

MINISTRY OF PRODUCTION ACTIVITIES
General Department for Energy and Minerary Resources – Office C4

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SUBJECT: Law 23rd August 2004, n. 239. First directions for the oil sector

The Law 23 August 2004, n. 239 provides the reorganisation of the energy sector according to three points:

- Definition of the competencies of State and Regions under the new constitutional regulations outlined by the constitutional Law n. 3/ 2001, in amendment of the V Title of Constitution;
- Completion of market liberalisation;
- Development of system efficiency.

Therefore, the article 1, paragraph 2, by defining the criteria which regulate the activities of the energy sector, explains in letter a), that the activities concerning production, import, export, storage, not underground, of mineral oils are free in all national territory, in observance of the obligations of public service resulting from the Community Rules and legislation in force. The following paragraph 8, letter c), clarifies that “mineral oils” means the raw mineral oils, the residues of their distillation and all kinds and qualities of oil products, by-products and added products, including liquefied petroleum gas and bio-diesel.

Furthermore the Law provides that “Regions perform administrative functions in matter of manufacturing, storage and distribution of mineral oils not exclusive for the State” (article 1, paragraph 55), currently developed at central or local level by Governmental territorial departments, according to a sharing of competencies based on the plants capacity. Moreover, the rule maintains the current provisions in environmental, sanitary, tax, safety, fire prevention and maritime State property matters.

The law introduces, in paragraphs 56, 57 and 58, procedural simplifications for the activities concerning manufacturing and storage of mineral oils, to complete the markets liberalisation and develop their domestic efficiency. Having considered the strategic role of Italian provision in the mineral oils sector, and the international context in which the sector operates, the Law provides provisions to identify the State policy and coordination power, in order to guarantee a planning and unitary regulations in oil matter, as well as co-ordination mechanisms between State and Regions (article 1, paragraph 8, letter c).

This Administration, by accomplishing the point 5 of the mentioned paragraph 8, letter c), is working for the identification of criteria and modalities to issue authorisations for installation and operation of manufacturing and storage plants of mineral oils, as well as for the identification of national oil pipelines network (article 1, paragraph 8, letter c), point 6). With this object, the Administrations and Institutions concerned are been required the designations of representatives for the constitution of a comparison technical table on such themes.

Waiting for the identification in the ministerial domain of such criteria and modalities, in order to issue the authorisations related to the cases in point that the new Law submits to the authorising regime, there will be enforced the rules dictated by the D.P.R. (Decree of Republic President) n. 420/94 for such regime; it's on the base of the direction of the Law n. 131/03, containing provisions to conform the Republic regulations to the constitutional Law n.3 /2001.

In addition, it is appropriate to give directions for the management of the practices in itinere. In this regard, one can refer to the general principles of regulations, particularly the so-called principle of “tempus regit actum”, according to which, each act of a proceedings series has to be conformed with the current rules at the moment of its adoption. On the base of such principle, the pending procedures in this Administration are to be evaluated according to the new rules.

From the coming into effect of the Law, the activities concerning production, storage and distribution of mineral oils will be free, consequently the activities that will be already authorised or granted in that period, will automatically operate in the new liberalised regime, without the necessity of any formal accomplishment. Regions instead are to issue the authorising acts, related to four cases in point, provided by the article 1, paragraph 56, of the Law under examination, following the rules dictated by the D.P.R. (Decree of Republic President) n. 420/94 with regard to authorising regime, waiting for the identification of the above mentioned criteria and modalities (paragraph 8, letter c), mentioned point 5), in agreement with the Conference State-Regions.

We list the most frequent verifiable records of cases, classifying them in the abovementioned principle of “tempus regit actum”, as follows:

Petitions for cases in point provided by the article 1, paragraph 56 (*Petitions for the installation of new manufacturing or storage plants; petitions for interventions changing the manufacturing capacity; petitions for interventions increasing more than 30% the previously authorised storage capacity; petitions for the abandonment of manufacturing or storage plants.*)

It is a case in point for which the new rules provide the authorising regime.

The petitions in itinere will be transferred to Regions who will carry out procedures by acquiring lacking advice and providing to issue the authorisation measure, following the procedure described by the article 5 of D.P.R. (Decree of Republic President) n. 420/94.

Petitions for cases in point not provided by the article 1, paragraph 56 (*Petitions for changes to the storage capacity less than 30% of the authorised capacity; petitions for minor works subject to authorisation; petitions for assignments, title transfers*).

There are cases in points liberalised by the new rules, for which it has not to carry out the already opened preliminary investigation. The Administration will directly point out to the concerned person and the other Administrations involved in the proceedings that the preliminary investigation will not be carried out, as it's a work submitted to the new liberalised regime (article 1, paragraph 58), being provided the accomplishments by the environmental, fiscal, sanitary, safety, fire prevention and maritime State property rules.

Proceedings added/related to the previous petitions

Petition of renewal for an already expired concession

If the concessive titles, having the plants to work with provisional budget, are expired in the date of coming into force of the law, the checking of the provided requirements of the budget, already started by the central administration, is to be completed (procedure of concession renewal). Considering the new liberalisation regime, the Region, whom are transmitted the petitions related to this case in point together with the opinions already acquired, is to adopt a declaratory regulation about the permanence of such requirements for the continuation of the activity. Waiting for the issuing of the abovementioned regulation, the Region is supposed to issue possible further extensions of the budget. If the title, whose renewal is required, is not expired yet in the date of coming into force of the law, the petitions already lodged won't have follow-up and will be returned to owner, informing the other interested administrations.

Petitions of provisional budget and petitions of test and adjustment

The institution of the provisional budget is used in order to allow the continuation of the plants activity while waiting for the issue of the needed act (concession renewal, registration) or, once finished the authorized or conceded works, waiting for the inspection. In the new regime, will be examined only the petitions of provisional budget related to concession renewals already expired (see previous point) and to other intervention subject, according to paragraph 56, to the regional authorization (new plants of production and storage). The other petitions of provisional budget won't have follow-up, being related to liberalising interventions as for the new regime.

Petition of inspection

The procedure of inspection is additional considering the main regulation of concession and authorization and aims to establish the accordance of the works carried out with the approved plan. The same procedure is to be carried out just for the works subject, even in the new regime, to authorisation, unless the procedure of constitution of the Interdepartmental Committee of inspection is, when the law comes into force, to be completed by issuing of the decree of appointment of members.

The central Administration will transmit to the Region the petitions of inspection for works subject to authorization in the new regime and whose Committee is not constituted yet. Remember that, waiting for the inspection, the provisional budget of the plant is to be authorised to guarantee the prosecution of the activity.

Extensions to the conclusion of works

With reference to the works conceded or authorized, if not carried out in times foreseen in the authorization/concession act, it's permitted to ask the extension to the conclusion of works. The petitions aiming at this extension will be transferred to the Region to open them just if they are about works subject, even in the new regime, to authorization. Otherwise, there won't be communication to applicant and related administrations.

We inform also that it's not possible to spread information, classified by region, related to the number of papers to transfer, as well as to the set of installations within the competence of each region. Herein it's enclosed the referring people for further explanations.

Region Tuscany, as well as the other interested administrations, is invited to spread the contents of this note and give instructions to their branches.

General Manager

Prof. SERGIO CARRIBBA

N.B. – This text will be published on the website: www.attivitàproduttive.gov.it

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