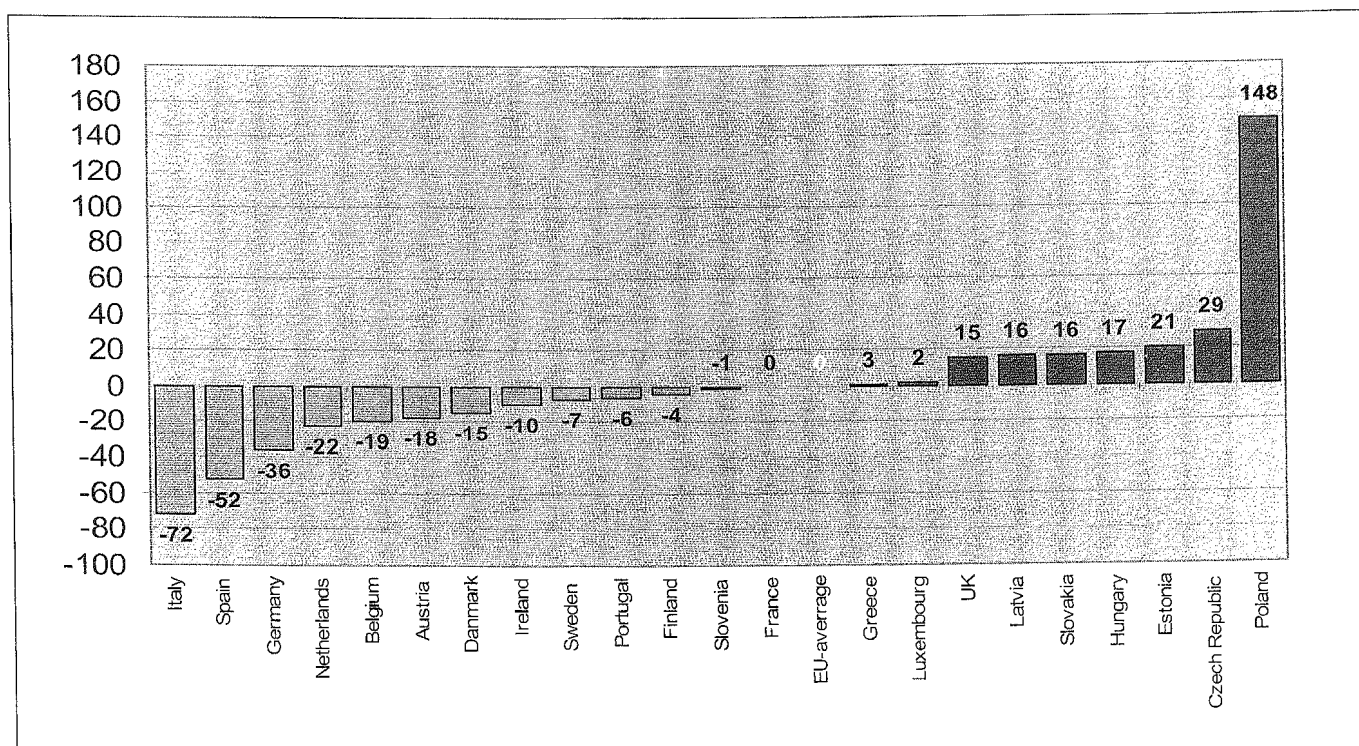


Figure 1. The 'distance to target indicator' (DTI) (expressed in millions of tonnes per year), ie where Member States are in relation to a straight line between their 1990 emissions and their EU/Kyoto targets (2005).

(the ET Directive 2003/87/EC),<sup>1</sup> and the 'Linking Directive' (2004/101/EC)<sup>2</sup> – the greenhouse gas (GHG) emissions of all the main industrialised countries are incontestably increasing and will lead those countries to fail to achieve the emission reductions to which they are committed (see Figure 1).

The article then takes a step back from the Kyoto and EU scenarios and looks at the deeper structural factors behind the temporary 'stall' of the Italian GHG emissions trading system, in order to highlight the potential inconsistencies and the possible solutions for the crucial forthcoming decade.

Indeed, despite being one of the EU's 'early movers' in this process, Italy is still struggling to deliver a truly effective and viable implementation of the European ET Directive and to play an effective role in the EU ETS. Italy's GHGs are increasing and, as we have already seen, were 72 million tonnes over its Kyoto target in 2005, and are predicted to be about 30 per cent over target in 2012: this means that the effort and measures required in order to comply with the Kyoto parameters are massive. An evaluation of the measures enacted to date and of their degree of implementation reveals clearly that they are likely to generate lower emissions reductions than expected and, consequently, Italy could face a harsh awakening in 2008, the beginning of the first Kyoto commitment period.

The principal reason for this temporary 'lack of effectiveness' is due to the fact that many political issues (not least Italy's commitment to Kyoto after 2012) and legal issues still remain unresolved. This brief analysis will try to shed light on those continuing outstanding issues and to suggest a viable way to address them.

Both the ET Directive and the 'Linking Directive' constitute a turning point from the traditional and consolidated European approach of 'command and control' regulations to a more 'market oriented' approach aimed at driving the operators to the use of the best available technologies for environmental protection by means of market incentives. The list of the goals set by the Protocol outlines a remarkably challenging scenario for all the industrialised countries, especially in light of the fact that – compared with the expected GHG emission figures – we have been witnessing an increase of GHG emissions among the 'Annex I Parties'

(the developed countries) and a strong decrease among the 'transitional economies'.<sup>3</sup>

Italy clearly cannot escape from this environmental emergency, due to the fact that in this country GHG emissions in the last few years have tended to increase,<sup>4</sup> mainly due to combustion of raw materials for four main purposes: activities of industrial transformation, power generation, home heating and traffic pollution.<sup>5</sup> On this basis it is very difficult to evaluate with sufficient accuracy which costs and/or environmental advantages the Italian implementation of Kyoto (and, in due course, of the EU ETS) would deliver, mainly because the targets and the binding commitments set forth by the Protocol would seem to be the outcome of a political evaluation rather than a strict and cost-effective analysis.<sup>6</sup>

The relatively low efficiency of the Italian economic and energy system<sup>7</sup> (if compared with those of other EU Member States), widely dependent on gas and coal power generation and deprived of nuclear power plants, together with the concern of the Italian Government that the GHG commitments could *de facto* generate a huge 'friction effect' on the national economic growth, could constitute one of the contributory reasons as to why Italy has so far chosen a cautious approach<sup>8</sup> to Kyoto, and to the implementation of the ET Directive.

## 2 Status of the ET Directive implementation process in Italy

Law no 89/1989, ('Norme generali sulla partecipazione dell'Italia al processo normativo comunitario e sulle procedure di esecuzione degli obblighi comunitari') known as 'Law concerning the EC Directives implementation' or better as 'Legge Comunitaria', constitutes the main tool for the implementation of EU Directives in Italy. The law provides for different types of regulations that might be used in order to put the directives into effect within the Italian boundaries.

3 See J Gummer and R Moreland, 'The European Union and Global Climate Change, a Review of Five National Programmes', prepared for the Pew Center on Global Climate Change, Sanroft International LTD, p 156.

4 M Migiara 'Politiche nazionali ed europee per la riduzione del livello di emissione di gas ad effetto serra e per il raggiungimento degli obiettivi previsti dal protocollo di Kyoto', in Rivista Giuridica dell'Ambiente, 2004 n 3 p 131 (in Italian).

5 *ibid* p 132.

6 *ibid* p 132.

7 *ibid* p 133. See also JK Setear 'Learning to Live with Losing: Climate Change and International Environmental Law in the New Millennium', Working Paper No 00-17, 2000.

8 As stated above, the Italian Government declared during the recent COP 10 Convention held in Buenos Aires on 14 December 2004 that Italy will not be keen to comply with the new parameters set forth with reference to the post-2012 years.

1 Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, 13 October 2003, OJ L275/32, 25 October 2003.

2 Directive 2004/101/EC 27 October 2004, amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms, OJ L338/18, 13 November 2004.



The 'Legge Comunitaria' for 2003 was approved on 31 October 2003,<sup>9</sup> and because the ET Directive was published in the Official Journal of the European Community on 25 October 2003, it was possible to include it in the 'Legge Comunitaria' for that year, rather than in the 'Legge Comunitaria' for 2004. Despite that prompt insertion, Italy has not yet fully implemented the ET Directive. However, as a matter of urgency, the Italian Government has transposed into national law *some* of the provisions of the directive in order to allow installations caught by the provisions of the directive to operate as from 1 January 2005.

In particular, the Italian Government has issued the following decrees:

1. Law Decree no 273 (DL 273/04), converted with modifications into Law 316/04 (DL 273/04) implemented Article 1 para 3 of the ET Directive ruling on the request to obtain permits to operate obligated installations:

- any plant starting operations following the date of DL 273/04 shall file the request to obtain the permit 30 days before commencing operations
- the permit shall be issued jointly by the Ministry of the Environment and the Ministry of Production Activities, having the contents as specified under Article 6 of the ET Directive
- any plant will be subject to the following sanctions:
  - in case of failure to file the request to obtain the permit: €40 per tonne of CO<sub>2</sub> emitted without the permit
  - in case of filing of false emissions data to the authorities: €40/t CO<sub>2</sub> emitted in excess of the true emissions data<sup>10</sup>
  - in case of failure to file survey data to the authorities: €10/t CO<sub>2</sub> emitted in violation of the provisions of DL 273/04.<sup>11</sup>

In all cases, the authorities shall also order the closure of the installation until compliance with the law is reached. Sanctions shall be applicable until the date of implementation of the ET Directive in Italy.

2. 'Decreto Direttoriale', jointly issued by the Ministry of the Environment and by the Ministry of Production Activities, 16 November 2004. This decree set a date of 5 December

2004 for the filing of requests to obtain permits for already operating obligated installations.

3. 'Decreto Direttoriale', issued jointly by the Ministry of the Environment and by the Ministry of Production Activities dated 29 November 2004, which implemented Article 2 para 1 of the ET Directive ruling on the filing of the survey data for the authorities to complete the allowance allocation process. The decree fixed the date of 30 December for the filing of the survey data by already operating obligated installations.

4. Law no 62/2005, ('Legge Comunitaria 2004') was issued, among others, for the implementation of the ETS Directive in Italy and published in the Italian Official Journal on 27 April 2005 with entry into force 15 days after its publication. The Italian Government has very recently received the power to enact within 18 months a legislative decree implementing the ETS Directive in accordance with the principles and criteria set out in Law 62/2005, which include:

- safeguarding the security of energy supply and competitiveness of the Italian industrial system, providing incentives to renewable energies plants and technologies
- avoiding distortion effects on competition
- ensuring public access to information on allocation of allowances and on emissions controls results in compliance with EU Directive 2003/4 ruling on public access to environmental information
- providing effective and proportionate sanctions for the violation of regulations on emissions and emissions trading
- ensuring coherence of the National Allocation Plan with the National Plan for the Reduction of GHGs by recognising and taking into account energy efficiency levels reached, in particular in the power sector, as well as abatement potential of the Clean Development Mechanisms (CDMs) and Joint Implementation (JI) projects.

### 3 The Italian National Allocation Plan (NAP)

The criteria set by the Ministry of the Environment for the implementation of the ET Directive and – in particular – for the draft NAP are:<sup>12</sup>

<sup>9</sup> Law no 306, Official Journal 266, 15 November 2003.

<sup>10</sup> Article 16.4 of the ET Directive.

<sup>11</sup> *ibid.*

<sup>12</sup> Directive 2003/87 CE – Italian National Allocation Plan – Clarifications.

the allocation of the emission allowances will acknowledge that, over the last 20 years, Italy's industrial system has given birth to more than one structural operations system in order to increase the energy efficiency of the system

the NAP will safeguard the market competitiveness of Italian enterprises and energy safety in Italy Italian enterprises falling under the provisions of the directive – in order to comply with their maximum CO<sub>2</sub> allowances – will be permitted to take advantage of the credits generated by the CDMs and the JI. (Thus, if the Linking Directive had not been implemented before 2005, Italy would have not been able to implement the 2003/87/CE Directive.)

On the basis of the experience acquired between 2002 and 2004 while supervising the drafting of a law for the ratification of the Kyoto Protocol (Law no 120/2002, 1 June 2004), the Interministerial Committee for Economic Planning (CIPE) finally approved on 19 December 2002 the 'National Plan for the Reduction of greenhouse gas emissions for years 2003–2010', which has been incrementally developed until it became the National Allocation Plan (NAP). The Italian Ministry of Production Activities and Ministry of the Environment jointly drafted the Italian NAP which was released for consultation on 21 April 2004. Following closing of the consultation period on 6 May 2004, the draft NAP has undergone a revision process. On 14 July 2004 Italy eventually submitted a draft NAP for assessment by the EU Commission. The draft NAP, in the version submitted to the Commission did not, however, allocate allowances to single installations.

The Italian Ministry of the Environment has been working for months jointly with the Ministry of Production Activities – following the collection of emissions data submitted by the operators before the 30 December 2004 deadline – in order to complete the NAP with the information on allowances allocation to single installations. The actual emissions reduction obligation is close to 20 per cent for Italy to be able to achieve the Kyoto target. Italy, together with Denmark, Portugal and Spain will exceed emissions reduction targets.<sup>13</sup>

The European Commission recently finalised Italy's NAP (and that of Greece) on 25 May 2005, the last day for reaching an agreement. The European Commission accepted Italy's

plan for allocating CO<sub>2</sub> emission allowances to Italian companies for the 2005–2007 trading period, after the Italian authorities agreed to lower significantly the total number of allocations by 23 million tonnes of CO<sub>2</sub> annually, or 9 per cent.

Italy will also have to notify further details of its allocations to specific installations and to abandon a provision to make a so-called ex-post adjustment to the plan. The Commission's Decision clears the way for Italian companies to participate in the EU Emissions Trading Scheme, allowing for greenhouse gas emissions from Italy's power sector and from energy-intensive industrial plants to be cut at least cost to the economy.<sup>14</sup>

The Italian allocation plan covers 1,240 installations, all of which qualify for trading. They will be allocated allowances to emit an annual average of 232.5 million tonnes of CO<sub>2</sub> for the 2005–2007 trading period. The Italian Government had first intended to allocate allowances for an average of 255.5 million tonnes per year, but accepted the Commission's argument that this amount would not have been in line with criteria laid down in the Emissions Trading Directive.

Besides reducing the number of allowances, the Italian Government has over the course of the Commission's assessment also extended the scope of the installations covered, renounced two out of three provisions for making ex-post adjustments to the plan and substantiated its intention to purchase emission credits through the flexible mechanisms of the Kyoto Protocol to help Italy meet its greenhouse gas reduction target under the Protocol (a cut of 6.5 per cent below the 1990 level to be achieved by 2012). Ex-post adjustments, which involve revising the number of allowances allocated to individual installations after a plan has been finalised, are not compatible with the directive and the Commission is asking Italy to drop the remaining provision for these in its plan.

A small share of the agreed number of emission allowances has not yet been allocated to individual installations and the Commission is seeking details of which installations will receive how many allowances.<sup>15</sup>

### 3.2 Analysis of the issues arising from the Italian NAP

The provisional application of the NAP by Italian undertakings, which began on 1 January 2005, has nevertheless given rise to many legal issues, three of which

13 See JK Setear 'Learning to Live with Losing: Climate Change and International Environmental Law in the New Millennium', Working Paper No 00–17; and J Gummer and R Moreland 'The European Union & Global Climate Change: a Review of Five National Programmes' Executive Summary p 156.

14 Source: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/602&format=HTML&aged=0&language=EN&guiLanguage=en>.

15 Source: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/602&format=HTML&aged=0&language=EN&guiLanguage=en>.

are worthy of detailed examination and, hopefully, suggested solutions.

### 3.2.1 *Accounting treatment of allowances*

When addressing the problem of inserting the allowances into the balance sheets a number of questions may arise: how should firms reflect allowances in their financial statements? Are allowances intangibles or financial assets? Are they to be priced on receipt at market value or nominal value? How are relevant uncertainties to be reflected in accounting entries? Even if all these questions fall outside the scope of this article, it must be noted that in May 2003 the Interpretation Committee of the International Accounting Standards Board (IASB)<sup>16</sup> issued its first draft interpretation on the accounting of emission rights, concluding that:

- an allowance does meet the definition of an 'asset'
- the obligation to deliver allowances equal to emissions that have been produced is a liability. The liability is recognised at the market value of the allowances needed to cover emissions
- an allocation of allowances for less than fair market value (eg free of charge) gives rise to a government grant
- allowances are intangible assets, rather than financial assets
- where allowances are allocated at less than market value, they should be recognised initially at market value.

Publicly traded companies within the Community are required to apply International Accounting Standards under EU Directive 51/2003, implemented in Italy by Law no 178, 17 July 2003.

### 3.2.2 *State aid and competition issues*

An emission allowance was considered equivalent to an intangible asset the value of which would subsequently be determined by the market. The fact that a state gives it free of charge to companies may result in an advantage for companies in that state. By choosing not to sell allowances (ie by putting them up for auction) the state deprives itself of a resource, with the result that the advantage is funded by means of state resources. If the advantage is granted only to certain economic sectors or certain companies the measure is selective, the trade between Member States may be affected and competition in the Common Market distorted. For example, where a Member State allocates more allowances to undertakings than is needed to cover their projected emissions

during the relevant period, these undertakings have the possibility to sell surplus allowances and retain the proceeds of sale. This advantage to the undertakings could seriously distort competition and since there would be no link to an economic or environmental counterpart, it would, in principle, be considered an incompatible state aid by the Commission. This is particularly the case if the financing for the Kyoto Protocol credits is not provided by the same undertakings as those which benefit from the increased allocation. State aid issues may arise even in cases where National Allocation Plans comprise no over-allocation. Article 10 of the ET Directive requires Member States to allocate at least 95 per cent of the allowances free of charge. According to the Commission, state aid will always be involved if a Member State decides to allocate more than 95 per cent of allowances free of charge for the period 2005–2007, thereby forgoing public revenue.

Finally, state aid will furthermore be involved if a Member State decides to issue allowances for the second period in respect of allowances cancelled at the end of the first period (due to them not having been used) in accordance with Article 13, second subparagraph of the Directive ('banking'). This is because, in the second period, the Member State would issue allowances for free, when it could otherwise have sold, and thereby obtained revenue from, an equivalent number of Kyoto Protocol 'Assigned Amount Units'.

### 3.2.3 *Regulatory enforcement*

The regulatory enforcement of the violation of the NAP still constitutes an open issue both under the Italian and under other EU NAPs. The peculiarities of each jurisdiction may affect the process and the actual enforceability of rights, for example in connection with:

- installation/operator compliance with the monitoring, reporting and verification requirements
- installation/operator compliance with the requirement to surrender allowances for each tonne of emissions
- installation/operator compliance with general requirements set out in national legislation implementing the ET proposal (eg duty to undertake transfers in accordance with law).

According to the preliminary work on the draft of the ET Directive implementing regulation, hopefully a relevant part of these issues could be resolved by the Italian implementation of the Directive — which, as stated above — is still in progress.

<sup>16</sup> <http://www.iasb.org/>. See the document IAS 38 p 3.

## General comments on the ET Directive and on the Italian NAP

The draft NAP issued in 2004, and reissued earlier this year, was prepared on the assumption that Russia could not ratify the Kyoto Protocol.<sup>17</sup> This is quite clear from the declarations of the Minister of the Environment until a few days before Russian support of the Protocol was announced.<sup>18</sup> In light of this political background it is easy to understand why the ET Directive has been only partially adopted in Italy, the aim being to minimise its effects instead of using it as an innovative instrument to reduce the compliance costs of the carbon targets. For these reasons the Italian NAP has drawn fire from environmental NGOs who allege it gives little incentive for industry to cut emissions and relies too heavily on the purchase of foreign emissions credits for Italy to meet its national target under the EU burden-sharing scheme for implementing the Kyoto Protocol.

From a more analytical standpoint, as widely recognised by many Italian economic operators, a number of issues connected with the general structure of the ET Directive and the Italian NAP still remain undeveloped or unclear on some aspects. In general, the issues which should be addressed are:

- *new entrants and new entrant reserves management*: as far as the ET Directive (in general) is concerned, in order to provide a more reliable picture of the expected total emission amounts and to preserve conditions of 'market fairness' for CO<sub>2</sub> emissions it would be strongly advisable to proceed with a 'pre-allocation' of allowances for already assessed new entrants. Such a measure would keep the total GHG amounts in line with the effective expected emissions and prevent an excessive and unexpected 'overweight' of the so-called 'EU GHG bubble' that would probably lead to the whole system falling short of expectations and, in due course, to fail
- *so-called 'standby periods'*: the Italian NAP (as with all the other EU NAPs notified or approved to date) does not provide for a regulation on the management of allowances in case of 'standby' of the plant for a given number of weeks or months. This lack of provision in the NAPs could lead the undertakings to push on

production periods even if they needed maintenance to the plants, in order either not to lose their allowances for the forthcoming years, or to run the risk of selling them at a considerably lower price. It is quite evident that such an approach could expose the whole system to serious environmental risks

- *'intra-company' sales of allowances*: the Italian NAP does not regulate the transferability of allowances between plants belonging to the same company. In the light of the fact that the production of power in Italy is spread among few undertakings, it is predictable that this will be an issue in the next few years
- *linking 'first' (2005–2012) and 'second' (post-2012) commitment periods*: the step between the first and second commitment periods has always been perceived by the operators as a huge gamble, because it has not yet been acknowledged that an undertaker may 'bank' its allowances during the first commitment period in order to have them available in the second commitment period. Of course this uncertainty, if not amended, would jeopardise the chance of success of the entire GHG reduction system, as evidently many operators would not be keen to see much of their allowance at risk in the transition from the first to the second commitment period
- *weak approach to encourage renewable energy sources*: an effective climate policy should have privileged domestic GHG emission reductions instead of regulating the trading and financial aspects of the GHG. This NAP seems to decrease the pressure on the Italian Government to take real action for the promotion of renewable energy sources and energy efficiency measures.

## The Italian GHG scenario and the outlook for the years ahead

The political discussion surrounding the NAP spins around a simple statement: according to the Italian NAP the emissions in the sectors covered are allowed to increase by 15 per cent between 2000 and 2010. At first sight it is thus clear that the proposed values are totally in contrast with the Kyoto targets (–6.5 per cent). This is particularly true for the electricity sector, where emissions are set to increase by 40 per cent between 1990 and 2010.<sup>19</sup> This approach has been motivated by the facts that Italian industries will largely use JI and CDMs and that Italy is mostly energy efficient.<sup>20</sup>

<sup>17</sup> On this topic see M Migiara op cit n 2 p 133. See also JK Setcar op cit n 5.

<sup>18</sup> The statements of the Italian Environmental Minister during the Tenth Session of the Conference of Parties (COP 10), 6–17 December 2004 in Buenos Aires, Argentina were reported by Italian newspapers *La Repubblica*, p 27, 17 February 2005 and p 29, 16 February 2005; *Il Sole 24 Ore*, p 21, 16 February 2005; and *Corriere della sera*, p 19, 15 February 2005.

<sup>19</sup> Italian National Allocation Plan – Clarifications.

<sup>20</sup> M Migiara op cit n 2 p 145.

The latter argument is only partly true. The Italian energy intensity is in fact relatively low: at the same time, in contrast with most other European countries, the improvement over the last decade has been very modest. With regard to the electricity system it is true that there is a gap between consumption and production (for economic reasons) and that prices are on the high side, but the system has a large potential to improve due to the obsolete structure of the power plants. The high allocation in this sector is due partly to the overestimated electricity demand in 2010 and partly to the large introduction of coal that many operators are considering.<sup>21</sup> Given the generous caps proposed by the Italian Government, the industrial sectors have accepted the official NAP with only small disagreements. Among the critical voices is the cement industry, which is worried about the possible increase of the electricity costs (20 per cent of the final production costs) and claims that a price of €10/tonne CO<sub>2</sub> would increase production costs by 30 per cent.<sup>22</sup> Generally speaking, a large part of the Italian industry only began to take the possible effects of the EU ETS seriously toward the end of 2004. Moreover, the fact that Italian companies will not know their allocations in good time will handicap them due to the shorter time remaining to design a strategy. It is increasingly possible that due to poor internal reduction actions Italy will have to spend from €1–5 billion in total to comply with its Kyoto target. For this reason, the EU ET Directive and the Italian NAP should in the author's opinion be subject to a heavy re-evaluation in order to minimise the total climate costs.

In addition to all of the above, the fact that Italy seems to be clearly set to pull out of the Kyoto Protocol adds uncertainty to uncertainty. No doubt any such move would be the one of the biggest shocks to the climate treaty since the US refused to put its name to the agreement. Environment Minister Altero Matteoli said Italy would probably pull out in 2012 because the US and China were not involved.<sup>23</sup> Signatories are expected to agree to bigger cuts in a second period after 2012 in a rolling process aimed at bringing emissions down to levels that will not affect the climate, considered to be at least a 60 per cent global cut. Kyoto decrees that signatories must start discussing their post-2012

commitments by 2005 at the latest. The promoters of the Protocol have always assumed this would mean more and bigger emissions cuts, something Italy has now put in doubt: although Italy's EU partners<sup>24</sup> have played down the idea that the minister's comments signalled a change in policy. In a framework of apparently unstoppable growth of CO<sub>2</sub> emissions, Italy seems to play a role both of compliance with and breach of the general EU guidelines by, first, submitting the NAP almost on time as required by the ET Directive and, secondly, by its weak commitment to the global effort towards GHG reduction (due to the heavy economic burden that a GHG-committed country must bear). Such a role can only be understood as a 'holding over' approach, between EU (late) compliance and ideas to pull out of the Protocol. Whether a position must be taken, in light of all the issues discussed so far, and despite the deep scepticism that surrounds the Protocol-system,<sup>25</sup> is debatable.

I would like to express my opinion in favour of emissions trading systems, but – as has already been pointed out – it is also important to notice, when dealing with environmental problems, that we must look at and even beyond the economic market, for a vision to guide policy-makers. The concept of international CO<sub>2</sub>-emissions trading does not constitute *in itself* the solution we need to resolve the problem of global warming. However, as long as there is a lack of alternatives, it is a mechanism that at least could trigger and cement future collaboration among the participants of the climate regime. Once more effective alternatives have been found, we may then (and only then) radically change the standpoints of emissions trading in favour of adopting something which is totally different. Perhaps the greatest hope for our future is changed attitudes to the environment through education and evolving social consciousness: such social changes, however, tend to come gradually, taking generations to achieve.

Possibly persuaded by that view, the Italian Government, paying tribute to history, seems to have been playing the delaying role of the famous Roman consul and dictator Quintus Fabius Maximus, widely known as *cunctator*:<sup>26</sup> during the Punic Wars he followed the Carthaginian army through Italy, monitored its activities closely, wore down the enemy with guerrilla warfare and prevented its re-supply; however,

21 *ibid* p 133. See also JK Setcar *op cit* n 5 p 32.

22 Source: Integrated version of the Italian NAP. See also E Di Giulio, S Migliavacca and A Vaglio *La Strada Dell'Italia verso Kyoto: Sogni e risvegli* (in Italian), Eni Corporate University, 2004.

23 'The first phase of the protocol ends in 2012; after that it is unthinkable to go ahead without the United States, China and India,' said Mr Matteoli. 'Seeing as these countries do not wish to talk about binding agreements, we must proceed with voluntary accords, bilateral pacts and commercial partnerships,' he said, according to *La Repubblica* newspaper.

24 In particular the UK, Germany and France, as reported by Italian newspapers *La Repubblica*, p 27, 17 February 2005 and p 29, 16 February 2005; *Il Sole 24 Ore*, p 21, 16 February 2005; and *Corriere della sera*, p 19, 15 February 2005.

25 See, among others, M Grubb, C Vrolijk and D Brack *The Kyoto Protocol, A Guide and Assessment* (Earthscan London 1999); J Gummer and R Moreland *op cit* n 1.

26 Quintus Fabius Maximus, *Cunctator* ('The Delayer') 275–203 BC – Consul five times (233, 228, 215, 214 and 209 BC) and Roman dictator (217).



the Romans grew impatient with this approach and replaced him. Immediately thereafter, the Roman disaster of Cannae (216 BC) showed the shrewdness of his view.

Away from looking at historical characters, it is clear that global climate change requires action now, and a 'part-time ratification' and a 'cunctabundus' approach to the problem – so to speak – will not pay off. Global climate change requires active and fully committed statesmen and policy-makers, capable of making strong decisions now that will affect (positively or negatively) our country's welfare for decades to come. Maybe our country has already run out of such leaders, but that would be a discussion for another day.