Corte costituzionale

JUDGMENT NO. 225 OF 2009

FRANCESC O AMIRANTE, President
PAOLO MADDALENA, Author of the Judgment

JUDGMENT NO. 225 YEAR 2009

In this case the Court considered a challenge by various regions to delegated legislation enacting various environmental law provisions, on the grounds *inter alia* that: the pre-legislative consultation procedures with the regions (required under the principle of loyal cooperation) had not been complied with, and that the legislation did not comply with the procedural requirements specified under the parent statute for the implementation of Community directives, and specifically did not respect the time limit for such implementation. The Court ruled that, with regard to some of the challenges affected by legislation subsequently enacted, there was no longer any matter in dispute, and with regard to all other challenges, that they were groundless.

THE CONSTITUTIONAL COURT

composed of: President: Francesco AMIRANTE; Judges: Ugo DE SIERVO, Paolo MADDALENA, Alfio FINOCCHIARO, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO, Giuseppe FRIGO, Alessandro CRISCUOLO, Paolo GROSSI,

gives the following

JUDGMENT

in proceedings concerning the constitutionality of the text as a whole and of Articles 3-52, 55, 58, 59, 63, 64, 65, 67, 69, 74, 91, 95, 96, 101, 113, 114, 116, 117, 121, 124, 148, 149, 153, 154, 155, 160, 166, 181, 183, 186, 189, 195, 202, 205, 214, 240, 242, 243, 244, 246, 252 and 257, as well as Annexes I and II of Part Two of legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters), commenced by Emilia-Romagna (2 applications), Calabria, Tuscany, Piedmont, Valle d'Aosta, Umbria, Liguria,

Abruzzo, Puglia, Campania, Marche and Basilicata Regions, by applications respectively served on 24 April, 8, 12-21, 12-27, 9, 13, 12 and 13 June 2006, filed in the Court Registry on 27 April, 10, 14, 15, 16, 17, 20, 21 and 23 June 2006, and registered as numbers 56, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79 and 80 in the Register of Applications 2006.

Considering the entry of appearance by the President of the Council of Ministers, as well as the interventions by the non-profit Italian Association for the World Wide Fund for Nature (WWF Italia) – Onlus, and by Biomasse Italia S.p.a. and others;

having heard the Judge Rapporteur Paolo Maddalena in the public hearing of 5 May 2009;

having heard the barristers Giandomenico Falcon, Franco Mastragostino and Luigi Manzi for Emilia-Romagna Region, Maria Grazia Bottari Gentile for Calabria Region, Lucia Bora and Guido Meloni for Tuscany Region, Luigi Manzi for Piedmont Region, Giampaolo Parodi for Valle d'Aosta Region, Giandomenico Falcon and Luigi Manzi for Umbria Region, Giandomenico Falcon for Liguria Region, Fabrizio Lofoco for Puglia Region, Vincenzo Cocozza for Campania Region, Gustavo Visentini for Marche Region, Alessandro Giadrossi for the Italian Association for the World Wide Fund for Nature (WWF Italia) – Onlus, and the *Avvocato dello Stato* Giuseppe Fiengo for the President of the Council of Ministers.

The facts of the case

1. – By application served on 24 April 2006, filed on 27 April and registered as No. 56 in the Register of Applications 2006, Emilia-Romagna Region seized the Court directly with questions concerning the constitutionality of Articles 63, 64, 101(7), 154, 155, 181(7)-(11), 183(1), 186, 189(3) and 214(3) and (5) of legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters), also requesting the suspension of their efficacy.

1.1. – This decision concerns exclusively the challenge to the aforementioned provisions with reference to Article 76 of the Constitution and the principle of loyal cooperation, since the treatment of the further questions of constitutionality raised by the applicant Emilia-Romagna Region against the same provisions with reference to different principles will be a matter for separate decisions.

2. – The region's representative, first and foremost, gives a detailed description of the procedural developments which led to the enactment of legislative decree No. 152 of 2006, asserting that:

– law No. 308 of 15 December 2004 (Authorisation for the Government to reorganise, coordinate and supplement the legislation on environmental matters and measures of direct application) authorised the Government enact within eighteen months "one or more decrees reorganising, coordinating and supplementing the legislative provisions in the following sectors and areas of law, including through the drafting of consolidated texts";

– pursuant to Article 1(4) of law No. 308 of 2004, these decrees were to be adopted "after having obtained the opinion of the Joint Assembly pursuant to Article 8 of legislative decree No. 281 of 28 August 1997";

– the draft of the governmental decree approved by the Council of Ministers, after the parliamentary committees had expressed their opinions on 18 November 2005, was transmitted to the regions on 29 November 2005, whilst the draft of the annexes to the decree was made available over the computer network on 7 December 2005, in view of the technical meeting of 12 December 2005 of the Joint Assembly and the meeting of 15 December of the Assembly itself;

– in the technical meeting of 12 December the Chairman of the Assembly of the Regions requested a deferral of the time limit for the issue of an opinion given the extreme complexity of the matters treated and the very short period of time granted for the examination of the broad body of legislation included in the decree;

– by telegram of 13 December the Minister for the Environment and the Protection of the Territory intimated that "the Government does not intend to grant extensions to the time limit specified by the law for examination by the competent committees, considering the

duration of the time limits provided for under law No. 308 of 2004 and also taking into account the remaining period of activity of Parliament";

– during the course of the meeting of 15 December the representatives of the Regions as well as those of the local authorities restated on the same grounds their request that a new time limit be set for the issue of an opinion;

– the Deputy Minister for the Environment and the Protection of the Territory opposed the extension arguing, on the one hand, that environmental protection falls under the exclusive competence of the state, and on the other hand that the authorisation was due to expire on the same day;

– the Minister for Regional Affairs proposed the deferral to the following meeting of the Assembly, scheduled for 20 January 2006, but the Deputy Minister for the Environment and the Protection of the Territory reiterated his opposition;

– the Chairman of the Assembly of the Regions pointed out that the time limit for the expiry of the authorisation was in reality 11 July 2006 and that the procedure for the enactment of the decree could not be continued without the opinion of the Joint Assembly; however, the Deputy Minister for the Environment and the Protection of the Territory responded that the Assembly had been consulted and that its opinion was not binding;

– the Minister for Regional Affairs, taking note of the failure to express an opinion, announced that "should this step prove to be indispensable, the issue in question will be placed again on the agenda of the next Assembly";

– in spite of the fact that the opinion was not expressed, on 19 January 2006 the Council of Ministers "definitively" approved the text of the legislative decree;

– in the meeting of 26 January 2006 of the Joint Assembly, the representatives of the regions and of the local authorities tabled a resolution containing a negative opinion on the draft decree, justified both on the merits as well as due to the procedural method followed, and the representative of the Government limited himself to taking note of it;

– in any case, on 10 February 2006 the Council of Ministers approved the draft decree, again "definitively", without however making amendments or re-examining it on the merits;

– however, following a request for certain clarifications from the President of the Republic with regard to the procedure for enactment and the merits of the decree, on 29 March 2006 the Council of Ministers re-approved the decree with some modifications, which was finally enacted on 3 April 2006, with a text formally (albeit only partially) different from that placed before the parliamentary committees and the Joint Assembly for examination.

2.1. – According to the Region's representative, the procedure described above did not comply with the minimum content of the guarantee of participation for the Joint Assembly imposed by the principle of loyal cooperation as well as the parent statute itself (Article 1(4) of law No. 308 of 2004), since the Government requested the opinion within a time limit that was such as to render its expression impossible and refused the request for deferral of the examination of the question, invoking non-existent grounds of urgency.

The Region's representative also argues that the item on the agenda approved on 20 January 2006 cannot be considered equivalent to an opinion actually expressed and given following a correct procedure and states that, in any case, it was not actually taken into consideration.

Finally, referring to the case law of this Court (specifically judgments No. 422 of 2002, No. 308 of 2003 and No. 31 of 2006), the Region's representative argues: that in areas such as environmental law, in which state and regional powers are necessarily and inextricably connected, the principle of loyal cooperation requires the implementation of procedures in which all of the constitutionally significant mechanisms can be applied; that the Assembly system is one of the most appropriate forums to develop rules intended to supplement the principle of loyal cooperation and that, even though this principle may be organised in different ways, involving varying forms and intensity of the cooperation which is in any case necessary, it cannot however be reduced, as occurred in this case, to a purely formal ritual.

2.2. – The President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato*, entered an appearance by writ of 11 May 2006,

requesting that the both the application as well as the request for suspension of the contested provisions be ruled inadmissible and groundless.

In particular, insofar as is of interest for these proceedings, the state representative argues that the applicant's argument concerning the violation of the principle of loyal cooperation is first and foremost inadmissible since Emilia-Romagna Region appears thereby to claim that a procedure of co-decision is necessary, instead of the consultative role provided for, since such a challenge should have been directed against the parent statute, which was not subject to challenge.

The violation averred of the principle of loyal cooperation and of the procedural requirements imposed by the parent statute, law No. 308 of 2004, do not moreover subsist and are claimed to be based on a representation of the procedural stages which is tendentious and does not correspond to the facts, since it is not true that "the opinion could not be expressed", as it is rather the case that on 15 December 2005, sixteen days after transmission of the draft of the measure, the Joint Assembly considered that it could express its position, asserting that it was unable to give an opinion.

Moreover, the time limit actually granted was not inappropriate, according to the *Avvocatura Generale*, even compared with the maximum time limit of twenty days provided for by Article 2(3) of legislative decree No. 281 of 28 August 1997 (Specification and extension of the competences of the permanent Assembly for relations between the state, the regions and the autonomous provinces of Trento and Bolzano and unification, for matters and tasks of common interest to the regions, provinces and municipalities, with the State, Cities and Local Autonomous Bodies Assembly) for opinions to be expressed by the State-Regions Assembly. Furthermore, according to the state representative, this provision is not applicable, either under a broad interpretation or by analogy, to the different *modus operandi* of the Joint Assembly.

Finally, the *Avvocatura dello Stato* denies that the item on the agenda for the Joint Assembly's meeting of 26 January 2006, expressing a negative opinion expressed by the Regions, has any relevance for the validity of the legislative procedure in question, since it concerns an act referring exclusively to the regions, and which above all was never

officially transmitted either to the parliamentary committees or to the Government, and not the opinion of the Assembly which was by contrast requested under the parent statute.

2.3. – On 14 June 2006 a note was filed by the President of the Council of Ministers containing an excerpt from the Cabinet meeting of 9 June 2006 resolving to "withdraw the intervention in the application to the Constitutional Court by Emilia-Romagna Region challenging certain articles of legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters) formerly decided in the meeting of 27 April 2006".

2.4. – By order No. 245 of 22 June 2006, this Court ruled that there was no need to issue a decision on the application for suspension of the provisions challenged by the Applicant Emilia-Romagna Region, finding that, in requesting the Court to exercise that power, the Applicant had only presented its case in an assertive manner, but had not adequately established that the relative prerequisites had been fulfilled.

2.5. – Shortly before the public hearing of 5 May 2009, Emilia-Romagna Region filed a written statement in which, amongst other things, it noted that it still retained an interest in filing an application, also in view of the significant amendments made to the contested legislative decree by the corrective decrees No. 284 of 8 November 2006 (Provisions to correct and supplement legislative decree No. 152 of 3 April 2006 laying down provisions concerning environmental matters) and No. 4 of 16 January 2008 (Further provisions to correct and supplement legislative decree No. 152 of 3 April 2006 laying down provisions concerning environmental matters).

Moreover, the Region's representative expresses doubts regarding the position adopted by this Court in case law, according to which "the exercise of legislative activity falls outwith the scope of loyal cooperation procedures", arguing that it follows from the constitutional status of the principle and from the provisions of Article 5 of the Constitution that any power, including legislative powers, must be exercised in accordance with the requirements of local government.

The Region's representative however emphasises that, in the case before the Court, cooperation during the legislative procedure was required under the parent statute itself (Article 1(4) of law No. 308 of 2004), which means that the involvement of the regions and

the requirement to obtain the opinion of the Joint Assembly were absolutely necessary, even following the position, which was not shared, adopted in the case law of the Court.

Finally, the Region's representative refers to judgment No. 401 of 2007 (point 5.3 of the conclusions on points of law), from which it is possible to infer the requirement to request a second opinion from the Assembly where, as in the case before the Court, the text of the legislative decree is amended after the opinion has been given and the amendment is not a consequence of the opinion.

3. – By application served on 8 June 2006, filed on 10 June and registered as No. 68 in the Register of Applications 2006, Calabria Region seized the Court directly with questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006, as well as, *inter alia*, of Articles 3(2), 4(1)(a) and (b), 5(1)(q) and (r), 6(6), (7) and (8), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and Annexes I and II of Part Two, requesting also the suspension of their efficacy.

3.1. – This decision concerns exclusively the challenge to the decree as a whole and the above provisions with reference to the principles indicated above, as the treatment of the additional questions of constitutionality raised by the Applicant Calabria Region will be the object of separate proceedings.

4. – Calabria Region challenges, first and foremost, the whole of legislative decree No. 152 of 2006 arguing, due to the procedures (noted above under point 2) which led to its enactment and the differences which emerged in the Joint Assembly's meeting of 15 December 2005, that the principle of loyal cooperation has been violated, entailing a violation of the constitutional powers of the regions and the local authorities.

4.1. – The Applicant also challenges Article 3(2) of legislative decree No. 152 of 2006, which authorises the government to issue regulations pursuant to Article 17(2) of law No. 400 of 23 August 1988 (Regulation of the activity of government and organisation of the Presidency of the Council of Ministers) to modify and supplement implementing regulations in environmental matters.

According to the Region's representative, this provision contrasts with Article 117(6) of the Constitution on the grounds that it legitimises government regulations in an area in

which regional powers over territorial government and protection of health prevail, or in any case exist alongside the state powers (as may be inferred form Article 2(1) of the same decree which identifies the promotion of standards of living as a primary objective of the legislation in question).

In the alternative, were these regulations considered to refer only to the state competence over environmental protection, according to the Region's representative Article 3(2) violates, at the very least, the principle of loyal cooperation since "the indeterminate nature of the contents of the regulations to be issued and in any case the overlap between state and regional powers" require that the Joint Assembly give its opinion on these regulations.

4.2. – Calabria Region also challenges Article 6(6), (7) and (8) of legislative decree No. 152 of 2006, with reference to the principle of loyal cooperation, insofar as they do not provide for an effective participation by the representatives of local government bodies in the task force for environmental evaluations, notwithstanding the impact of the activities of that body on sectors (territorial government and protection of health) under regional competence.

According to the Region's representative in fact, the possibility for a regional representative to intervene in the work of the committee where the Region is able to point to a direct interest concerning the territory to which the environmental evaluation refers is insufficient, whilst by contrast the participation of that regional representative should be considered "indispensable" and not merely potential.

4.3. – The representative of Calabria Region also argues that the entire arrangements introduced by legislative decree No. 152 of 2006, implementing directive 2001/42/EC (Directive of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment) and specifically Articles 4(1)(a), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, as well as Annexes I and II of Part Two of the decree violate Articles 76 and 77(1) of the Constitution on the grounds that the authorisation was acted on by the Government beyond the time limit specified by Parliament.

4.3.1. – The Region's representative substantiates this claim, arguing that the authorisation apparently exercised by the secondary legislator, namely that contained in Article 1(1)(f) of law No. 308 of 2004 (which authorised the Government to implement directive 2001/42/EC within the time limit of eighteen months, accordingly before July 2006), had been repealed on the grounds of incompatibility by Article 19 of law No. 62 of 18 April 2005 (Provisions governing the implementation of obligations resulting from Italy's membership of the European Communities – Community law 2004).

This second provision, which again authorised the Government to implement Community directive 2001/42/EC set, in addition to specifying additional directional criteria and principles, the shorter time limit of six months to act on the authorisation.

Legislative decree No. 152 of 2006, promulgated in April 2006 well beyond that brief time limit (which expired in October 2005), is therefore claimed to be unconstitutional on the grounds that, by relying on an authorisation repealed by a subsequent authorisation, which had in turn expired, it purports to implement Community directive 2001/42/EC.

Again according to the Region's representative, this procedural violation may be relied on in proceedings in which the Constitutional Court is seized directly, since the provisions enacted without a valid authorisation have the effect of limiting the powers granted to the regions under constitutional law over territorial government and protection of health.

4.3.2. – On this question however, the Region's representative points out that Article 1 of law No. 62 of 2005 authorises the Government to implement within eighteen months the Community directives indicated in the attached lists, which included (in Annex B) again directive 2001/42/EC.

According to the Region's representative, in view of the principle of *lex specialis derogat generali*, Article 19 (and its shorter time limit) should apply rather than Article 1 of law No. 62 of 2005. However, even were the latter – and more favourable – provision to apply, Articles 4(1)(a), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 as well as Annexes I and II of Part Two would in any case violate Article 76 of the Constitution since the Government would in any case have followed the procedures contemplated under

law No. 308 of 2004, instead of those providing greater guarantees for the constitutional autonomy of the regions contained in law No. 62 of 2005.

4.4. – Calabria Region goes on to argue that the legislation on strategic environmental assessments (hereafter SEA), to which Articles 7-22 and 48-52 of legislative decree No. 152 of 2006 refer, falls predominantly under regional powers over territorial government and protection of health and that, even were the Court to recognise *in subiecta materia* that competences were shared under conditions of parity between the state and the regions, unilateral regulation by the state would not in any case be possible, other than with regard to the elaboration of fundamental principles. This is also in consideration of the fact that the competence of the state over environmental protection, pursuant to Article 117(2)(s) of the Constitution, is limited to the imposition of "uniform standards of protection".

For this reason Articles 8, 9, 10, 11, 12, 13 and 14 of legislative decree No. 152 of 2006, which lay down detailed provisions, violate Articles 117(2)(s) and (3) and 118 of the Constitution, as well as the principle of loyal cooperation.

4.5. – Calabria Region goes on to challenge Articles 9(2), second sentence, (4) and (6) (which specifies the content of the environmental report), 10(2), second sentence, and (3) (which specifies the forms for publication of the non technical summary of the environmental report), 12(2), (3) and (4) (which specifies the procedure for making an environmental compatibility assessment) and 14(3) (which specifies the forms for publication of corrective measures to the plans adopted), and Annex I of Part Two (which specifies the information which must be included in that report) of legislative decree No. 152 of 2006, with reference to the principle of loyal cooperation, arguing that these provisions, which do not contain fundamental principles ("with the exception perhaps of Article 12(2), (3) and (4)"), but are on the contrary extremely detailed, should have been "agreed on" with the regional authorities.

4.6 – Calabria Region also challenges Articles 16 and 17 of legislative decree No. 152 of 2006, with reference to the principle of loyal cooperation, on the grounds that, when regulating the procedure for the strategic environmental assessment on state level, these provisions fail to accommodate any possibility of intervention by the regional authorities in

the procedures leading to the approval of the plan or programme proposed and accordingly do not take account of the impact of the plan or programme on territorial government.

4.7. – Finally, Calabria Region challenges Articles 4(1)(b) – limited to the phrase "and with directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003" – and 5(1)(q) and (r), with reference to Articles 76 and 77(1) of the Constitution.

These provisions which, in the opinion of the Applicant, implement directive No. 2003/35/EC of 26 May 2003 (Directive of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC) violate the principles specified above, since the implementation of this directive does not expressly fall under the authorisation contained in law No. 308 of 2004.

However, according to the Applicant, even were it to be found that Article 1(9)(f) of law No. 308 of 2004 – which indicates amongst the principles and general criteria governing the delegation the full and consistent implementation of Community directives – had implicitly authorised the Government also to implement directive 2003/35/EC, Articles 4(1)(b) and 5(1)(q) and (r) would nevertheless be unconstitutional.

This is because Article 1 and paragraph B of law No. 62 of 2005, which expressly authorised the Government to implement the directive in question, repealed the 2004 authorisation *in parte qua* and, since the two authorisations provided for two different procedures for the adoption of the legislative decree, the contested provisions violate Article 76 of the Constitution, since the Government followed the procedure pursuant to the repealed law No. 308 of 2004, rather than that specified under law No. 62 of 2005, which provided better guarantees for the constitutional autonomy of the regions.

5. – By application of 19 June 2006 Calabria Region requested that its request for the suspension of the efficacy of the contested provisions be treated jointly with that made by Emilia-Romagna Region in application No. 56 of 2006.

6. – Shortly before the public hearing of 5 May 2009, Calabria Region filed a written statement in which it restated the challenges already made.

As far as the challenge to Article 3(2) of legislative decree No. 152 of 2006 is concerned, the Region asks that it be treated as an alternative to the claim regarding the failure to interpret the two year time limit provided for thereunder as a mandatory term for the adoption of implementing regulations by the Government.

As regards the further challenges made, the Region's representative argues that the repeal or replacement of numerous provisions of legislative decree No. 152 of 2006 and, insofar as is of interest here, the repeal and replacement of the whole of Part Two of the decree (Articles 4-52) by Articles 1 and 4(2) of legislative decree No. 4 of 2008 does not cause the interest to bring the challenges made to lapse, since the repeal was not retroactive and, notwithstanding the fact that their entry into force was deferred several times, the provisions were in any case only temporally applicable.

However, according to the Region's representative, the Court cannot make a ruling that there is no longer any matter in dispute in the light of the subsequent enactment of the corrective legislative decree No. 4 of 2008, since that decree violated Article 76 of the Constitution, both because it was founded on an authorisation (that contained in Article 1(1) and (2) of legislative decree No. 284 of 2006) which was invalid since it was not contained in a law enacted by Parliament but in a legislative decree promulgated by the Government, as well as because, even if it could be brought under the original delegation contained in Article 1(6) of law No. 308 of 2004, it in any case went beyond the limited task of coordination and correction, having completely rewritten the earlier text of the decree.

7. – By application served on 12-21 June 2006, filed on 14 June and registered as No. 69 in the Register of Applications 2006, Tuscany Region seized the Court directly with questions concerning the constitutionality, *inter alia*, of Articles 3(4), 6(6), 7(3) and (8), 10(3) and (5) and 17 of legislative decree No. 152 of 2006.

Tuscany Region argues that the legislation enacted by the legislative decree concerned related not only to environmental protection, under exclusive state competence, but also regional powers over territorial government, the protection of health, the valorisation of cultural and environmental heritage, agriculture and economic development, and argues

that the state legislature may only legislate over environmental matters provided that it respect the regions' prerogatives guaranteed under constitutional law, assuring them a primary role in consideration of the delicate intersection between the various competences.

7.1. – Given the above, Tuscany Region challenges first and foremost Article 3(4) of legislative decree No. 152 of 2006, which provides that the Minister for the Environment and the Protection of the Territory by one or more ministerial regulations shall carry out any amendments and supplements to technical standards governing environmental matters.

According to the Applicant, this provision violates Articles 117 and 118 of the Constitution, as well as the principle of loyal cooperation, insofar as it does not provide for mechanisms for consultation with the regions, since the impact of these regulations also on regional matters is undeniable: territorial government, protection of health, the valorisation of cultural and environmental heritage and agriculture.

7.2. – The Applicant also challenges Article 6(6) of legislative decree No. 152 of 2006, which regulates the state task force responsible for the strategic environmental assessment and the assessment of environmental impact, and Article 17 which charges that committee with the strategic environmental assessment on state level, insofar as these provisions to not contemplate the participation of the regions in the procedures for the strategic environmental assessment of plans and programmes under state competence.

Having pointed out the impact of these state plans and programmes on the government of the Region, the Region's representative complains that Articles 117 and 118 of the Constitution have been violated, since the participation of a regional representative in the state committee indicated is merely potential, which therefore means that an adequate involvement of the regions is not guaranteed in the only procedural stage possible.

The provisions in question thereby also violate directive 2001/42/EC, which provides for the participation in SEA procedures of the institutional bodies with competence over environmental matters and territorial government and, in doing so, violates Article 11 of the Constitution, as well as Article 76 of the Constitution, due to violation of Article 1(8)(e) and (f) of law No. 308 of 2004, which require compliance with Community legislation on environmental law.

7.3. – Tuscany Region goes on to challenge Article 7(3) of legislative decree No. 152 of 2006, which requires an SEA not only for those plans and programmes indicated under Article 7(2), but also for plans and programmes concerning the definition of the reference framework for the construction of public works which, whilst not being subject to environmental impact assessment (EIA), may have significant effects on the environment, in the opinion of the competent state sub-committee [of the task force] competent for the SEA pursuant to Article 6 of the decree.

According to the Applicant, this provision violates Articles 117 and 118 of the Constitution, as well as the principle of loyal cooperation, insofar as it does not provide for an agreement with the region also to subject regional plans to the SEA, and thereby permits a state organ to interfere with matters concerning territorial government.

7.4. – The Applicant goes on to challenge Article 7(8) of legislative decree No. 152 of 2006, which exempts from the SEA procedure plans and programmes relating to infrastructure for mobile telephone communication, formerly subject to the provisions contained in Article 87 of legislative decree No. 259 of 1 August 2003 (Electronic Communications Code).

According to the Applicant, this provision violates Article 3 of directive 2001/42/EC, which does not permit this type of plan from being exempted from the SEA procedure and, in doing so, violates Article 11 of the Constitution, as well as Article 76 of the Constitution, due to violation of Article 1(8)(e) and (f) of law No. 308 of 2004, which require compliance with Community legislation on environmental law.

These violations are claimed to impinge upon regional powers, since the failure to subject the planning decisions concerning mobile telephone communication to an SEA infringed regional powers in the area of protection of health and territorial government.

7.5. – Finally, Tuscany Region challenges Article 10(3) and (5) of legislative decree No. 152 of 2006, which provide, respectively, that the procedures regulating the total or partial publication of the plan or project subject to the SEA be laid down by ministerial regulation and that the filings and publications made for the SEA substitute for all purposes

the procedures governing information and participation, if any, provided for on an ordinary basis by the procedures for the adoption and approval of the said plans and programmes.

Arguing that these provisions refer also to SEA procedures on regional level, the Applicant claims that they violate Articles 117(3) and (4) and 118 of the Constitution on the grounds that they impinge upon the power of the Region to regulate procedures within its competence.

8. – The President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato*, entered an appearance by writ of 11 May 2006, requesting that the Court rule the application inadmissible and groundless.

8.1. – In particular, the state representative argues:

– with regard to the challenge to Article 3(4) of legislative decree No. 152 of 2006, that the setting of technical standards concerning environmental matters is done strictly with a view to setting of uniform standards throughout the country and falls under the exclusive competence of the state over environmental law;

– with regard to the challenge to Articles 6(6) and 17 of legislative decree No. 152 of 2006, that the SEA is a procedure merely for obtaining information and that it contemplates adequate instruments to permit the regions to present their own interests;

– with regard to the challenge to Article 7(8) of legislative decree No. 152 of 2006, that constitutional case law has recognised the unitary and comprehensive nature of the planning and authorisation of telecommunications installations;

– with regard to the challenge to Article 10(3) and (5) of legislative decree No. 152 of 2006, that the provision can be interpreted as referring only to SEA procedures on state level.

9. – Shortly before the public hearing of 5 May 2009, Tuscany Region filed a written statement in which, as far as the provisions at issue in these proceedings are concerned, it asserts that it no longer has any interest in the application filed, due to the amendments introduced by legislative decree No. 4 of 2008 and, specifically, due to the introduction into the text of legislative decree No. 152 of 2006 of Articles 3-*bis* to 3-*sexies* and the repeal and replacement of the legislation governing the SEA.

10. – By application served on 12-27 June 2006, filed on 15 June and registered as No. 70 in the Register of Applications 2006, Piedmont Region seized the Court directly with questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006 including, *inter alia*, Articles 5(1)(e), 6(6), 12, 21 and 22.

These proceedings concern exclusively the challenge to the whole text of the decree and to the aforementioned provisions with reference to the principles indicated below, as the treatment of the further questions of constitutionality raised by the Applicant Piedmont Region will be the object of separate proceedings.

10.1. – The Applicant challenges first and foremost the whole text of legislative decree No. 152 of 2006 arguing, due to the procedural developments (described above in paragraph 2) which led to its issue and the disagreements which emerged during the meeting of 15 December 2005 of the Joint Assembly, that the principle of loyal cooperation and Articles 5 and 76 of the Constitution had been violated, with reference to Article 1(4) of the parent statute No. 308 of 2004, which required the consultation of the Joint Assembly during the procedure leading to the promulgation of the decree.

The Applicant argues that this procedural violation resulted in an infringement of the constitutional powers of the regions and the local authorities, since legislative decree No. 152 of 2006 has various effects on sectors which pertain also – "at times identified and always interlinked" – to matters over which competence is shared pursuant to Article 117(3) of the Constitution "(territorial government, protection of health, civil protection, energy) and to the sphere of competence reserved to regional legislation pursuant to Article 117(4) of the Constitution (agriculture, productive sectors, local public services, public works etc.)".

The Region's representative recalls, on this point, that the case law of the Constitutional Court (*inter alia*, judgments No. 259 of 2004 and No. 307 of 2003) has on more than one occasion precluded the strict existence of an area of law that can be brought, in a technical sense, exclusively under "protection of the environment", "classifying the environment as a constitutionally protected 'value' which as such delineates a kind of 'cross cutting' area of law over which different powers are exercised which may well be regional, with the state

having the task of setting 'standards' of uniform protection throughout the country and with the regions on the other hand having the power to enact legislation in the matters falling under their own competence which also pertain to goals of environmental protection".

It follows, in the opinion of Piedmont Region, that the absence of an adequate debate on the provisions "to be issued, not to speak of an adequate assessment of the different situations existing and the possible diversified solutions which could be adopted impinges in fact on the entire approach of the legislation concerned", with the result that the exclusion of any contribution by the regions "for the elaboration of the provisions of legislative decree No. 152/2006 has an impact that is sufficiently substantial to invalidate the legislation as a whole, leaving aside the specification, which is nonetheless made, of questions relating to specific provisions".

10.2. – The Applicant identifies a further violation of the law in the "extension" and "depth of the amendments made by the delegated decree to the legislation hitherto applicable in the various sectors covered", whereas pursuant to Article 1(1) and (8) of law No. 308 of 2004, the object of the authorisation was limited to legislative coordination within the various fields on the grounds that they had been affected by various laws enacted over time or containing partial arrangements which needed to be brought together and, if necessary, supplemented in order to render them consistent and cohesive, as well as the rationalisation of existing legislation, also with regard to the need for the full and consistent implementation of Community directives, but "did not permit the introduction of new principles, new institutions, new functions or new procedures" nor "the enactment of new arrangements for the sectors concerned".

Legislative decree No. 152 of 2006 by contrast introduced "a series of important amendments in various sectors, both through completely new legislation as well as through significant amendments to parts of the legislation by introducing changes to the approach or contents, thereby straying beyond the limits imposed by the parent statute, insofar as is relevant for regional powers, which are significantly infringed or ignored in various ways".

10.3. – Moreover, the Region continues, Article 1(8) of law No. 308 of 2004 stipulates as a general principle of the authorisation that the legislative decrees be promulgated "out

of respect [...] for the substantive competences of the state administrations as well as the powers of the regions and the local authorities, as defined under Article 117 of the Constitution, law No. 59 of 15 March 1997 and legislative decree No. 112 of 31 March 1998 [...]".

It is possible to infer from the above provision "the limited scope of the legislative coordination delegated to the legislative decrees, which were therefore required to maintain the legislative framework of the various sectors already set out both under national legislation as well as regional provisions already enacted in the various areas to implement the former" whilst legislative decree No. 152 of 2006 "by contrast revisits and reorganises *ex novo* entire fields of activity without an appreciable reasonable justification focused on the pursuit of requirements pertaining to the unitary nature of the state […] setting aside without giving consideration, not even in the minimal sense of appropriate transitional arrangements, all of the regional legislation applicable in the area, which was particularly directed at the coordination and supplementation of the various sectoral competences, and which was indiscriminately disregarded along with the organisation of functions already implemented within the region".

In this regard, Piedmont Region recalls that it has taken steps to enact: "Provisions concerning environmental compatibility and the assessment procedures" by regional law No. 4 of 14 December 1998; "Provisions on the management of waste" by regional law No. 24 of 24 October 2002; provisions on the "Decontamination and reclamation of contaminated sites. Approval of the regional decontamination plan for polluted areas" by regional law No. 42 of 7 April 2000; "Provisions for the protection of the environment in the area of atmospheric pollution and first implementation of the regional plan for the recovery and protection of the quality of the air" by regional law No. 43 of 7 April 2000; "Provisions on water management" by regional law No. 13 of 20 January 1997; "Provisions to supplement and coordinate the arrangements on soil protection in the regional territorial plan and in municipal town planning instruments" by regional law No. 56 of 1977, as subsequently amended and supplemented.

Since, in the opinion of the Applicant, the legislation concerned has already been enacted by the Region "in accordance with the objectives of environmental protection and which could have been appropriately taken into consideration through correct drafting, as contemplated, with the contribution of the regions and the local authorities", which was by contrast "ignored by the legislative decree, in violation of the parent statute and the institutional framework of state, regional and local authority powers, which was also expressly confirmed by the parent statute, thereby breaching also the principles of reasonableness and the proper conduct of the public administration due to the unjustified upheavals caused to bodies, functions and procedures currently applicable and effectively operational on regional level".

10.4. – The Applicant also challenges the fact that, as part of the significant innovations which it introduced compared to the previous legislation in the various sectors concerned, legislative decree No. 152 of 2006 was "characterised by a marked centralism and the separation of activities and powers relating to environmental protection (also through the creation of new bodies and the allocation of functions) from the powers to protect all other public interests which interact and intersect with environmental protection that fall under regional legislative competence and the administrative activity of the regions and the local authorities". In this way, the principle of subsidiarity referred to also in the parent statute (Article 1(8)) is claimed not to have been correctly applied, since attribution to the minister "of many important and varying functions, including both those newly created as well as others already exercised on municipal, provincial and regional level" was not justified by requirements pertaining to the unitary nature of the state. Similarly, the legislation did not correctly apply the principles contained in the parent statute (Article 1(8)(m) and (9)(c)) which were intended to reassert the role of the regions pursuant to Article 117 of the Constitution and to remove problems of an organisational, procedural and financial nature "which may hinder the achievement of the fully operational status of the administrative and technical organs charged with the protection and recovery of the soil and the subsoil, moving beyond the superimposition of the various plans of environmental significance and coordination them with town planning schemes", as well as the valorisation of the role and

competences performed by the bodies with mixed state and regional composition, since it did not take into account “the principle of joint responsibility and loyal cooperation which must characterise the relations between the different institutions in order to guarantee the effectiveness of protection through an approach to environmental policies which, by involving all of the bodies that represent local needs, may take into account the complex nature of the issue”.

10.5. – Piedmont Region also complains of the violation of the parent statute “also with regard to the inadequate or imprecise application of Community legislation on environmental protection, having regard for the express indications laid down by the directional criteria to 'implement Community directives fully and consistently in order to guarantee high levels of environmental protection and thereby contribute to the competitiveness of local economies and undertakings, avoiding situations in which competition is distorted' and to 'assert the Community law principles of prevention, precaution, correction and reduction of pollution and environmental damage and the “polluter pays' principle” (Article 1(9)(e) and (f)).

Legislative decree No. 152 of 2006 therefore does not fully implement the Community legislation, violating “Article 117(1) of the Constitution, with implications for the functions of the regions which are also required to implement Community legislation themselves pursuant to Article 117(5) of the Constitution and, according to the settled rulings of the Community authorities, are responsible within the ambit of their own administrative activities – and the same may be said for the local authorities – for the precise application of such legislation”.

10.6. – As far as the challenges to the specific provisions of Part Two of legislative decree No. 152 of 2006 are concerned, the Region argues first and foremost, in general terms, that “Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, and the principles of loyal cooperation, reasonableness, adequacy, differentiation, subsidiarity and the proper conduct of the public administration, with regard also to the violation of principles and rules of Community and international law, have been violated”.

The Region's representative goes on to argue that the legislation governing strategic environmental assessments (SEA), as is the case for that on environmental impact assessments (EIA), is justified "by the overall consideration of works and initiatives which will have the effect of causing a significant impact on the environment through their incorporation into the territorial context, their justification with reference to requirements for infrastructure, manufacturing, economic development, etc., and in the search for implementation procedures which reconcile the various competing requirements". Therefore, the area of environmental protection is clearly interrelated with the other areas of territorial government, protection of health, energy, manufacturing, etc., which fall under shared or residual regional competence, "the arrangements governing which and the administrative decisions relating to which intersect and interfere with one another in the structuring of the legislation and procedures for strategic environmental assessment and environmental impact assessment", whilst on the other hand, the incorporation of the procedures and the various authorisations amounted to a "specific criterion within the parent statute, alongside the correct and full transposition of the Community legislation which governed the institutes concerned".

In the opinion of the Applicant, legislative decree No. 152 of 2006 disregards the aforementioned requirements, modifying the structure of powers, in breach of the parent statute and causing upheavals to the implementing legislation already enacted on regional level (Piedmont Region law No. 40 of 1998), despite the absence of requirements pertaining to the unitary nature of the state which may justify bringing specific activities under the competence of the state.

10.7. – Given the above, the following provisions are specifically contested:

– Article 5(1), "insofar as it provides under letter e that the EIA procedure shall apply to preliminary projects without providing, in breach of directives 85/337/EEC and 97/11/EEC, that definitive projects which contain significant modifications [also] be subject to an EIA and without providing for their incorporation into a single decision making process along with other authorisation proceedings, the decisions on which are taken with reference to the definitive project";

– Article 6(6), “insofar as it provides that the national task force which is responsible for carrying out the investigation for the SEA, EIA and IPPC assessments concerning public works and initiatives of national significance contain on every sub-committee 'an expert' appointed by the region directly affected by the completion of the project”. This is claimed to violate the principle of loyal cooperation, since the provision assigns a “limited and secondary role” to the participation of the region;

– Article 12 since, contrary to the provisions of directive 2001/42/EC (which favours a strong integration between issues and authorities in the sectors concerned, given that the SEA is not a mere authorisation, but must set in motion a decision making process by the public administration which weighs up the choices to be made within a specific environmental, geographical and socio-economic context), “the procedure laid down by the legislative decree provides that a decision be taken on the environmental compatibility of a plan or programme, with which the plan or programme must necessarily comply, by a different body which is not obliged to compare its own assessment with that of the proposing body, which means that the environmental assessment and the planning or programming do not really overlap, but remain successive and essentially separate stages”. Moreover, it is apparent from sub-section 2 that the procedure is arranged mechanically, which reduces its effective function as specified under Community legislation, by “setting a time limit for the issue of the decision, the intervention on an alternative basis by the Council of Ministers and the provision, where this does not occur, that the environmental compatibility of the plan or programme under state competence is considered not to have been approved, and also that the same rule apply also for plans and programmes subject to SEA under regional competence until the enactment of specific regional legislation”.

Indeed, the space reserved to regional legislation is almost non existent also with regard to procedures under regional competence, “which in practice are still defined completely according to the provisions of the legislative decree, pursuant to the reference contained in Articles 21 and 22(1) and (2)”.

11. – The President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato*, entered an appearance in the proceedings, requesting that the the application be ruled inadmissible and groundless.

The state representative argues that the application is inadmissible due to its late service and, on the merits, reserving the right to submit more detailed arguments during the course of proceedings, challenges in general terms the application by Piedmont Region, arguing that the cross-cutting nature of environmental law is without prejudice to the exclusive power of the state to lay down uniform rules throughout the country for procedures and functions which pertain specifically to environmental protection.

12. – By application served on 9 June 2006, filed on 15 June and registered as No. 71 in the Register of Applications 2006, Valle d'Aosta Region seized the Court directly with questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006 as well as, *inter alia*, specifically Articles 4(1)(a)(iii) and (vi) (as well as Articles 15 to 22, insofar as they refer to Article 6), 7(3), 12(2), 10 and 16.

12.1. – The Applicant argues, first and foremost, that it enjoys broad and general powers over environmental matters.

As justification for this claim the Region's representative refers, in addition to the powers specified under Article 2 of constitutional law No. 4 of 26 February 1948 (Special statute for Valle d'Aosta) over town planning, agriculture and forestry, hunting and fishing, tourism, public works, crafts and, above all, protection of the countryside, also to certain judgments of the Constitutional Court (specifically judgments No. 183 of 1987, No. 1029 of 1988, No. 264 of 1996 and No. 285 of 1997), as well as certain provisions implementing the Statute.

In particular, the Region's representative refers to:

– Article 16 of law No. 196 of 16 May 1978 (Provisions to implement the Special Statute of Valle d'Aosta), according to which “as implementation of Article 4(1) of constitutional law No. 4 of 26 February 1948, in relation to Article 2(q), last part, of the same constitutional law, the administrative functions which the Ministry for Cultural and

Environmental Heritage and other central and local state bodies exercise for the territory of Valle d'Aosta over protection of the countryside are transferred to Valle d'Aosta Region";

– Article 50 of presidential decree No. 182 of 22 February 1982 (Provisions to implement the Special Statute of Valle d'Aosta Region extending to the Region the provisions of presidential decree No. 616 of 24 July 1977 and the legislation relating to bodies abolished by Article 1-*bis* of decree-law No. 481 of 18 August 1978, converted into law No. 641 of 21 October 1978), which provides that "the administrative functions in matters relating to town planning and development plans for areas of particular importance for tourism relate to the legislation on the use of the territory including all information, legislative and management aspects concerning operations to safeguard and transform the soil as well as environmental protection and the approval of development plans for areas of particular importance for tourism";

– Article 51 also of presidential decree No. 182 of 1982, the first two sub-sections of which provide as follows: "the administrative functions concerning: *a)* the identification of the general framework for national land management, with particular reference to the geographical organisation of initiatives in the interest of the state and the environmental and ecological protection of the land as well as the defence of the soil; *b*) the formation and updating of lists of earthquake-proof buildings and the issue of the relative technical standards for their construction, fall within the competence of the state. For public works which are to be carried out by state administrations or which otherwise concern land owned by the state, the determination of compatibility with the requirements laid down by the standards and town planning and construction plans, except for works intended for military defence, shall be carried out by the state, in consultation with the region";

– Article 67 of presidential decree No. 182 of 1982, which transfers to the region, aside certain exceptions, the administrative functions exercised by the central and local state bodies regarding soil hygiene and atmospheric, water, heat and noise pollution, including the health and hygiene aspects of unhealthy industries;

– Article 68 of presidential decree No. 182 of 1982 which limits the powers reserved to the state by setting out a mandatory closed list which, according to the Applicant, does not

contain any justification for the legislative provisions enacted by legislative decree No. 152 of 2006 and contested before the Court.

According to the Region's representative, this general competence in the area of environmental protection cannot be subject to limitations grounded on the broad legislative powers of the state over the protection of the environment and the ecosystem, pursuant to Article 117(2)(s) of the Constitution, in view of the provisions laid down by Article 10 of constitutional law No. 3 of 18 October 2001 (Amendments to Title V of Part II of the Constitution). On the other hand "as far as the matters over which legislative competence is regulated pursuant to Article 117(3) and (4) of the Constitution are concerned, it cannot be excluded that these powers may also be recognised as being vested in the Applicant where they provide for more far-reaching autonomy compared to that granted to it under the Special Statute and its implementing legislation which, with reference to the Applicant, could be asserted with regard to certain areas of law – including industry, the management of public waters for hydroelectricity, protection of health, civil protection and territorial government – insofar as they fall beyond, if at all, the area of law of town planning and construction, primary competence over which is assigned to Valle d'Aosta Region".

12.2. – In view of the above, Valle d'Aosta Region challenges, first and foremost, the whole of legislative decree No. 152 of 2006, with reference to the principle of loyal cooperation and Article 76 of the Constitution.

According to the Region's representative, the procedural developments (described above in paragraph 2) which led to the enactment of the legislative decree did not respect the minimum content of the guarantee of participation for the Joint Assembly imposed by the principle of loyal cooperation and by the parent statute itself (Article 1(4) of law No. 308 of 2004). Moreover, the text placed before the Joint Assembly was different from that subsequently enacted, the latter having been modified by the Government following certain observations by the President of the Republic and not presented again to the Assembly and the parliamentary committees. According to the Applicant, these procedural irregularities resulted in an infringement of the constitutional powers of the regions and the local authorities.

12.3. – Valle d'Aosta Region also challenges Article 6 of legislative decree No. 152 of 2006, which provides for the creation with the Ministry for the Environment and the Protection of the Territory – by decree of the President of the Council of Ministers, acting on a proposal by the Minister for the Environment and the Protection of the Territory – of a task force to carry out environmental assessments, assigning that body with the duties of carrying out the investigation and expressing an opinion on the environmental reports and environmental impact studies relating to plans and programmes or to projects respectively subject to strategic environmental assessment and environmental impact assessment under state competence.

The Applicant Valle d'Aosta Region complains that its own powers have been infringed "in environmental law and related matters", violating Articles 11, 76 and 117(1) of the Constitution as well as the principle of loyal cooperation, since the participation of a regional representative in the state committee mentioned is merely potential, weak and not guaranteed, and this does not guarantee, during the only procedural stage possible, an adequate involvement of the regions, as is however required under the case law of this Court (citing judgment No. 303 of 2003).

Therefore, in not providing for the necessary and guaranteed participation of the regions, the provisions concerned are claimed to violate directive 2001/42/EC (Directive of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment), which requires the participation in SEA procedures of the institutional bodies with competence over environmental and land use issues and, in doing so, violate Articles 11 and 117(1) of the Constitution.

12.4. – At the same time, the "legislation on the task force for environmental assessments and the indifference to the requirements of adequate and effective involvement of the regions in the procedures likely to affect issues within the purview of local government bodies which that legislation implies means that the related arrangements contained in Head II of Title II of Part II of legislative decree No. 152 of 2006 are also inadequate, containing specific provisions for the SEA on state level, insofar as they refer to the task force mentioned in Article 6, contrary to the provisions of directive 2001/42/EC

of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, thereby violating Articles 11 and 117(1) of the Constitution".

12.5. – Valle d'Aosta Region also challenges Article 7(3) of legislative decree No. 152 of 2006, which provides that alongside the plans and programmes indicated in Article 7(2), also those plans and programmes regarding the definition of the frame of reference for the construction of works be subject to SEA which, whilst not being subject to EIA, may have significant effects for the environment in the opinion of the state sub-committee [of the task force] competent for the SEA.

According to the Applicant, this provision violates the principle of loyal cooperation, as well as Article 2(d), (f) and (g) of its Special Statute, which recognises the primary competence of the Region over town planning, roads and public works of regional interest, agriculture and forestry, husbandry, and flora and fauna insofar as they do not provide for adequate forms of collaboration with the region when subjecting also regional plans to SEA and therefore permits a state organ to interfere with the matter of territorial government.

12.6. – Valle d'Aosta Region then challenges Article 12(2) of legislative decree No. 152 of 2006, which provides that where the authority responsible for the environmental assessment does not report within sixty days, the Council of Ministers is authorised, following the issue of a warning setting a further deadline of twenty days, to exercise its reserve power, and where the Council of Ministers does not express its position a negative opinion will be presumed to have been issued, and which further provides that this legislation shall apply, up until the enactment of regional legislation in this area, also to SEA under regional competence.

The Applicant considers that, insofar as it refers to SEA under regional competence, this provision clearly violates Article 2(g) of the regional Statute, under which town planning is a matter under exclusive regional competence, and that it moreover violates the principle of the proper conduct of the public administration pursuant to Article 97 of the Constitution, implying the risk that numerous plans and programmes will contain a

negative assessment of environmental compatibility merely due to the expiry of the time limit.

12.7. – Valle d'Aosta Region goes on to challenge Articles 10 and 16 of legislative decree No. 152 of 2006, first and foremost insofar as they provide: that the environmental compatibility assessment be carried out before the approval of the plan or programme (Article 10(1)) and that, before the start of the approval procedure, an appropriate number of copies of the non technical summary must, pursuant to Article 10(1) and (2), be filed with the offices of the provinces and regions the territory of which is affected, including only partially, by the plan or programme or the effects of its implementation, whilst the regions must be sent also a full copy of the draft plan or programme and the environmental report (Article 16(2)).

According to the Applicant, these provisions violate Articles 4 and 6(1) of Community directive 2001/42/EC under which, on the other hand, the environmental assessment must be carried out during the preparatory stage of the plan or programme and prior to its adoption or to the commencement of the legislative procedure, and the draft plan or programme and the environmental report must be made available "to the authorities referred to in paragraph 3 of this Article and the public".

According to the Region's representative, under the terms of these provisions, the SEA is carried out "when the elaboration of the plan has already reached its final stage, thereby preventing public and private subjects which have the right to participate in the procedures leading to the approval of the plan from carrying out their own assessments also on the basis of the environmental assessment on the plan made by the competent authority", whilst the filing of the non technical summary is a form of publication that is not capable of providing guarantees to the pubic.

The violation of Community law and of Articles 11 and 117(1) of the Constitution, according to the region, "translates into an infringement of the regional powers over environmental protection, and also the regional competence over the implementation of Community directives pursuant to Article 117(5) of the Constitution". It is also claimed to violate Article 76 of the Constitution, with reference to Article 1(8) of law No. 308 of 2004,

insofar as it requires the secondary legislator to comply with the principles and rules of Community law, the powers of the regions and in particular the provisions of the regional statutes and the relative implementing legislation of the regions governed by special statute, as well as the principle of subsidiarity.

For the Applicant moreover, “at least the first of the two provisions cited, which is applicable also to proceedings at regional and local level, infringes regional powers over environmental matters”, as well as “the competences relating to further cross-cutting matters affected by the environmental assessment procedures”.

Article 10 is challenged with reference to sub-section 3 thereof, which provides that the total or partial publication of the draft plans on the computer network shall occur only where required by ministerial regulation, on the grounds that it violates the same Community law principle of publicity.

Whilst in the view of Valle d'Aosta Region Article 10(5), according to which the forms of publicity provided for the SEA procedure replace for all purposes the other forms of publicity for plans provided for under the ordinary approval procedure, violates the exclusive regional competence over town planning on the grounds that, since the procedures concerned are regional, these may only be regulated by regional law, including as regards the forms of publicity.

12.8. – Finally, Valle d'Aosta Region challenges Article 4(1)(a)(iii) of legislative decree No. 152 of 2006, which provides that the legislation under examination shall have the goal of promoting the use of environmental assessment in the drafting of state, regional and inter-municipal plans and programmes .

This provision is claimed to violate Article 3(1) of Community directive 2001/42/EC which stipulates that an environmental assessment must be carried out for the plans and programmes which are likely to have significant environmental effects, since they do not consider “that there are urban areas larger than the Community definition of 'small areas at local level' the planning of which, whilst not falling under the concept of 'inter-municipal planning', is likely to significant environmental effects”.

For the reasons indicated therefore, it is claimed to violate Articles 11 and 117(1) and (5) of the Constitution and also breaches Article 76 of the Constitution, with reference to Article 1(8) of law No. 308 of 2004 and the regional powers over town planning.

13. – Shortly before the public hearing of 5 May 2009, Valle d'Aosta Region filed a written statement in which it restates and elaborates the arguments contained in its application and, as regards these proceedings, argues that notwithstanding the fact that the repeal and replacement of the contested provisions governing the SEA satisfied its concerns, this does not mean that there is no longer any matter in dispute given that, pursuant to Article 4(1) of legislative decree No. 4 of 2008, the rules in force at the time of when the relevant procedure commenced shall apply to the projects for which, "at the time when 'this decree' enters into force", the EIA is being carried out and the project and environmental impact assessment have been presented".

13.1. – During the course of the public hearing of 5 May 2009 however, the Region's representative asserted that Valle d'Aosta Region no longer had any interest in challenging Articles 6 and 7(3) of legislative decree No. 152 of 2006, since Article 6 had been repealed and replaced by Articles 14 and 9 of presidential decree No. 90 of 14 May 2007 (Regulation to reorganise the bodies operating with the Ministry for the Environment and the Protection of the Territory and the Sea, pursuant to Article 29 of decree-law No. 223 of 4 July 2006, converted into law, with amendments, by law No. 248 of 4 August 2006) before the entry into force on 31 July 2007 of the disputed SEA legislation and since Article 7(3) had been contested only on the basis of the alleged unconstitutionality of Article 6.

14. – By application served on 13 June 2006, filed on 16 June and registered as No. 72 in the Register of Applications 2006, Umbria Region challenged Articles 25(1), 35(1), 42(3), 55(2), 58(3), 63(3) and (4), 64, 65(3)(e), 95(5) 96(1), 101(7), 148, 149, 153(1), 154, 155, 160, 166(4), 181(7)-(11), 183(1), 186, 189(3), 195(1), 202(6), 214(3) and (5) of legislative decree No. 152 of 2006.

14.1. – The object of this decision is exclusively the challenge to the aforementioned provisions with reference to Article 76 of the Constitution and the principle of loyal

cooperation, as the further questions of constitutionality raised by the Applicant Umbria Region against the same provisions with reference to different principles will be the object of separate proceedings.

14.2. – According to the Region's representative, the procedural developments (described above in paragraph 2) which led to the promulgation of the legislative decree – with particular regard to the provisions mentioned above – did not comply with the minimum content of the guarantee of participation for the Joint Assembly imposed by the principle of loyal cooperation and by the parent statute (Article 1(4) of law No. 308 of 2004) and these procedural violations resulted in an infringement of the constitutional powers of the regions and the local authorities.

15. – Shortly before the public hearing of 5 May 2009 Umbria Region filed a written statement, which however did not contain arguments relating to the challenges at issue in these proceedings.

16. – By application served on 13 June 2006, filed on 16 June and registered as No. 73 in the Register of Applications 2006, Emilia-Romagna Region challenged, *inter alia*, Articles 5(1)(e), (g) and (m) and 12(2) of legislative decree No. 152 of 2006.

16.1. – Article 5(1)(e), after having defined the concept of the project for a works plan or initiative, provides that the EIA be carried out on preliminary projects, without requiring that subsequent definitive projects which contain modifications to the projects or envisage the use of natural resources or the emission of polluting substances be subject to the same procedures.

Emilia-Romagna Region claims that the provision breaches directive 85/337/EEC (Council directive on the assessment of the effects of certain public and private projects on the environment), as amended by directive 97/11/EC (Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment) and specifically Article 2(1) and point 13 of Annex II which by contrast stipulate this obligation, nothing that, by reasoned opinion No. 2002/5170 of 18 October 2005, the European Commission initiated infringement proceedings against Italy with reference to a similar provision contained in Article 20(5) of

legislative decree No. 190 of 20 August 2002 (Implementation of law No. 443 of 21 December 2001 on the construction of strategic infrastructure and manufacturing installations of national interest).

16.2. – Article 5(1)(g) defines the substantial modification to a works plan or initiative, providing that, for works or initiatives for which quantitative thresholds are set in Annex III of Part Two of the decree, modifications include also interventions to expand, strengthen or extend the works where the said intervention, considered in itself, is equal to or grater than thirty percent of those thresholds.

Emilia-Romagna Region considers that this provision is not clearly worded and argues that, were it to be understood as meaning that in order for a modification to be regarded as substantial it is necessary that the thresholds be exceeded by more than thirty percent, then the provision would contrast "with point 8 [of Article 3] of directive 2003/35/EC, which provided for the introduction of the following point into Annex I of directive 85/337/EEC, as amended by directive 97/11/EC: '22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex'".

16.3. – Article 5(1)(m) defines the environmental compatibility assessment as the decision by which the competent body concludes the strategic environmental assessment or the environmental impact assessment procedure, whilst Article 12(2) provides that the body responsible for the environmental assessment issue an environmental compatibility statement, which constitutes a prerequisite for the continuation of the approval procedure for the plan or programme.

Emilia-Romagna Region considers that these provisions violate directive 2001/42/EC, since they structure the SEA procedure and its outcome in terms essentially similar to those of the EIA procedure, whereas according to the Community directive indicated the SEA cannot be presented as a specific measure of authorisation by one authority for another, but should be conceived as a decision making process by the public administration which approves the plan or programme.

The violation of Community law has the further effect of infringing the constitutional guarantees of the Region since these provisions on the one hand must be applied by the local authorities, whilst on the other impose, pursuant to Article 22 of legislative decree No. 152 of 2006, a limit on future regional legislation.

17. – Shortly before the public hearing of 5 May 2009, Emilia-Romagna Region filed a written statement in which, following an examination of the recent case law of the Constitutional Court in environmental matters, it argues that as a preliminary matter it is fully entitled to rely on the fact that the state legislation breaches Community law, because, "given the requirement that regional law respect state environmental legislation, it would be required to exercise its legislative powers in contrast with Community law: this is especially the case since this contrast cannot simply be resolved by replacing the state principle with a corresponding Community law principle amenable to direct application".

On the merits, insofar as it relates to this dispute, the Region's representative argues that the repeal of the contested provisions does not have the result that there is no longer any matter in dispute, since the legislation would have been in force between 31 July 2007 and the entry into force of the corrective legislative decree No. 4 of 2008, therefore reaffirming the challenges raised.

18. – By application served on 13 June 2006, filed on 16 June and registered as No. 74 in the Register of Applications 2006, Liguria Region contested Articles 58, 59, 63, 64, 65, 67, 69, 74, 91(1)(d), 96, 113, 114, 116, 117, 121, 124(7), 148(4) and (5), 149(6), 154, 181(7)-(11), 183(1), 186, 189(3), 205(2), 240(1)(b), (c) and (g), 242, 243, 244, 246, 252 and 257 of legislative decree No. 152 of 2006.

18.1. – This decision concerns exclusively the challenge to the aforementioned provisions with reference to Article 76 of the Constitution and the principle of loyal cooperation, as the further questions of constitutionality raised by the Applicant Liguria Region against the same provisions, but with reference to different constitutional principles, will be the object of separate proceedings.

18.2. – According to the Region's representative, the procedural developments (described above in paragraph 2) which led to the promulgation of legislative decree – and,

in particular, the aforementioned provisions – did not comply with the minimum content of the guarantee of participation for the Joint Assembly imposed by the principle of loyal cooperation as well as the parent statute itself (Article 1(4) of law No. 308 of 2004) and these procedural violations resulted in an infringement of the constitutional powers of the regions and the local authorities.

19. – Shortly before the public hearing of 5 May 2009, Liguria Region filed a written statement in which however it does not submit arguments relating to the challenges at issue in these proceedings.

20. – By application served on 12 June 2006, filed on 17 June and registered as No. 75 in the Register of Applications 2006, Abruzzo Region contested, *inter alia*, the whole of legislative decree No. 152 of 2006, with reference to Article 76 of the Constitution and the principle of loyal cooperation, requesting moreover the suspension of its efficacy.

20.1. – This decision concerns exclusively the aforementioned questions of constitutionality, as the further questions of constitutionality raised by the Applicant Region in the same application will be the object of separate proceedings.

20.2. – The Applicant challenges the whole of legislative decree No. 152 of 2006, proposing the same challenges and arguments as those submitted by Emilia-Romagna Region in Application No. 56, described above in paragraph 2.1.

The Region's representative moreover argues that the item on the agenda approved on 20 January 2006 cannot be regarded as equivalent to an opinion effectively elaborated and issued following a correct procedure and points out that it was not in any case effectively taken into consideration.

21. – By application served on 13 June 2006, filed on 20 June and registered as No. 76 in the Register of Applications 2006, Puglia Region challenged, *inter alia*, Articles 6, 15(1), and 19 of legislative decree No. 152 of 2006, with reference to Articles 5, 76 and 118 of the Constitution.

21.1. – Puglia Region makes its challenge with reference to the following principles:

– Article 6 of legislative decree No. 152 of 2006, which regulates the state task force responsible for the strategic environmental assessment and the environmental impact

assessment, complaining that there is no provision for any form of agreement or collaboration between this state body and the regions, the territory of which is affected by the plans and projects under examination, and the merely potential participation in the work of the task force by a representative of the region concerned cannot be considered sufficient;

– Article 15(1), which provides that the plans and programmes the approval of which is a matter for state bodies be subject to strategic environmental assessment, and Article 19(2), which provides that the prior assessment be carried out by the authority competent to approve the plans or programmes, on application by the proposer [of the plan], having obtained the opinion of the task force pursuant to Article 6, complaining of the failure to provide for any input from the region, despite the undisputed effects on the territory of the plans and programmes concerned.

The contested provision are therefore claimed to violate Article 5 of the Constitution on the grounds that they are not capable of satisfying the specific requirements of local government bodies. They are also claimed to violate Article 76 of the Constitution on the grounds that they breach Article 8(m) (rather, Article 1(8)(m)) and Article 9(c) (rather, Article 1(9)(c) of law No. 308 of 2004, which impose the requirement to respect regional powers. They are finally claimed to violate Article 118 of the Constitution, since they attribute administrative functions to the state notwithstanding the absence of any requirement for the unitary exercise of those functions.

22. – Shortly before the public hearing of 5 May 2009, Puglia Region filed a written statement in which, with regard to the provisions at issue in these proceedings, it asserts that it no longer has any interest in the challenge made due to the amendments introduced by legislative decree No. 4 of 2008 and, specifically, due to the repeal and replacement of the arrangements governing the SEA.

23. – By application served on 13 June 2006, filed on 21 June and registered as No. 78 in the Register of Applications 2006, Campania Region challenged, *inter alia*, the whole of legislative decree No. 152 of 2006, with reference to Article 76 of the Constitution.

23.1. – This decision concerns exclusively the aforementioned question, since the treatment of the additional questions of constitutionality raised by the Applicant Campania Region will be the object of separate decisions.

23.2. – According to the Region's representative, the procedural developments (described above in paragraph 2) which led to the enactment of the legislative decree are stated not to comply with the minimum content of the guarantee of participation for the Joint Assembly imposed by the principle of loyal cooperation as well as the parent statute itself (Article 1(4) of law No. 308 of 2004).

24. – Shortly before the public hearing of 5 May 2009, Campania Region filed a written statement in which it restates and elaborates the arguments already presented and submits further challenges.

First and foremost, the Region's representative specifies the initial ground for its challenge, arguing that the contested legislative decree contrasts with Article 76 of the Constitution on the grounds that the Government rendered it materially impossible for the Assembly to obtain knowledge of the subject matter on which it was to issue its opinion.

Campania Region then identifies the following further grounds for challenge, again with reference to Article 76 of the Constitution:

– the text of the decree issued is different from that on which the opinion of the Joint Assembly was requested, having been amended by the Government following certain observations from the President of the Republic without being placed before the Assembly a second time;

– the legislative decree violates the principles laid down by Article 1(9)(e) and (m) of the parent statute, law No. 308 of 2004, and also disregards its nature as an authorisation to carry out reorganisation and coordination, and therefore for reformulate the existing legislation, since the secondary legislator did not fully and consistently implement Community law, but rather had an impact on the entire legislative system (rather than coordinating it), thereby infringing the powers of the regions and the local authorities.

25. – By application served on 13 June 2006, filed on 21 June and registered as No. 79 in the Register of Applications 2006, Marche Region seized the Court directly with the

question concerning the constitutionality, *inter alia*, of Articles 3(4), 6(6), 7(3) and (8), 10(3) and (5) and 17 of legislative decree No. 152 of 2006.

25.1. – Marche Region challenges the aforementioned provisions, submitting the same challenges and the same arguments as those made by Tuscany Region in application No. 69, discussed above in paragraphs 7, 7.1., 7.2., 7.3., 7.4. and 7.5.

26. – Shortly before the public hearing of 5 May 2009, Marche Region filed a detailed written statement in which it specifies and provides further argumentation for the challenges raised.

26.1. – With reference to the challenge to Article 3(4) of legislative decree No. 152 of 2006, the Region's representative argues that even though the state regulations laying down technical rules on environmental matters refer to an area under the exclusive competence of the state, they should in any case be adopted in accordance with a form of consultation with the regions, given the cross-cutting nature of environmental law and the extreme invasiveness of those technical rules on regional powers.

26.2. – With reference to the challenge to Articles 6(6) and 17 of legislative decree No. 152 of 2006, the Region's representative argues that the repeal and amendment of Article 6 by Articles 14 and 9 of presidential decree No. 90 of 2007 do not have the result that there is no longer any matter in dispute, since the reserve arrangements introduced did not satisfy the Region's claims, and in fact aggravated the alleged violation.

In fact, the current arrangements, resulting from the combined provisions of the new Article 8 of legislative decree No. 152 of 2006, introduced by Article 1(3) of the corrective legislative decree No. 4 of 2008 – which provides that the task force responsible for verifying the environmental impact, established pursuant to Article 9 of presidential decree No. 90 of 2007, shall ensure that the Minister for the Environment and the Protection of the Territory receives the technical and scientific support necessary in order to implement the provisions of the decree – and Article 9 of the aforementioned presidential decree No. 90 of 2007, by reducing the number of state members of the task force from seventy eight to sixty, but introducing at the same time the requirement that the task force must operate in

plenary form rather than the more limited sub-committees previously specified, ultimately end up reducing the proportional weight of the only regional member.

For the applicant, the fact that the later legislation does not satisfy its concerns means that it would be necessary to transfer the question of constitutionality raised to the new provisions contained in Article 8 of legislative decree No. 152 of 2006, introduced by legislative decree No. 4 of 2008, in the event that it were found that the reference made to Article 9 of presidential decree No. 90 of 2007 amounted to the conferral of legal status on a specific external rule. On the other hand, should that reference be found to consist in the conferral of legal status on an external *source* of rules, the new Article 8 of legislative decree No. 152 of 2006 would in any case be unconstitutional on the grounds that it does not provide for any collaboration with the region within the ambit of strategic environmental assessment procedures which affect its territory.

26.3. – With reference to the challenges brought against Article 7(3) and (8) and Article 10(3) and (5) of legislative decree No. 152 of 2006, Marche Region specifies that the repeal and amendment of the contested provisions had the effect of satisfying its claims. Nevertheless, for the Region's representative, there is still an interest in the challenges raised, given the non retroactive nature of the repeal and since the provisions concerned have not yet been applied. The decision as to whether the provision in question has been applied or not, the Applicant asserts, "could also be subject to a specific order for measures or inquiry, should this Court consider it necessary to obtain this information".

26.4. – With reference to the challenge to Article 10(3) of legislative decree No. 152 of 2006, the Region's representative points out moreover that a constitutionally informed interpretation of the provision is possible, in the sense that it does not preclude further forms of publication of the plans and programmes specified under regional law.

Should it not be considered possible to read the contested provision in a manner compatible with the Constitution, the Region's representative insists in any case that the question [of constitutionality] be accepted.

27. – By application served on 13 June 2006, filed on 23 June and registered as No. 80 in the Register of Applications 2006, Basilicata Region contested, *inter alia*, the whole of

legislative decree No. 152 of 2006, with reference to Article 76 of the Constitution and the principle of loyal cooperation.

27.1. – This decision concerns exclusively the aforementioned question, since the treatment of the additional questions of constitutionality raised by the Applicant Basilicata Region will be the object of separate decisions.

27.2. – According to the Region's representative, the procedural developments (described above in paragraph 2) which led to the promulgation of the legislative decree are stated not to comply with the minimum content of the guarantee of participation for the Joint Assembly imposed by the principle of loyal cooperation as well as the parent statute itself (Article 1(4) of law No. 308 of 2004), since the government requested the opinion within a time-scale of such a nature as to render its expression impossible, and rejected the request for a deferral of the examination of the question, alleging non existent requirements of urgency.

The text of the decree promulgated was also different from that on which the opinion of the Joint Assembly was requested, having been amended by the Government following certain observations from the President of the Republic without being placed before the Assembly a second time, with the result that in the end the decree was promulgated without the required opinion.

The Region's representative goes on to submit similar arguments to those made by Emilia-Romagna Region in Application No. 56, described above in paragraph 2.1.

Finally, the Region's representative argues that “the violation of the parent statute, and therefore of Article 76 of the Constitution and the principle of loyal cooperation constitute an evident and direct violation of the powers and prerogatives conferred on the regions under constitutional law, which specifically amount to a violation of the Constitution that entitles the Region to file the application”.

28. – In all the proceedings, with the exception of those commenced by Calabria Region by Application No. 68 of 2006, the non-profit Italian Association for the World Wide Fund for Nature (WWF Italia) – Onlus intervened, arguing, as a preliminary matter, that it was the “holder of an interest in the protection of the environment”, recognised

"pursuant to law No. 349 of 1986 and also the parent statute No. 308 of 2004, insofar as it refers to the Association, granting it a specific consultative role in the procedure for the promulgation of the decree" and that "any judgment accepting or rejecting the application filed" by each of the applicant regions "would have a direct influence with significant effects on the individual position of the Association".

On the merits, endorsing the submissions made by the various applicants, the intervener requested, *inter alia*, that the contested provisions be ruled unconstitutional due to violation of the principle of loyal cooperation and the parent statute.

29. – Shortly before the public hearing of 5 May 2009, WWF Italia filed a written statement in each of the proceedings in which it intervened, in which it called for the Constitutional Court to rethink its position on the admissibility of interventions, in proceedings in which the Constitutional Court is seized directly, by parties other than the Applicant and the holder of the legislative power, the decision of which is in dispute.

On the merits, insofar as is relevant for these proceedings, the intervener restates the arguments already submitted, endorsing those of the various applicant regions, but also arguing, differently from some of these, that due to the amendments introduced by legislative decree No. 4 of 2008, there was no longer any matter in dispute with regard to the the contested provisions relating to the rules on the SEA and the EIA.

30. – In the proceedings commenced by Piedmont Region, Biomasse Italia S.p.a., Società Italiana Centrali Termoelettriche – SICET S.r.l., Ital Green Energy S.r.l. and E.T.A. Energie Tecnlogiche Ambiente S.p.a. intervened, submitting arguments in support of the admissibility of their intervention and, on the merits, arguing that the application by Piedmont Region was groundless, but in relation to provisions not at issue in these proceedings.

Conclusions on points of law

1. – By application No. 56 of 2006, Emilia-Romagna Region seized the Court directly with questions concerning the constitutionality of Articles 63, 64, 101(7), 154, 155, 181(7)-(11), 183(1), 186, 189(3) and 214(3) and (5) of legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters), with reference, *inter alia*, to the principle of loyal cooperation and Article 76 of the Constitution, in the light of Article 1(4) of law No. 308 of 15 December 2004 (Authorisation for the Government to reorganise, coordinate and supplement the legislation on environmental matters and measures of direct application), requesting also suspension of the efficacy of the contested provisions.

1.1. – By application No. 68 of 2006, Calabria Region seized the Court directly with a question concerning the constitutionality of the whole of legislative decree No. 152 of 2006, as well as, *inter alia*, Articles 3(2), 4(1)(a) and (b) – limited to the phrase "and with directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003" – 5(1)(q) and (r), 6(6), (7) and (8), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and Annexes I and II of Part Two, requesting also the suspension of their efficacy.

1.2. – By application No. 69 of 2006, Tuscany Region seized the Court directly with a question concerning the constitutionality, *inter alia*, of Articles 3(4), 6(6), 7(3) and (8), 10(3) and (5) and 17 of legislative decree No. 152 of 2006.

1.3. – By application No. 70 of 2006, Piedmont Region seized the Court directly with questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006 as well as, *inter alia*, of Articles 5(1)(e), 6(6), 12, 21 and 22.

1.4. – By application No. 71 of 2006, Valle d'Aosta Region seized the Court directly with questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006, as well as, *inter alia*, of Articles 4(1)(a)(iii), 6 (as well as Articles 15 to 22, insofar as they refer to Article 6), 7(3), 12(2), 10 and 16.

1.5. – By application No. 72 of 2006, Umbria Region seized the Court directly with questions concerning the constitutionality of 25(1), 35(1), 42(3), 55(2), 58(3), 63(3) and (4), 64, 65(3)(e), 95(5) 96(1), 101(7), 148, 149, 153(1), 154, 155, 160, 166(4), 181(7)-(11), 183(1), 186, 189(3), 195(1), 202(6), 214(3) and (5) of legislative decree No. 152 of 2006,

with reference, *inter alia*, to Article 76 of the Constitution (in the light of Article 1(4) of law No. 308 of 2004) and the principle of loyal cooperation.

1.6. – By the further application, registered as No. 73 in the Register of Applications 2006, Emilia-Romagna Region seized the Court directly with questions concerning the constitutionality, *inter alia*, also of Articles 5(1)(e), (g) and (m) and 12(2) of legislative decree No. 152 of 2006.

1.7. – By application No. 74 of 2006, Liguria Region seized the Court directly with questions concerning the constitutionality of Articles 58, 59, 63, 64, 65, 67, 69, 74, 91(1)(d), 96, 113, 114, 116, 117, 121, 124(7), 148(4) and (5), 149(6), 154, 181(7)-(11), 183(1), 186, 189(3), 205(2), 240(1)(b), (c) and (g), 242, 243, 244, 246, 252 and 257 of legislative decree No. 152 of 2006, with reference to Article 76 of the Constitution (in the light of Article 1(4) of law No. 308 of 2004) and the principle of loyal cooperation.

1.8. – By application No. 75 of 2006, Abruzzo Region, *inter alia*, seized the Court directly with a question concerning the constitutionality of the whole of legislative decree No. 152 of 2006, requesting also its suspension.

1.9. – By application No. 76 of 2006, Puglia Region seized the Court directly with a question concerning the constitutionality, *inter alia*, of Articles 6, 15(1) and 19 of legislative decree No. 152 of 2006.

1.10. – By application No. 78 of 2006, Campania Region seized the Court directly with a question concerning the constitutionality of the whole of legislative decree No. 152 of 2006.

1.11. – By application No. 79 of 2006, Marche Region seized the Court directly with questions concerning the constitutionality, *inter alia*, of Articles 3(4), 6(6), 7(3) and (8), 10(3) and (5) and 17 of legislative decree No. 152 of 2006.

1.12. – By application No. 80 of 2006, Basilicata Region seized the Court directly, *inter alia*, with questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006.

1.13. – This decision concerns the challenges, in general terms, to the whole of legislative decree No. 152 of 2006, as well as those relating to the specific provisions

indicated above, as the further questions of constitutionality raised by the applicants Calabria, Tuscany, Piedmont, Valle d'Aosta, Abruzzo, Puglia, Campania, Marche, Basilicata and Emilia-Romagna Regions in application No. 73 of 2006 will be the object of separate proceedings.

The challenges raised by Emilia-Romagna Region in application No. 56 of 2006 and by Umbria and Liguria Regions against the provisions mentioned above will on the other hand be treated in this decision only with reference to the principles referred to above, namely Article 76 of the Constitution and the principle of loyal cooperation, as the further questions of constitutionality raised by the said applicants against the same provisions, but with reference to different constitutional principles, will be the object of separate proceedings.

1.14. – In view of the above, since the aforementioned applications raise questions which are largely analogous, the Court must order that the relative proceedings be joined for unitary treatment and a single decision.

2. – By order read out in the public hearing of 5 May 2009 and attached to this judgment, in accordance with the settled case law of this Court, the interventions by the non-profit Italian Association for the World Wide Fund for Nature (WWF Italia) – Onlus in all proceedings (with the exception of that commenced by Calabria Region), as well as that by Biomasse Italia S.p.a., Società Italiana Centrali Termoelettriche – SICET S.r.l., Ital Green Energy S.r.l. and E.T.A. Energie Tecnlogiche Ambiente S.p.a. in the proceedings commenced by Piedmont Region, were ruled inadmissible.

Proceedings concerning the constitutionality of laws in which the Court is seized directly are in fact structured as proceedings celebrated exclusively between bodies that are vested with legislative powers, without prejudice, for subjects that do not have such powers, to the means of protection for individual rights, including those under constitutional law, before other courts, including as the case may be also before this Court on an interlocutory basis (judgments No. 405 of 2008 and No. 469 of 2005).

3. – As a preliminary point, the Court rejects first and foremost the objection of inadmissibility raised by the *Avvocatura dello Stato* with regard to the application filed by Piedmont Region due to the allegedly late service of the notice of the application.

Since the principle that a distinction be drawn between the time when the service must be regarded as having been concluded by the serving party and the time when it is for the party receiving service of the notice applies also in proceedings in which the Court is seized directly (judgments No. 477 of 2002 and No. 300 of 2007), the Court accordingly finds that in the case before it the notice was served on time by the Region, since the application was sent by post on 12 June 2006, and therefore within the time limit of sixty days from the publication of the contested legislative decree, which occurred on 14 April 2006.

3.1. – Before considering the merits of the various questions, it is appropriate to give an account of the legislative history of the contested legislative decree No. 152 of 2006 laying down provisions concerning environmental matters.

3.2. – According to the express indication contained in the preamble, this decree was promulgated pursuant to the authorisation contained in law No. 308 of 2004.

In particular, Article 1(1) of law No. 308 authorises the Government to adopt, within eighteen months of the date of entry into force of the law (and hence before 11 July 2006) one or more legislative decrees to reorganise, coordinate and supplement, including through the drafting of consolidated laws, the legislative provisions governing: *a*) waste management and the decontamination of contaminated sites; *b*) the protection of water from pollution and the management of water resources; *c*) the defence of the soil and the fight against desertification; *d*) the management of protected areas, the conservation and sustainable use of specimens of protected species of flora and fauna; *e*) protection under tort law for damages to the environment; *f*) procedures for environmental impact assessments (EIA), strategic environmental assessments (SEA) and for integrated pollution prevention control (IPPC); and *g*) protection of the air and reduction of atmospheric emissions.

Article 1(4) of law No. 308 provides that these legislative decrees shall be adopted "on a proposal of the Minister for the Environment and the Protection of the Territory, acting

together with the Minister for Public Service, with the Minister for Community Policies and the other interested ministers, after having obtained the opinion of the Joint Assembly pursuant to Article 8 of legislative decree No. 281 of 28 August 1997".

Article 1(6) provides that "within two years of the date of entry into force of each of the legislative decrees referred to in sub-section 1, in accordance with the principles and directional criteria laid down by this law, the Government may issue, pursuant to sub-sections 4 and 5, provisions to supplement or correct the legislative decrees promulgated pursuant to sub-section 1, on the basis of a reasoned opinion presented to the Houses of Parliament by the Minister for the Environment and the Protection of the Territory, which identifies the provisions of the legislative decrees he intends to amend and the reasons for the proposed legislative amendment".

Article 1(8) provides on the other hand that "the legislative decrees referred to in sub-section 1 shall comply – in accordance with the principles and provisions of Community law and the competences *ratione materiae* of the state administrations, as well as the powers of the regions and local authorities, as defined pursuant to Article 117 of the Constitution, law No. 59 of 15 March 1997, and legislative decree No. 112 of 31 March 1998, and without prejudice to the regional statutes and relative implementing legislation of the regions governed by special statute and the autonomous provinces of Trento and Bolzano, and the principle of subsidiarity" – with certain general principles and directional criteria amongst which those contained in Article 1(8)(e), (on the "full and consistent implementation of Community directives, in order to guarantee high levels of environmental protection and thereby contribute to the competitiveness of local economies and undertakings, avoiding situations in which competition is distorted") and those laid down by Article 1(9)(f) (concerning the [need to] "guarantee the full transposition of Council directive No. 85/337/EEC of 27 June 1985, and Council directive No. 97/11/EC of 3 March 1997 on the EIA and directive No. 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the SEA") are of particular relevance for the purposes of these proceedings.

3.3. – The Government implemented this authorisation drawing up a single decree, comprised of more than three hundred articles and sub-divided into six parts (and various annexes to each part), the first of which (Articles 1-3) lays down common provisions, whilst the second (Articles 4-52) concerns arrangements for the SEA and the environmental impact assessment (hereafter EIA) and integrated pollution prevention control (hereafter IPPC).

The draft of the text of this decree, approved by the Council of Ministers, having obtained the opinions of the parliamentary committees on 18 November 2005, was transmitted to the regions and local authorities on 29 November 2005, whilst the draft of the annexes to the decree were placed on the computer network on 7 December 2005, in view of the meeting of 15 December 2005 of the Joint Assembly.

During the course of the meeting of the Assembly of 15 December 2005:

a) the representatives of the regions and those of the local authorities requested a deferral of the time limit for for the issue of an opinion given the extreme complexity of the matters treated and the very short period of time granted for the examination of the broad body of legislation inserted into the decree;

b) the representative of the government (in this case the Deputy Minister for the Environment and the Protection of the Territory) opposed the deferral arguing, first, that environmental protection falls under the exclusive competence of the state, and secondly that the authorisation was due to expire on the dame day;

c) the Chairman of the Assembly of the Regions pointed out that the time limit for expiry of the authorisation was in reality 11 July 2006 and that the procedure for the promulgation of the decree could not be continued without the opinion of the Joint Assembly, but the Deputy Minister for the Environment and the Protection of the Territory repeated that the Assembly had been consulted and that its opinion was not binding.

The Council of Ministers of 19 January 2006 accordingly “definitively” approved the text of the legislative decree.

In the meeting of 26 January 2006 of the Joint Assembly, the representatives of the regions tabled an item on the agenda expressing a negative opinion on the draft decree,

justifying this position both on the merits as well as due to the procedural method followed, and the representative of the Government limited himself to taking note of it.

However, on 10 February 2006 the Council of Ministers approved, again "definitively", the draft decree, without however making amendments or re-examining the merits.

Following a request for certain clarifications from the President of the Republic with regard to the procedure for enactment and the merits of the decree, on 29 March 2006 the Council of Ministers re-approved the decree, in the words of the applicant regions "with some modifications". It was finally promulgated on 3 April 2006 as legislative decree No. 152 of 2006, published in the *Official Journal* No. 88 of 14 April 2006.

3.4. – The entry into force of Part Two of legislative decree No. 152 of 2006, laying down *inter alia* the contested legislation on the EIA and the SEA was initially set (Article 52) at one hundred and twenty days after publication. This time limit was however deferred, first by Article 1-*septies* of decree-law No. 173 of 12 May 2006 (Extension of the time limits for the issue of acts of a regulatory and legislative nature) – article added by the conversion law No. 228 of 12 July 2006, extending the date to 31 January 2007 – and, subsequently, by Article 5(2) of decree-law No. 300 of 28 December 2006 (Extension of time limits provided for by legislative and other different provisions), converted by law No. 17 of 26 February 2007, extending the date to 31 July 2007.

Legislative decree No. 152 of 2006 was subject to broad amendments by legislative decree No. 284 of 8 November 2006 (Provisions to correct and supplement legislative decree No. 152 of 3 April 2006 laying down provisions concerning environmental matters), which did not however relate to the provisions examined in these proceedings.

The whole of Part Two of legislative decree No. 152 of 2006 was on the other hand repealed by Article 4(2) of legislative decree No. 4 of 16 January 2008 (Further provisions to correct and supplement legislative decree No. 152 of 3 April 2006 laying down provisions concerning environmental matters) and was replaced by Articles 1(2) and 4(3) of the same corrective decree, which introduced, in the area of SEAs, arrangements (the current Articles 4-18 and 30-36, as well as Annexes I to V of Part Two) largely different

(and the same is to be said, in relation to Articles 19-29, with regard to the legislation on the EIA and the IPPC) from that contested by the applicant regions.

The contested provisions on the SEA and the EIA therefore remained in force from 31 July 2007 until 13 February 2008, the date of entry into force of the new legislation introduced by the corrective decree No. 4 of 2008.

None of the applicants has seized the Court with the question concerning the constitutionality of the new legislation introduced by the corrective legislative decree No. 4 of 2008.

4. – Before starting with the examination of the individual questions, it is also appropriate to carry out a review of the state of the case law of this Court on the issue of "environmental protection", highlighting the most significant decisions and the related terminological clarifications.

The first problem which arises is obviously that of identifying the area of law concerned, and to this end it is necessary to consider the subject matter of the legislation (state or regional), as well as its rationale, comparing it with the list contained in Article 117 of the Constitution (judgments No. 411, No. 449 and No. 450 of 2006; No. 30, No. 285 and No. 319 of 2005).

With regard to the area of law concerning "environmental protection", it must be pointed out that its content is at the same time related to an object, since it applies to a resource, the environment (judgments No. 367 and No. 378 of 2007; No. 12 of 2009), and also goal-related in that it seeks to secure the better conservation of that resource (see judgments No. 104 of 2008; No. 10, No. 30 and No. 220 of 2009).

The identification in the terms described above of the area of law of environmental protection highlights a fact of significant importance: different competences are "shared" (judgment No. 105 of 2008) over the same resource (the environment) (judgments No. 367 and No. 378 of 2007) which, however, remain distinct form one another, pursuing their specific goals independently through the enactment of various legislative schemes (see judgments No. 367 and No. 378 of 2007, No. 104 and No. 105 of 2008, No. 12 and No. 61 of 2009).

This phenomenon shows that, under the scheme of constitutional legislation, on the one hand the state is responsible for the protection and conservation of the environment, through the setting of "adequate and non reducible [levels] of protection" (judgment No. 61 of 2009) whilst on the other hand the regions are responsible for exercising their powers, subject to respect for the levels of protection laid down under state legislation (judgments No. 62 and No. 214 of 2008), aimed essentially at regulating the use of the environment, avoiding the degradation or alteration of the environment.

In this sense it may be said that state competence constitutes a "limit" on the exercise of regional powers (judgments No. 180 and No. 437 of 2008 as well as No. 164 of 2009), insofar as it is exercised in relation to environmental protection.

In this regard, it must however be specified that, whereas the regions when exercising their powers must not violate the levels of environmental protection imposed by the state, it is equally the case that once these have been set by the state, the regions may provide for more heightened levels of protection, provided that they remain within the ambit of the exercise of their powers (judgments No. 104 of 2008, No. 12, No. 30 and No. 61 of 2009), thereby impinging indirectly on environmental protection.

Protection of health is closely linked to environmental protection, since it is beyond doubt that the wholesomeness of the environment has an affect on human health. It must however be pointed out that these two matters have different objects – namely environment and health – and that the setting by the regions of more heightened levels of environmental protection for the purposes of the protection of human health only has indirect effects on the environment, which is already adequately protected under state legislation.

This possibility is however not available in cases in which the state law must be considered not to be amenable to exceptions, where it results from the balancing of several interests which may be in conflict with one another.

As regards in particular the impact of the principle of loyal cooperation, it must be remembered that, in eliminating the principle of parallelism between legislative and administrative powers for the purposes of the division of administrative functions between the state and the ordinary regions and in devolving administrative functions to a more local

level, Article 118 of the Constitution nonetheless provides that administrative functions may be distributed differently where it is necessary to ensure that they are exercised in a uniform manner, pursuant to state or regional law depending on the legislative competences referred to under Article 117 of the Constitution, and provided that this respect for the principle of legality, as well as the principles of subsidiarity, differentiation and adequacy (judgments No. 303 of 2003; No. 172 of 2004).

It follows that, in the case of environmental protection, the state as holder of exclusive competence pursuant to Article 118 of the Constitution may, subject to compliance with the aforementioned principles, award itself the relative administrative functions, or confer them on the regions or other local government bodies, or again provide that the administrative function be exercised with the involvement of state bodies and regional or local bodies.

In the light of the above, the solution to the problem of the identification of the area of law under which the institutes of the SEA and the EIA must be classified appears to be entirely straightforward. In fact, since they concern procedures which evaluate "environmental sustainability" specifically and in advance, there can be no doubt over the fact that they fall within the area of environmental protection, pursuant to Article 117(2)(s) of the Constitution.

5. – In view of the above general introduction, in order to achieve a clearer and more cohesive treatment of the numerous questions raised by the twelve applicant regions in their thirteen applications, it appears appropriate first and foremost to classify the applications under four groups.

5.1. – A first group is comprised of the challenges brought against the whole legislative decree (or against all the provisions contested by the Applicants) due to the alleged faults in the procedure leading up to the issue of the decree or the alleged violations of the parent statute, which would invalidate the whole of legislative decree No. 152 of 2006.

5.2. – A second group of questions are raised with reference to provisions from Parts One and Two of legislative decree No. 152 of 2006, but which do not concern the provisions governing the strategic environmental assessment (SEA).

5.3. – A third group of questions concerns an alleged violation of the time limit for the implementation of the authorisation, as well as alleged procedural violations which are claimed to invalidate (not the whole decree but only) the part of legislative decree No. 152 of 2006 implementing directive No. No. 2001/42/EC of 27 June 2001 (Directive of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment), namely the arrangements governing the SEA.

5.4. – Finally, as fourth group of questions concerns specific provisions regulating SEA.

6. – Turning now to the first group of questions identified above, a first challenge is brought by Calabria, Campania, Valle d'Aosta, Abruzzo, Basilicata and Piedmont Regions against the whole of legislative decree No. 152 of 2006 and by Umbria and Liguria Regions, as well as Emilia-Romagna Region in application No. 56 of 2006, against all of the provisions respectively challenged by them, on the grounds that the procedure for the adoption of the legislative act did not respect the minimum content of the guarantee of participation for the Joint Assembly.

The Applicants complain in particular that the time-scale granted to the Joint Assembly to examine the text of the decree was not adequate in order to permit an adequate examination, considering the breadth and complexity of the legislative initiative, and accuse the Government, in the person of the Deputy Minister for the Environment, of having refused to defer the discussion of the question to the following meeting of the Assembly. Moreover, they consider that the procedure followed in order to adopt the decree should not have continued, since the Assembly asserted that it was not able to issue the required opinion, and arguing that this fault should invalidate the entire legislative decree.

The challenge is brought: with reference only to the principle of loyal cooperation by Calabria Region, with reference to Article 76 of the Constitution (in the light of Article 1(4) of the parent statute, law No. 308 of 2004, which which required the consultation of the Joint Assembly during the procedure leading to the promulgation of the decree) by Campania Region, and with reference to both of these principles by Piedmont, Valle d'Aosta, Abruzzo, Basilicata, Umbria, Liguria and Emilia-Romagna Regions (the last in

application No. 56 of 2006). For the same reasons, Piedmont Region also claims that Article 5 of the Constitution has been violated.

All of the Applicants assert that the legislation enacted by the legislative decree in question concerns not only environmental protection, under the exclusive competence of the state, but also various regional competences inextricably linked with the state competence (including *in primis* the powers over territorial government and protection of health). For many of the Applicants moreover, in environmental matters the principle of loyal cooperation requires the implementation of procedures in which all of the mechanisms significant under constitutional law may be applied; the Assembly system is claimed to be one of the most appropriate *fora* for the elaboration of rules intended to supplement the principle of loyal cooperation and, whilst this principle may be organised in different ways with regard to the forms and intensity of the albeit necessary cooperation, it cannot however be reduced, as occurred in the case before the Court, to a purely formal ritual.

6.1. – The question is groundless with reference to the principle of loyal cooperation given that, as has been consistently reasserted within the case law of this Court, the exercise of legislative activity is not subject to loyal cooperation procedures (cf. judgments No. 159 of 2008 and No. 401 of 2007).

The question is also groundless with reference to Articles 5 and 76 of the Constitution.

The time limit granted to the Assembly in order to examine the draft text of the legislative decree, equal to sixteen days, was certainly brief, but not to the point of being inadequate, nor of making it impossible for the Assembly to make its own consultative contribution in the procedure leading to the promulgation of the decree.

In the absence of a precise legal time limit (minimum or maximum), once it has been established that the time limit actually granted to the Joint Assembly was not inadequate, it must as a corollary be excluded that the Assembly may refuse to issue its opinion, and thereby postpone the term, since this would be tantamount to granting the Assembly a suspensory or even a veto power that would not be reconcilable with the constitutional powers conferred on the Government to issue secondary legislation.

6.2. – A second challenge is brought, with reference to the principle of loyal cooperation and Article 76 of the Constitution (again in the light of Article 1(4) of the parent statute, law No. 308 of 2004), by Valle d'Aosta, Basilicata and Abruzzo Regions, which claim that the text of the decree promulgated was different from that on which the opinion was requested from the Joint Assembly, having been modified by the Government following certain observations from the President of the Republic without being placed before the Assembly a second time.

The same challenge is brought by Emilia-Romagna Region in application No. 56 of 2006 and by Campania Region (which however relies on only Article 76 of the Constitution as a principle) in the written statements filed shortly before the public hearing of 5 May 2009.

The fact that the text placed before the Assembly for examination was allegedly different from that promulgated is moreover also referred to in the applications by Calabria and Piedmont Regions, which however, do not articular a specific ground for challenge in this regard, and in the applications by Umbria and Liguria Regions as well as in application No. 56 of 2006 by Emilia-Romagna Region, which expressly specify that this procedural fault does not result in an infringement of regional powers.

6.2.1. – This Court cannot make any ruling with regard to the challenge not filed in accordance with standard procedures in the written statements of Campania and Emilia-Romagna Regions, since it is impossible for the Applicants to amend or supplement the grounds set out in the applications during the course of proceedings before the Constitutional Court.

The question raised by the other applicants is inadmissible due to the generic nature of the argument. In fact, none of the applications indicates where or to what extent the text promulgated is different from that placed before the Assembly for examination. This means that it is not possible to verify the impact of these alleged modifications on the areas of law under regional competence and, as a result, the very relevance of the alleged violation of the parent statute for the constitutional powers of the Applicants (cf. judgment No. 401 of 2007).

6.3. – Further challenges have been brought against the whole of legislative decree No. 152 of 2006 by Piedmont Region alone, which complains of the violation of Article 76 of the Constitution:

a) in the light of Article 1(1) of the parent statute, law No. 308 of 2004, which authorises the Government to issue one or more legislative decrees reorganising, coordinating and supplementing [the existing arrangements], on the grounds that the Government exceeded the authorisation by introducing "new principles, new institutions, and new functions or procedures";

b) in the light of Article 1(8) of the parent statute, law No. 308 of 2004, insofar as it requires that the powers of the regions and the local authorities be respected, as defined by Article 117 of the Constitution, law No. 59 of 1997 and legislative decree No. 112 of 1998, and in relation to the principles of the proper functioning of the public administration and reasonableness, due to "the unjustified upheaval caused to bodies, functions and procedures currently applicable and effectively operational on regional level";

c) in the light of Article 1(8) of the parent statute, law No. 308 of 2004, insofar as it requires that the principle of subsidiarity be respected by the secondary legislator, since the provision made by the legislative decree to bring within the purview of the minister "many important and varied functions, including both newly created functions as well as those formerly exercised by the municipalities, princes and regions, was not objectively justified by requirements that the interests affected be considered on a unitary basis on national level".

6.3.1. – Leaving aside the evident irrelevance of some of the principles relied on, which are not related to the sphere of regional powers, the questions are inadmissible due to their generic and indeterminate nature.

The Applicant Piedmont Region does not in fact indicate what the new content of legislative decree No. 152 of 2006 is, to what extent it "unjustifiably causes upheaval to" regional bodies, functions and procedures (not specified in greater detail), nor what the "many important and varied functions" transferred to state level in breach of the principle of subsidiarity are.

In any case, contrary to the assertions of Piedmont Region and many other applicants, the authorisation contained in Article 1(1) of law No. 308 of 2004 has new content and permits not only the coordination, but also the reorganisation and supplementing of the legislation on environmental law. The innovative nature of the authorisation is not only permitted but also even imposed in order to ensure respect for the general principles and directional criteria laid down by sub-section 8 and, above all, for those specific principles and criteria laid down by Article 1(9) of law No. 308 of 2004, which implicitly or explicitly presuppose or require the substantive amendment of environmental law legislation, including as regards the structure of competences in this area (see judgments No. 350 of 2007 and No. 303 of 2005).

Moreover, Article 1(8) of law No. 308 of 2004 identifies a very general principle and criterion in its initial provision and a subsequent series (indicated by letters a to n) of criteria, which are again general with regard to their object, but of a more specific and directive nature for the delegated legislative power.

In the initial provision to Article 1(8) in particular, it is provided that the legislative decrees referred to in sub-section 1 shall comply with the additional principles and directional criteria indicated "in accordance with the principles and provisions of Community law and the competences *ratione materiae* of the state administrations, as well as the powers of the regions and local authorities, as defined pursuant to Article 117 of the Constitution, law No. 59 of 15 March 1997, and legislative decree No. 112 of 31 March 1998, and without prejudice to the regional statutes and relative implementing legislation of the regions governed by special statute and the autonomous provinces of Trento and Bolzano, and the principle of subsidiarity".

The concurrent reference, in addition to that to law No. 59 of 1997 and legislative decree No. 112 of 1998, of Article 117 of the Constitution (sub-section two of which confers on the state exclusive competence over "environmental protection") and the flexible principle of subsidiarity (which, pursuant to Article 118 of the Constitution, as mentioned above, permits the state – which has competence over environmental protection and ecosystem – to reserve to itself the administrative functions in those areas whenever

there is a requirement for their unitary exercise) means that the above ordinary legislation cannot be recognised as being intangible in nature, as however is argued by Piedmont Region. If this were not the case, the supposed inability to modify the distribution of administrative functions in environmental matters under legislative decree No. 112 of 1998 would prevent the implementation of most of the principles referred to immediately after in sub-section 8 and in sub-section 9.

Therefore, the criteria mentioned in the initial provision in Article 1(8) of law No. 308 of 2004 must be evaluated and coordinated in the light of the further criteria laid down in the parent statute, i.e. as specifying that the that the secondary legislator was entitled to modify the powers formerly conferred on the regions where the change was consistent with one of the directional principles indicated in the various letters which make up Article 1(8) and (9). For example, if the implementation of a Community directive made it necessary, in accordance with the principle of subsidiarity, to transfer administrative functions within the field concerned, the reallocation could lawfully be ordered by the secondary legislator, even where it transferred the relevant functions to the state.

It therefore follows from the above considerations that it was incumbent upon the Applicant to indicate in detail which functions had been reallocated centrally and, at the very least, aver the specific reasons why this reallocation violated the principle of vertical subsidiarity, and it is therefore not sufficient for it merely to aver the reductive nature of the legislation contained in legislative decree No. 152 of 2006 compared to that of legislative decree No. 112 of 1998. As noted above on the other hand, the application by Piedmont Region merely made indeterminate and generic assertions on this point. For this reason the questions are inadmissible.

6.4. – The last challenge against the whole of legislative decree is finally brought again by Piedmont Region, with reference to Articles 76 (in the light of Article 1(8)(e) of the parent statute, law No. 308 of 2004, which requires the full and consistent implementation of Community directives) and 117(1) and (5) of the Constitution, since on various points the secondary legislator did not fully implement Community law.

6.4.1. – The question is inadmissible, both due to its evident generic nature, since it is not indicated in the application where and on which ground the contested legislative decree violates Community law, as well as due to the failure to identify the implications of that supposed and indeterminate violation on the powers of the Applicant region.

7. – The second group of questions, that is those directed against the specific provisions of legislative decree No. 152 of 2006, but not regarding the arrangements governing the SEA, include the challenges to Articles 3(2) and (4), 4(1)(b) and 5(1)(e), (g), (q) and (r) of legislative decree No. 152 of 2006.

7.1. – Article 3(2) provides that the Government, acting on a proposal by the Minister for the Environment and the Protection of the Territory, shall adopt the necessary measures to amend and supplement the implementation and enforcement regulations in environmental law.

Article 3(4) provides on the other hand that the Minister for the Environment and the Protection of the Territory shall take steps to amend and supplement the technical rules governing environmental matters by one or more regulations.

Calabria Region challenges Article 3(2), with reference to Article 117(6) of the Constitution, on the grounds that it authorises government regulations in an area, namely environmental law, in which regional powers (in particular over territorial government and protection of health) prevail or at the very least exist alongside the state powers and, in the alternative, should these regulations be considered to refer only to the state competence over environmental protection, with reference to the principle of loyal cooperation, since "the indeterminate nature of the contents of the regulations to be issued and in any case the vicinity of the state competence with regional powers" require that the Joint Assembly give its opinion on these regulations.

Marche and Tuscany Regions on the other hand challenge Article 3(4), with reference to Articles 117 and 118 of the Constitution and the principle of loyal cooperation, due to the fact that since the provision does not provide for the involvement of the "Regions and/or the Assembly", it results in the adoption of unilateral measures in this area over which there is also an inextricably interlinked competence of the regions.

By contrast, in its written statement filed shortly before the public hearing of 5 May 2009, Tuscany Region stated that it no longer had an interest in pursuing the complaint due to the inclusion of Articles 3-*bis* to 3-*sexies* in the provisions of legislative decree No. 152 of 2006. However, this statement does not exempt this Court from examining the question concerned, since it does not amount to a formal partial renunciation of the application (nor moreover was there any formal acceptance of the same by the President of the Council of Ministers, who entered an appearance in accordance with the applicable procedures), nor can it be understood (as is by contrast the case below in paragraph 9.1.) as evidence of the failure to apply the regulation concerned within the territory of Tuscany Region.

7.1.1. – The questions raised by Calabria Region are groundless.

Pursuant to Article 117(2)(s) of the Constitution, the state has exclusive legislative competence over environmental protection, whilst pursuant to Article 117(6) of the Constitution it has regulatory powers over the matters within its exclusive competence.

Therefore, whilst it cannot be denied that the state is vested with the contested regulatory power, which was used to issue regulations implementing and supplementing existing legislation concerning environmental matters, it is also necessary to reiterate that which the case law of this Court clarified some time ago (judgments No. 401 of 2007 and No. 134 of 2006), that is that there is no obligation to consult regions during the stage in which regulatory powers are exercised by the state in matters reserved to its exclusive competence.

The questions raised by Tuscany and Marche Regions are on the other hand inadmissible.

These Applicants in fact complain of a merely potential infringement of their constitutional powers, which does not regard the theoretical conferral of regulatory powers, but rather the possible specific infringing content of the regulations to be issued on the grounds that they may violate its sphere of competence, and which could, if necessary, be relied on using the judicial remedies provided for.

7.2. – Article 4(1)(b) provides that the provisions contained in Part Two of legislative decree No. 152 of 2006 constitute the implementation, inter alia, of "directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003".

Article 5(1)(q) and (r) define, on the other hand, the notions of public and interested public for the purposes of the legislation on the EIA and the SEA.

These provisions are challenged by Calabria Region, with reference to Articles 76 and 77(1) of the Constitution, on the grounds that they implement directive No. 2003/35/EC of 26 May 2003 (Directive of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC), whilst the implementation of that directive was not expressly covered by the authorisation contained in law No. 308 of 2004.

Moreover, according to Calabria Region, even were it to be considered that Article 1(9)(f) of law No. 308 of 2004, which indicates the full and consistent transposition of Community directives amongst the general principles and criteria applying to the authorisation, had implicitly authorised the Government to implement also directive 2003/35/EC, Articles 4(1)(b) and 5(1)(q) and (r) would nevertheless be unconstitutional.

This is because Article 1 and Annex B of law No. 62 of 18 April 2005 (Provisions governing the implementation of obligations resulting from Italy's membership of the European Communities – Community law 2004), which expressly authorised the Government to implement the directive concerned, repealed the 2004 authorisation in this regard and, since the two authorisations provide for two different procedures for the adoption of the legislative decree, the contested provisions violate Article 76 of the Constitution, since the Government followed the procedure contemplated under the repealed law No. 308 of 2004, instead of that referred to in law No. 62 of 2005, which would have better guaranteed the region's position of constitutional autonomy.

7.2.1. – The questions are groundless.

The parent statute, law No. 308 of 2004, specifically authorises the Government to implement fully the Community legislation on the EIA contained in directive No.

85/337/EEC of 27 June 1985 (Council directive on the assessment of the effects of certain public and private projects on the environment), as amended by directive No. 97/11/EC of 3 March 1997 (Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment) (Article 1(9)(f)) and, more generally, indicates the full and consistent transposition of Community directives amongst the general principles and criteria applying to the authorisation (Article 1(8)(e)). It must therefore be considered that it implicitly authorises the Government also to implement directive 2003/35/EC (which amends in part the aforementioned directive 85/337/EEC).

The authorisation contained in law No. 308 of 2004 cannot moreover be considered to have been tacitly repealed by the combined provisions of Article 1 and Annex B of law No. 62 of 2005, since it has a substantially different object, which concerns not only the transposition of this directive with regard to the arrangements for the EIA, but also the overall redefinition of all the assessments of environmental compatibility and their reciprocal coordination and standardisation.

However, the procedure provided for under law No. 62 of 2005 does not differ significantly from that contemplated under law No. 308 of 2004 as regards the position of the regions, which means that it could at most be argued that the compliance with the procedural arrangements laid down by law No. 62 of 2005 would have guaranteed the regions a different level of autonomy or consultation.

7.3. – Article 5(1)(e) provides that the environmental impact assessment be carried out on preliminary projects which contain the exact indication of the areas affected and the characteristics of the works to be carried out, in addition to further information otherwise considered useful for the completion of the environmental impact assessment.

Emilia-Romagna Region (in application No. 73 of 2006) complains that this provision violates Article 2(1) and paragraph 13 of Annex II of directive 85/337/EC on the grounds that the Community legislation provides that subsequent definitive projects which contain modifications to the projects or envisage the use of natural resources or the emission of polluting substances also be subject to an EIA.

Piedmont Region complains on the other hand, on the same grounds, of the violation of Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, as well as the principle of loyal cooperation.

7.3.1. – The questions are inadmissible because, leaving aside the lack of argument regarding the violation of the constitutional principles relied on by Piedmont Region and by failure by Emilia-Romagna Region to indicate any constitutional principles, the applications do not explain in any way how the alleged violation of Community directive 85/337/EC could have implications for the constitutional powers of the regions.

7.4. – For the purposes of the regulations governing the EIA, Article 5(1)(g) defines as a substantial modification to a works plan: "the intervention on an already existing works plan which results in a works plan with characteristics substantially different from the previous works plan; for works or initiatives for which quantitative thresholds are set in Annex III of Part Two of the decree, modifications include also interventions to expand, strengthen or extend where the said intervention, considered in itself, is equal to or greater than thirty percent of those thresholds".

Emilia-Romagna Region (again in application No. 73 of 2006) complains that this provision violates paragraph 22 of Annex I of directive 85/337/EEC, as amended by point 8 [of Article 3] of directive 2003/35/EC since, for the purposes of the EIA, the Community legislation regards as a substantial amendment "any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex".

Also this question is inadmissible since the applicant region does not indicate any constitutional principle, limiting itself to averring the violation of the Community legislation, and does not explain to what extent this violation could have implications for its own constitutional powers.

8. – In the third group of questions, namely those that come before the whole issue of the arrangements for the SEA, there are two challenges brought by Calabria Region against Articles 4(1)(a), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 and Annexes I and II of Part Two of legislative decree No. 152 of 2006.

8.1. – The first challenge is brought against all of the provisions cited above, with reference to Articles 76 and 77(1) of the Constitution, because the authorisation is claimed to have been acted on by the Government beyond the time limit set by Parliament.

The Applicant Calabria Region argues in favour of this position by claiming that the authorisation contained in Article 1(1)(f) of law No. 308 of 2004 (which authorised the Government to implement directive 2001/42/EC within the time limit of eighteen months, and accordingly before July 2006) had been tacitly repealed by Article 19 of law No. 62 of 2005 (which stipulated the shorter time limit of six months for that implementation, expiring in October 2005).

Legislative decree No. 152 of 2006, enacted in April 2006 well after that shorter time limit, was therefore unconstitutional on the grounds that, by invoking an authorisation which had been countermanded by a subsequent authorisation, which had in turn expired, it purported to implement directive 2001/42/EC.

According to the Applicant, this procedural violation may be relied on in constitutionality proceedings in which the Court is seized directly since the provisions introduced in the absence of a valid authorisation have the effect of limiting the constitutional powers of the regions over territorial government and protection of health.

8.2. – However, the Region's representative points out that Article 1 of law No. 62 of 2005 authorises the Government to implement within eighteen months the Community directives indicated in the annexed lists including (in Annex B) again directive 2001/42/EC.

According to the Region's representative, on account of the principle of *lex specialis derogat generali*, Article 19 (and its shorter time limit) should apply rather than Article 1 of law No. 62 of 2005. However, even were the latter provision to apply, Articles 4(1)(a), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, as well as Annexes I and II of Part Two would in any case violate Article 76 of the Constitution, since the Government followed the procedure specified under law No. 308 of 2004, rather than that which provided greater guarantees for the constitutional autonomy of the regions laid down by law No. 62 of 2005.

8.3. – The questions are groundless.

Contrary to the assertions of the Applicant, the authorisation contained in law No. 308 of 2004 (Article 1(8)(f)) cannot be considered to have been repealed tacitly neither by Article 19 nor by the combined provisions of Article 1 and Annex B of law No. 62 of 2005, since it has a substantially different subject matter, concerning not only the transposition of directive 2001/42/EC on the SEA, but the overall redefinition of all the assessments of environmental compatibility and their reciprocal coordination or standardisation.

9. – Turning finally to the fourth and last group of questions, that is those concerning the regulation of the SEA, it must first and foremost be remembered, in addition to for the reasons already set out above, that this Court (judgment No. 398 of 2006) has already had the opportunity to assert "that the strategic environmental assessment, governed by directive 2001/42/EC, pertains to the area of environmental protection".

Whereas in fact the SEA is carried out within the ambit of state or regional plans or programmes which may concern any area of law (transport, energy, telecommunications, agriculture, etc.), it is not however attributable to any of these, since the object of the assessment regards exclusively aspects of environmental compatibility and amounts only to an information gathering and consultative instrument, at the choice of the authority proposing the plan or programme, with the sole purpose of ensuring that the environment is safeguarded and protected.

9.1. – Before passing to the specific challenges, the Court therefore finds:

– that in the written statements filed shortly before the public hearing of 5 May 2009, Tuscany and Puglia Regions declared that they no longer any interest in the challenges brought respectively against Articles 6(6), 7(3) and (8), 10(3) and (5) and 17 and against Articles 6, 15(1) and 19(2) of legislative decree No. 152 of 2006, in the light of the repeal of these provisions and the introduction of new arrangements, considered by them to be fully satisfactory, by the corrective legislative decree No. 4 of 2008;

– that, during the course of the public hearing of 5 May 2009, the representative of Valle d'Aosta Region, modifying in part his own arguments contained in the written statements filed shortly before the same hearing, declared that the Region no longer had any interest in challenging Articles 6 and 7(3) of legislative decree No. 152 of 2006, given

that Article 6 had been repealed and replaced by Articles 14 and 9 of presidential decree No. 90 of 14 May 2007 (Regulation to reorganise the bodies operating with the Ministry for the Environment and the Protection of the Territory and the Sea, pursuant to Article 29 of decree-law No. 223 of 4 July 2006, converted into law, with amendments, by law No. 248 of 4 August 2006) even before the entry into force on 31 July 2007 of the contested legislation on the SEA, and since Article 7(3) had been challenged only on the basis of the unconstitutionality averred of Article 6.

Since some of the provisions concerned were repealed and entirely replaced by the new legislation laid down by legislative decree No. 4 of 2008 even before the entry into force (Article 6) whilst the others remained in force for a brief period (from 31 July 2007 until 13 February 2008), and since, within this context, the manifestation of a lack of interest by the Applicant Regions may be interpreted as an assertion that the said provisions have not been applied in the regional territories concerned, and taking into consideration also the fact that, according to the state representative (who entered an appearance in accordance with the applicable procedures in the proceedings commenced by Tuscany Region), none of the aforementioned provisions was even applied before they were definitively repealed, the Court finds, as a preliminary matter, that for the said questions there is no longer any matter in dispute.

For the same reasons the Court also rules that there is no longer any matter in dispute with regard to the question raised again by Valle d'Aosta Region against the whole of Chapter II of Title II of Part II (that is, Articles 15 to 20) of legislative decree No. 152 of 2006 laying down specific provisions for the SEA on state level. In fact, also this challenge was raised by Valle d'Aosta Region only on the basis of the unconstitutionality averred of Article 6.

9.2. – The specific provisions contested, which are discussed below according to their numerical order, include first and foremost Article 4(1)(a)(iii) of legislative decree No. 152 of 2006, which provides that the legislation under examination shall have the objective of promoting the use of environmental assessments when drawing up state, regional and inter-municipal plans and programmes.

Valle d'Aosta Region challenges this provision with reference to Articles 11, 76 (in the light of Article 1(8) of law No. 308 of 2004, which requires the secondary legislator to comply with the principles and provisions of Community law) and 117(1) of the Constitution (in the light of Article 3(1) of Community directive 2001/42/EC), on the grounds that it reduces the extent of the application of the SEA and does not consider "that there are urban areas larger than the Community definition of 'small areas at local level' the planning of which, whilst not falling under the concept of "planning above municipal level", is likely to have a significant effect on the environment."

9.2.1. – The question is groundless since it is based on a mistaken interpretative premise.

Article 7(4) of legislative decree No. 152 of 2006 provides in fact that "small areas at local level" may be subject to SEA if the plans or programmes which make provision for their use may have significant effects on the environment, without however distinguishing between areas above municipal level, or on municipal or infra-municipal level.

9.3. – Article 6 of legislative decree No. 152 of 2006 regulates the state task force for environmental assessments, providing: (sub-section 6) that, in view of the specific regional interests affected by the exercise of an activity subject to the provisions contained in Part Two of the decree, the relative sub-committee shall include an expert appointed by each of the regions, the territory of which is directly affected by the activity; (sub-section 7) that, for the purposes of sub-section 6, the regional administrations for the territory that is directly affected shall register their interest with the Ministry for the Environment and the Protection of the Territory; (and sub-section 8) that where the administrations referred to in sub-section 7 have not appointed experts, the sub-committee shall be comprised in the ordinary fashion and shall in any case carry out the investigation assigned to it, without prejudice to the possibility to increase its membership at a later stage, provided that it respect the stage attained in its development and the partial conclusions, if any, already reached.

Calabria, Piedmont and Marche Regions challenge this provision, complaining in essence that it fails to provide for an adequate regional participation in the aforementioned

task force and, accordingly, an adequate participation of the regions in the strategic environmental assessment (SEA) procedures for plans and programmes under state competence.

Calabria Region in particular challenges Article 6(6), (7) and (8) with reference to the principle of loyal cooperation, on the grounds that they do not provide for the effective participation by representatives of local government bodies in the task force for environmental assessments, in spite of the fact that the activities of that body impinge upon matters (territorial government and protection of health) under regional competence.

Piedmont Region on the other hand challenges only Article 6(6), "insofar as it provides that the national task force which is responsible for carrying out the investigation for the SEA, EIA and IPPC investigations into public works and initiatives of national significance contain on every sub-committee 'an expert' appointed by the region directly affected by the completion of the project", with reference to "Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution", as well as the "principles of loyal cooperation, reasonableness, adequacy, differentiation, subsidiarity and the proper conduct of the public administration, with regard also to the violation of principles and rules of Community and international law", on the grounds that they provide for they assign a "limited and secondary role" to the participation of the region.

Finally, Marche Region challenges again Article 6(6), along with Article 17 of legislative decree No. 152 of 2006, which charges the task force provided for under Article 6 with carrying out the strategic environmental assessment on state level, with reference to Articles 117 and 118 of the Constitution, as well as with reference to Article 11 of the Constitution, in the light of directive 2001/42/EC and Article 76 of the Constitution (to be considered, due to violation of Article 1(8)(e) and (f) of law No. 308 of 2004, which requires that Community legislation on environmental law be respected), since they do not provide for an adequate participation of the regions in the strategic environmental assessment procedure for plans and programmes under state competence.

9.3.1. – The contested Article 6 of legislative decree No. 152 of 2006 was repealed and entirely replaced, respectively by Articles 14 and 9 of the repealing regulation enacted by

presidential decree No. 90 of 2007 before the entry into force, on 31 July 2007, of the contested legislation on the SEA.

The current arrangements were enacted by Article 8 of legislative decree No. 152 of 2006, introduced by Article 1(3) of the corrective legislative decree No. 4 of 2008, which provides that the task force for environmental impact assessments, created pursuant to Article 9 of presidential decree No. 90 of 2007 shall provide the Minister for the Environment and the Protection of the Territory with the technical and scientific support necessary for the implementation of the provisions contained in that decree.

Also the new arrangements resulting from the combined provisions of Article 8 of legislative decree No. 152 of 2006 and Article 9 of presidential decree No. 90 of 2007 provide, no differently from the previous legislation, for a merely potential participation by only one member from the region concerned (or rather, from each region concerned) in the state task force competent for environmental assessments.

The unsatisfactory nature of the subsequently enacted legislation mandates, according to the principle of the effectiveness of proceedings in which the Constitutional Court is seized directly, the transfer (expressly requested moreover by the representative of Marche Region) of the questions of constitutionality raised to the new provisions contained in Article 8 of legislative decree No. 152 of 2006.

9.3.2. – The questions, accordingly transferred to the current Article 8 of legislative decree No. 152 of 2006, are in any case groundless.

As clarified above in paragraphs 4 and 9, the arrangements governing the SEA fall under the matter of environmental protection under the competence of the state pursuant to Article 117(2)(s) of the Constitution. The regions therefore do not have any grounds to claim that they should participate in a state body – such as the aforementioned task force – which carries out administrative functions directed at the protection and conservation of the environment, which as such fall under a matter within the exclusive competence of the state.

Within this context, the ability for the regions (or rather, for each interested region) to appoint an expert on that body is not required under constitutional law, and accordingly is the result of a legislative choice by the state law.

9.4. – Article 7(3) of legislative decree No. 152 of 2006 provides that a SEA is required, in addition to the plans and programme indicated under Article 7(2), also for those plans and programmes concerning the definition of the reference framework for the construction of public works which, whilst not being subject to environmental impact assessment (EIA), may have significant effects on the environment, according to a opinion (so-called screening) expressed by the state sub-committee [of the task force] competent for the SEA.

Marche Region challenges this provision with reference to Articles 117 and 118 of the Constitution, as well as the principle of loyal cooperation, on the grounds that it does not provide for an agreement with the region to subject also regional plans to SEA, thereby permitting a state body to interfere with the matter of territorial government.

9.4.1. – The question is groundless.

First and foremost, it is directive 2001/42/EC itself (Article 3(4)) which requires the Member States to subject to SEA also those plans or programmes which, whilst they do not fall under those that are subject to SEA by law, may have a significant impact on the environment; furthermore, as clarified above, the subjection of plans or programmes to SEA is to be attributed to the exclusive competence of the state over environmental protection and accordingly the identification of the body to be appointed to carry out the so-called screening function falls within the discretion of the state legislator.

It must in any case be emphasised that the question no longer arises following the entry into force of the corrective decree No. 4 of 2008, according to which the state task force established pursuant to Article 9 of presidential decree No. 90 of 2007, referred to by the new Article 8, evaluates only state plans and no longer carries out the so-called screening, which is by contrast carried out by the regional authority with competence over environmental assessments.

9.5. – Article 7(8) of legislative decree No. 152 of 2006 exempts from the SEA procedure plans and programmes relating to infrastructure for mobile telephone communication, formerly subject to the provisions contained in Article 87 of legislative decree No. 259 of 1 August 2003 (Electronic Communications Code).

Marche Region, arguing that this exemption is not permitted under Article 3 of directive 2001/42/EC, challenges this provision with reference to Articles 117(3) and 118 of the Constitution, as well as with reference to Articles 11 and 76 of the Constitution (due to violation of Article 1(8)(e) and (f) of law No. 308 of 2004 which, as mentioned above, require compliance with Community legislation on environmental law), on the grounds that it is not possible to exempt this type of plan from the SEA procedure, thereby infringing regional powers in the area of protection of health and territorial government.

9.5.1. – The contested provision certainly contrasts with Article 3(8) of directive 2001/42/EC (which led the secondary legislator to remove this exception with the corrective decree No. 4 of 2008). The question is nevertheless inadmissible.

According to this Court (judgments No. 265 of 2006 and No. 336 of 2005) the exemption operated under state legislation of mobile telephone communication plans from regional powers over town planning, notwithstanding their subjection to other forms of control by the local authorities, is lawful. In this light of this case law, the Court therefore finds that the violation of Community law averred does not have implications for regional powers over territorial government or the competence over town planning established under the regional statute. The question is accordingly inadmissible.

9.6. – Articles 8 to 14 of legislative decree No. 152 of 2006 lay down the general arrangements governing the SEA.

Calabria Region challenges these provisions in general terms with reference to Articles 117(2)(s) and (3) and 118 of the Constitution, as well as with reference to the principle of loyal cooperation, on the grounds that they enact detailed legislation in an area – strategic environmental assessment – which predominantly falls under the regional powers over territorial government and protection of health.

According to Calabria Region, the constitutional principles indicated would have been violated, even had the intention been to recognise shared competence over SEA on an equal basis between the state and the regions, since also in this eventuality it would not have been possible for the state to enact legislation unilaterally, other than with regard to the clarification of fundamental principles, since state competence over environmental protection, pursuant to Article 117(2)(s) of the Constitution is limited to the provision of "uniform protection standards".

9.6.1. – The questions are groundless since, as noted above, the arrangements on the SEA fall under the matter of environmental protection, within the competence of the state pursuant to Article 117(2)(s) of the Constitution, and in that area of the law (see, most recently, judgment No. 61 of 2009) the competence of the state is not limited to the setting of minimum standards of environmental protection, but must on the contrary assure and "adequate and non reducible" protection.

9.7. – Article 9(2), second sentence, (4) and (6) of legislative decree No. 152 of 2006 specify the content of the environmental report. Article 10(2), second sentence, and (3) specify the forms of publicity for the non technical summary of the environmental report. Article 12(2), (3) and (4) specify, *inter alia*, the procedures for the environmental compatibility statement. Article 14(3) specifies the forms of publicity of the corrective measures to the plans adopted. Finally, Annex I of Part Two specifies the information which must be included in that report.

Calabria Region challenges these provisions with reference to the principle of loyal cooperation on the grounds that, since they did not lay down fundamental principles ("with the exception perhaps of Article 12(2), (3) and (4)"), but were "rather extremely detailed", they should have been "agreed on" with the regional authorities.

9.7.1. – For the reasons stated above in paragraph 9.6.1., these questions are also groundless, since the state is not required to coordinate with the regions the detailed provisions within legislation which falls under its exclusive competence over matters concerning environmental protection.

9.8. – Article 10(1) of legislative decree No. 152 of 2006 provides that the environmental compatibility assessment shall be carried out prior to approval of the plan or programme, whilst Article 16(2) provides that before the start of the approval procedure, an appropriate number of copies of the non technical summary must, pursuant to Article 10(1) and (2), be filed with the offices of the provinces and regions the territory of which is affected, including only partially, by the plan or programme or the effects of its implementation.

Valle d'Aosta Region challenges these provisions with reference to Articles 4 and 6(1) of Community directive No. 2001/42/EC and, in consequence, with reference to Articles 11 and 117(1) and (5) of the Constitution, as well as with reference to Article 76 of the Constitution (in the light of Article 1(8) of law No. 308 of 2004, which requires the secondary legislator to comply with the principles and rules of Community law), since under Community law the environmental assessment must be carried out during the preparatory stage of the plan or programme and prior to its adoption or the commencement of the legislative procedure, and the draft plan or programme and the environmental report must be made available "to the authorities referred to in paragraph 3 of this Article and the public", whilst according to the state legislation the SEA is carried out "when the elaboration of the plan has already reached its final stage, thereby preventing public and private subjects which have the right to participate in the procedures leading to the approval of the plan from carrying out their own assessments, also on the basis of the environmental assessment on the plan made by the competent authority" and since, finally, the non technical summary is an inappropriate form of publicity.

9.8.1. – The questions are inadmissible since the alleged violation of the Community directive does not imply a limitation of the constitutional powers of the regions.

9.9. – Article 10(3) and (5) of legislative decree No. 152 of 2006 provide (sub-section 3) that the procedures regulating the total or partial publication of the plan or project subject to the SEA shall be laid down by ministerial decree and (sub-section 5) that the filings and publications made for the SEA shall substitute for all purposes the procedures

governing information and participation, if any, provided for in the ordinary way under the procedures for the adoption and approval of the said plans and programmes.

Marche Region challenges these provisions with reference to Articles 117(3) and (4) and 118 of the Constitution on the grounds that, since these provisions refer also to SEA on regional level, they impinge upon the power of the Region to regulate procedures within its competence.

Valle d'Aosta Region on the other hand challenges Article 10(3), with reference to Article 6(1) of directive 2001/42/EC and, in consequence, to Articles 11 and 117(1) and (5) of the Constitution, as well as Article 76 of the Constitution (in the light of Article 1(8) of law No. 308 of 2004, which requires the secondary legislator to comply with the principles and rules of Community law), on the grounds that it contrasts with the Community law principle that the environmental report be made public. It also challenges Article 10(5), with reference to Article 2(g) of the regional statute, which grants it exclusive competence over town planning, on the grounds that, since they relate to regional procedures, these may only be regulated by regional law, including as regards the forms of publicity.

9.9.1. – With regard to the questions relating to Article 10(3), the Court finds that there is no longer any matter in dispute because the ministerial regulation to which that provision refers was not issued before the repeal of that provision by legislative decree No. 4 of 2008.

The questions relating to Article 10(5) are however not well founded since they are based on a mistaken interpretative premise. The generic and indeterminate challenge to this provision must in fact be interpreted as relating only to forms of publicity and participation for state plans, as the state cannot be considered, in clear violation of the powers of the regions, to have intended to abolish the forms of publicity and arrangements for participation in regional plans and programmes.

9.10. – The first part of Article 12(2) of legislative decree No. 152 of 2006 provides that the authority responsible for the environmental assessment shall issue an environmental compatibility statement, which is a prerequisite for the continuation of the approval procedure for the plan or programme.

Piedmont Region argues that this provision violates "Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, and the principles of loyal cooperation, reasonableness, adequacy, differentiation, subsidiarity and the proper conduct of the public administration, with regard also to the violation of principles and rules of Community and international law" on the grounds that, according to the logic of directive 2001/42/EC, the SEA is not a mere measure of authorisation, but a decision making process by the public administration which weighs up the choices to be made within a specific environmental, geographical and socio-economic context and does not allow for a genuine interaction between the environmental assessment and the planning or programming, which remain "successive and essentially separate stages".

In application No. 73 of 2006, Emilia-Romagna Region challenges the same provision, along with that laid down by Article 5(1)(m) of legislative decree No. 152 of 2006 which, in turn, defines the environmental compatibility statement as the decision by which the competent body concludes the strategic environmental assessment procedure or the environmental impact assessment, with reference to directive 2001/42/EC (the reference is to be considered to Article 2), on the grounds that they purport to define and structure the SEA procedure and its outcome in terms essentially similar to those of the EIA procedure, whereas according to the Community directive indicated, the SEA should be conceived as a decision making process by the public administration which approves the plan or programme.

Furthermore, for Emilia-Romagna Region, the violation of Community law has the further effect of infringing its constitutional guarantees (the reference is to be considered to Article 117(3) of the Constitution), since these provisions must on the one hand be applied by local government bodies, whilst on the other impose, pursuant to Article 22 of legislative decree No. 152 of 2006, a limit on future regional legislation.

9.10.1. – The question raised by Piedmont Region is inadmissible, since it is not stated in the application how any regional powers were infringed as a result of the alleged violation of Community law, but it is asserted generically that the SEA pertains not only to

environmental protection, but also to territorial government and that the parent statute required that Community law and regional powers be respected.

9.10.2. – Leaving aside all considerations as to the fact that a constitutional principle was invoked only indirectly, the questions raised by Emilia-Romagna Region are groundless.

Article 5(1)(m) contains first and foremost a definition of the environmental compatibility statement that is neutral and does not infringe any other powers.

As regards Article 12(2) on the other hand, the question raised is based on an evident error of interpretation.

Contrary to the arguments of the Applicant, the environmental compatibility statement must be understood not as an authorisation but rather as a prerequisite for the continuation of the planning or programming procedure. This may be inferred in particular from the provisions of Article 12(3), which provides that the approval of the plan shall "take into account" the opinion contained in the environmental compatibility statement and from Article 4(3) also of legislative decree No. 152 of 2006, which asserts that the measures approving plans or programmes be issued on the basis of a strategic environmental assessment.

9.11. – The final part of Article 12(2) of legislative decree No. 152 of 2006 then provides that, where the authority responsible for the environmental assessment does not report within sixty days, the Council of Ministers is authorised to exercise its reserve power, and where the Council of Ministers does not express its position, a negative opinion will be presumed to have been issued and also provides that this legislation shall apply, up until the enactment of regional legislation in this area, also to SEA under regional competence.

According to Piedmont Region, this provision violates "Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, and the principles of loyal cooperation, reasonableness, adequacy, differentiation, subsidiarity and the proper conduct of the public administration, with regard also to the violation of principles and rules of Community and international law", since the procedure is of a mechanical nature, which reduces the

effective role outlined under the Community legislation laid down by directive 2001/42/EC.

For Valle d'Aosta Region on the other hand, it violates Article 2(g) of constitutional law No. 4 of 26 February 1948 (Special statute for Valle d'Aosta), which recognises town planning as an area of law falling under the exclusive competence of the region, and Article 97 of the Constitution, since it entails the risk that numerous plans and programmes receive a negative assessment of compatibility merely due to the expiry of the time limit.

9.11.1. – The questions are inadmissible because the challenge raised essentially amounts to a challenge to the reasonableness of the law and does not relate to regional competences.

9.12. – Articles 16 and 17 of legislative decree No. 152 of 2006 lay down specific provisions for the SEA on state level.

Calabria Region challenges these provisions with reference to the principle of loyal cooperation on the grounds that, when regulating the procedure for the strategic environmental assessment on state level, these provisions fail to accommodate any possibility for intervention by the regional authorities in the procedures leading to the approval of the plan or programme proposed and accordingly do not take account of the impact of the plan or programme on territorial government.

9.12.1. – The questions are groundless.

In fact, the SEA, which concludes with an "environmental compatibility statement" (see above, paragraph 9.10.2), as has been repeated on several occasions, falls under the area of environmental protection and specifies the limits of environmental protection which must be respected whilst, on the other hand (in addition to the points made above in paragraph 9.3.2.), the region may appoint a member of the competent state task force, pursuant to the original Article 6(6), (7) and (8), as well as pursuant to the current Article 8 of legislative decree No. 152 of 2006 (in conjunction with Article 9 of presidential decree No. 90 of 2007).

9.13. – Article 21 of legislative decree No. 152 of 2006 provides that the plans and programmes referred to in Article 7, the approval of which is a matter for the regions or the

local authorities, shall be subject to strategic environmental assessment on regional or provincial level.

Article 22 provides that, notwithstanding the provisions contained in Articles 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14, the regions and the autonomous provinces of Trento and Bolzano shall regulate through their own laws and regulations the procedures for the strategic environmental assessment of plans and programmes pursuant to Article 21 and that, up until the entry into force of the regional and provincial provisions referred to in sub-section 1, the provisions of Part Two of "this" decree shall apply.

Piedmont Region challenges these provisions, arguing that they violate "Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, and the principles of loyal cooperation, reasonableness, adequacy, differentiation, subsidiarity and the proper conduct of the public administration, with regard also to the violation of principles and rules of Community and international law", since they leave a non existent space to regional legislation, including with regard to procedures under regional competence.

9.13.1. – Leaving aside all considerations relating to its generic nature and the evident irrelevance of the numerous principles invoked by the Applicant in a confused manner and only on an assertive basis, the questions are not in any case well founded since in enacting the said legislation, the state was exercising exclusive powers and the regions have no grounds to challenge the discretionary choices made by the state legislature. Moreover, the very existence of an SEA on regional level has its only basis in a state law, which both requires and permits it, and not in the Constitution, which by contrast grants the state competence over matters relating to environmental protection.

10. – Since the Court has ruled on the merits of the various applications, there is no need to continue with the application for the suspension of the provisions contested by legislative decree No. 152 of 2006 formulated by the Applicants Calabria and Abruzzo Regions.

ON THOSE GROUNDS

hereby;

having reserved for a separate judgment the question concerning the other questions of constitutionality raised regarding legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters) by Emilia-Romagna, Calabria, Tuscany, Piedmont, Valle d'Aosta, Umbria, Liguria, Abruzzo, Puglia, Campania, Marche and Basilicata Regions;

rules that the interventions by the Italian Association for the World Wide Fund for Nature (WWF Italia) – Onlus (in the proceedings commenced by Emilia-Romagna, Tuscany, Piedmont, Valle d'Aosta, Umbria, Liguria, Abruzzo, Puglia, Campania, Marche and Basilicata Regions by the applications mentioned in the headnote) and by Biomasse Italia S.p.a., Società Italiana Centrali Termoelettriche – SICET S.r.l., Ital Green Energy S.r.l. and E.T.A. Energie Tecnlogiche Ambiente S.p.a. (in the proceedings commenced by Piedmont Region in the application mentioned in the headnote) are inadmissible;

rules that there is no longer any matter in dispute with reference to the questions concerning the constitutionality of Articles 6(6), 7(3) and (8), 10(3) and (5) and 17 of legislative decree No. 152 of 2006 raised by Tuscany Region in the application mentioned in the headnote;

rules that there is no longer any matter in dispute with reference to the questions concerning the constitutionality of Articles 6, 7(3), 15, 16, 17, 18, 19 and 20 of legislative decree No. 152 of 2006 raised by Valle d'Aosta Region in the application mentioned in the headnote;

rules that there is no longer any matter in dispute with reference to the questions concerning the constitutionality of Articles 6, 15(1) and 19 of legislative decree No. 152 of 2006 raised by Puglia Region in the application mentioned in the headnote;

rules that there is no longer any matter in dispute with reference to the questions concerning the constitutionality of Article 10(3) of legislative decree No. 152 of 2006 raised by Marche and Valle d'Aosta Regions in the applications mentioned in headnote;

rules that the questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006, raised with reference to Article 76 of the Constitution and the principle of loyal cooperation by Valle d'Aosta, Basilicata and Abruzzo Regions in the applications mentioned in the headnote, are inadmissible;

rules that the questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006, raised with reference to Articles 76 and 117(1) and (5) of the Constitution by Piedmont Region in the application mentioned in the headnote, are inadmissible;

rules that the questions concerning the constitutionality of Article 3(4) of legislative decree No. 152 of 2006, raised with reference to Articles 117 and 118 of the Constitution and the principle of loyal cooperation by Tuscany and Marche Regions in the applications mentioned in the headnote, are inadmissible;

rules that the questions concerning the constitutionality of Article 5(1)(e) of legislative decree No. 152 of 2006, raised with reference to Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, as well as with reference to the principle of loyal cooperation by Piedmont Region in the application mentioned in the headnote and, with reference to Article 2(1) and paragraph 13 of Annex II of directive No. 85/337/EEC of 27 June 1985 (Council directive on the assessment of the effects of certain public and private projects on the environment) by Emilia-Romagna Region by application No. 73 of 2006, are inadmissible;

rules that the question concerning the constitutionality of Article 5(1)(g) of legislative decree No. 152 of 2006, raised with reference to paragraph 22 of Annex I of directive No. 85/337/EEC by Emilia-Romagna Region by application No. 73 of 2006, is inadmissible;

rules that the question concerning the constitutionality of Article 7(8) of legislative decree No. 152 of 2006, raised with reference to Articles 11, 76, 117(3) and 118 of the Constitution and Article 3 of directive No. 2001/42/EC of 27 June 2001 (Directive of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment) by Marche Region in the application mentioned in the headnote, is inadmissible;

rules that the questions concerning the constitutionality of Articles 10(1) and 16(2) of legislative decree No. 152 of 2006, raised with reference to Articles 11, 76 and 117(1) and (5) of the Constitution and Articles 4 and 6 of directive No. 2001/42/EC by Valle d'Aosta Region in the application mentioned in the headnote, are inadmissible;

rules that the question concerning the constitutionality of Article 12(2), first part, of legislative decree No. 152 of 2006, raised with reference to Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, as well as with reference to the principle of loyal cooperation, by Piedmont Region, in the application mentioned in the headnote, is inadmissible;

rules that the questions concerning the constitutionality of Article 12(2), second part, of legislative decree No. 152 of 2006, raised with reference to Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, as well as with reference to the principle of loyal cooperation by Piedmont Region and, with reference to Article 2(g) of constitutional law No. 4 of 26 February 1948 (Special statute for Valle d'Aosta) and Article 97 of the Constitution, by Valle d'Aosta Region in the applications mentioned in the headnote, are inadmissible;

rules that the questions concerning the constitutionality of the whole of legislative decree No. 152 of 2006, raised, with reference to the principle of loyal cooperation by Calabria Region, with reference to Article 76 of the Constitution by Campania Region, with reference to Article 76 of the Constitution and the principle of loyal cooperation by Valle d'Aosta, Abruzzo and Basilicata Regions, and with reference to Articles 5 and 76 of the

Constitution and the principle of loyal cooperation by Piedmont Region in the applications mentioned in the headnote, are groundless;

rules that the question concerning the constitutionality of Articles 63, 64, 101(7), 154, 155, 181(7)-(11), 183(1), 186, 189(3) and 214(3) and (5), of legislative decree No. 152 of 2006, raised with reference to Article 76 of the Constitution and the principle of loyal cooperation by Emilia-Romagna Region by application No. 56 of 2006, is groundless;

rules that the question concerning the constitutionality of Articles 25(1), 35(1), 42(3), 55(2), 58(3), 63(3) and (4), 64, 65(3)(e), 95(5) 96(1), 101(7), 148, 149, 153(1), 154, 155, 160, 166(4), 181(7)-(11), 183(1), 186, 189(3), 195(1), 202(6) and 214(3) and (5) of legislative decree No. 152 of 2006, raised with reference to Article 76 of the Constitution and the principle of loyal cooperation by Umbria Region in the application mentioned in the headnote, is groundless;

rules that the question concerning the constitutionality of Articles 58, 59, 63, 64, 65, 67, 69, 74, 91(1)(d), 96, 113, 114, 116, 117, 121, 124(7), 148(4) and (5), 149(6), 154, 181(7)-(11), 183(1), 186, 189(3), 205(2), 240(1)(b), (c) and (g), 242, 243, 244, 246, 252 and 257, raised with reference to Article 76 of the Constitution and the principle of loyal cooperation by Liguria Region in the application mentioned in the headnote, is groundless;

rules that the questions concerning the constitutionality of Article 3(2) of legislative decree No. 152 of 2006, raised with reference to Article 117(6) of the Constitution and, in the alternative, with reference to the principle of loyal cooperation by Calabria Region in the application mentioned in the headnote, are groundless;

rules that the question concerning the constitutionality of Article 4(1)(a)(iii) of legislative decree No. 152 of 2006, raised with reference to Articles 11, 76 and 117(1) of the Constitution and Article 3(1) of directive No. 2001/42/EC by Valle d'Aosta Region in the application mentioned in the headnote, is groundless;

rules that the questions concerning the constitutionality of Articles 4(1)(b) and 5(1)(q) and (r) of legislative decree No. 152 of 2006, raised with reference to Articles 76 and 77(1)

of the Constitution and, in the alternative, with reference to Article 76 of the Constitution by Calabria Region in the application mentioned in the headnote, are groundless;

rules that the questions concerning the constitutionality of Articles 4(1)(a), 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 and Annexes I and II of Part Two of legislative decree No. 152 of 2006, raised with reference to Articles 76 and 77(1) of the Constitution and, in the alternative, with reference to Article 76 of the Constitution by Calabria Region in the application mentioned in the headnote, are groundless;

rules that the questions concerning the constitutionality of Article 8 of legislative decree No. 152 of 2006, as amended by Article 1 of legislative decree No. 4 of 16 January 2008 (Further provisions to correct and supplement legislative decree No. 152 of 3 April 2006 laying down provisions concerning environmental matters), raised with reference to the principle of loyal cooperation by Calabria Region with reference to Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, as well as with reference to the principle of loyal cooperation, by Piedmont Region and, with reference to Articles 11, 76, 117 and 118 of the Constitution by Marche Region in the applications mentioned in the headnote, are groundless;

rules that the question concerning the constitutionality of Article 7(3) of legislative decree No. 152 of 2006, raised with reference to Articles 117 and 118 of the Constitution and the principle of loyal cooperation by Marche Region, in the application mentioned in the headnote, is groundless;

rules that the questions concerning the constitutionality of Articles 8, 9, 10, 11, 12, 13 and 14 of legislative decree No. 152 of 2006, raised with reference to Articles 117(2)(s) and (3) and 118 of the Constitution and the principle of loyal cooperation by Calabria Region in the application mentioned in the headnote, are groundless;

rules that the questions concerning the constitutionality of Articles 9(2), second sentence, (4) and (6), 10(2), second sentence, and (3), 12(2), (3) and (4) and 14(3) and of Annex I of Part Two of legislative decree No. 152 of 2006, raised with reference to the

principle of loyal cooperation by Calabria Region in the application mentioned in the headnote, are groundless;

rules that the questions concerning the constitutionality of Article 10(5) of legislative decree No. 152 of 2006 raised, with reference to Article 2(g) of the Special Statute, by Valle d'Aosta Region, and with reference to Articles 117 and 118 of the Constitution by Marche Region in the applications indicated in the headnote, are groundless;

rules that the questions concerning the constitutionality of Articles 5(1)(m) and 12(2), first part, of legislative decree No. 152 of 2006, raised with reference to Article 117(3) of the Constitution and Article 2 of directive No. 2001/42/EC by Emilia-Romagna Region by application No. 73 of 2006, are groundless;

rules that the questions concerning the constitutionality of Articles 16 and 17 of legislative decree No. 152 of 2006, raised with reference to the principle of loyal cooperation by Calabria Region in the application mentioned in the headnote, are groundless;

rules that the the questions concerning the constitutionality of Articles 21 and 22 of legislative decree No. 152 of 2006, raised with reference to Articles 3, 5, 76, 97, 114, 117, 118, 119 and 120 of the Constitution, as well as with reference to the principle of loyal cooperation by Piedmont Region in the application mentioned in the headnote, are groundless.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 14 July 2009.

Signed:

Francesco AMIRANTE, President

Paolo MADDALENA, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Filed in the Court Registry on 22 July 2009.

The Director of the Registry

Signed: DI PAOLA

Annex:

order read out in the hearing of 5 May 2009

ORDER

Whereas these proceedings concerning the constitutionality of legislation, in which the Court has been seized directly, are structured as proceedings celebrated exclusively between subjects that are vested with legislative powers, insofar as such proceedings concern questions of legislative competence, notwithstanding the forms of protection of individual rights for individuals not vested with such powers, including under constitutional law, before other courts and, where appropriate, also before this Court on an interlocutory basis (judgments Nos. 405 of 2008 and 469 of 2005).

on those grounds

THE CONSTITUTIONAL COURT

rules that the intervention in the proceedings indicated in the headnote by the Italian Association for the World Wide Fund for Nature - ONLUS and by Biomasse Italia S.p.a., Società Italiana Centrali Termoelettriche - SICET S.r.l., Ital Green Energy S.r.l. and E.T.A. Energie Tecnologiche Ambiente S.p.a. is inadmissible.

Signed: Francesco AMIRANTE, President