Q&A on Environmental Law in Italy

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Contents

Introduction

Using a Q&A format, this article provides a guide to environmental law in Italy and gives a practical description of a wide range of topics including:

- Emissions to air and water
- Environmental impact assessments
- Waste
- Contaminated land
- Environmental issues in transactions.

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Environmental regulatory framework

1. What are the key pieces of environmental legislation and the regulatory authorities in your jurisdiction?

A significant portion of environmental legislation in Italy derives from EU law. The majority of Italian environmental legislation is contained in the Environmental Code approved by Legislative Decree No. 152 of 3 April 2006 (as amended) (Environmental Code). The Environmental Code has been subject to a number of amendments in the last year, including in relation to the extraction of fossil fuels and waste provisions.

The purpose of the Environmental Code is to promote quality of human life through the protection and improvement of environmental conditions, and the careful and rational use of natural resources.

The Environmental Code sets out rules that refer to:

- Environmental Impact Assessments (EIAs) (whether at the strategic plans/programmes level or at the level of individual facilities) (*see Question 11*).
- The integrated pollution prevention control (IPPC) regime (see *Question 4*).
- Soil and water protection (see *Question 6*).
- Air pollution and the reduction of emissions (see *Question 7*).
- Waste management and remediation of contaminated sites (see *Question 12*).
- Claims for environmental damage.

The Environmental Code is based on the following principles:

- Sustainable development, that is, balancing the needs of the current generation and the quality of life and needs of future generations.
- Prevention of environmental damage at source.
- The "polluter pays" principle under EU law.
- Legislation should only provide for the minimum controls necessary to ensure protection of the environment. More restrictive provisions are prohibited if they are arbitrary or unjustifiably increase bureaucracy.
- Freedom of access to environmental information and participation in environmental proceedings.

Other significant legislation includes:

- The promotion of the use of energy from renewable sources (Legislative Decree No. 28 of 3 March 2011, implementing Directive 2009/28/EC on the promotion of the use of energy from renewable sources).
- Waste electrical and electronic equipment (Legislative Decree No. 151 of 25 July 2005, implementing Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment).
- Public access to environmental information (Legislative Decree No. 34 of 19 August 2005, implementing Directive 2003/4/EC on public access to environmental information).
- Ship-source pollution (Legislative Decree No. 202 of 6 November 2007, implementing Directive 2005/35/EC ship-source pollution and on the introduction of penalties for infringements).
- Criminal offences relating to the environment (Legislative Decree No. 231 of 8 June 2001, as recently amended by Legislative Decree No. 121 of 7 July 2011, which provides for monetary sanctions for legal entities in cases of criminal offences concerning the environment, where these offences are committed for the legal entity's interest or benefit by any person who represents or administers the legal entity, or is subject to the legal entity's direction or control).
- Protection of wild fauna and the regulation of hunting (Law No. 157 of 11 February 1992, as amended).
- Asbestos and health and safety at work.

The main bodies responsible for developing environmental policy and legislation are the regions, but they must exercise their powers in compliance with national legislation. Other regulatory authorities include the:

- Ministry of Environment and Protection of Land and Sea (MoE).
- Ministry of Cultural Goods.
- Ministry of Public Health.
- Ministry of Economic Development.
- A steering committee between the state and regions (*Conferenza Unificata Stato-Regioni*), which has the power to rule on specific matters as provided by national legislation.

Italy is preparing to implement the Industrial Emissions Directive 2010/75/EU through Law No. 96/2013 which will change a number of aspects of industrial permitting (*see Question 30*).

Regulatory enforcement

2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

In general, regulators enforce environmental requirements through:

- Variable monetary penalties.
- Criminal penalties.
- Suspension of the activity for a certain period while the relevant requirement is implemented.

In specific cases, the authorisation obtained to conduct the activity may be revoked.

The authorities that can enforce the environmental requirements are the:

- Local authorities (municipalities, provinces and regions).
- MoE.
- Police.
- Special environmental agencies.
- Administrative and criminal courts.
- Public prosecutors.

The competent regulatory authorities must start an investigation and/or legal proceedings to ascertain the infringement of the law each time an interested party (such as a private body) reports a breach of environmental law.

However, the need for enforcement is balanced against the need to protect local economies and the level of employment in the relevant businesses. An example of this occurs in the proceedings relating to ILVA (a steel producer

in Taranto, Apulia Region). Due to dangerous emissions and soil contamination, the court recently suspended the activities of the company and seized part of the production plants to start works aimed at bringing the plants into compliance. The court also applied criminal sanctions in respect of the board of directors. However, the suspension of operations caused a strong worker reaction. In an attempt to balance the protection of health and environment against the rights of employees to work, the Italian government, environmental agencies and the court subsequently worked together to find a solution that allowed operations to continue while safeguarding the environment.

Environmental NGOs

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

NGOs (such as WWF-Italia or LegaAmbiente) can:

- Take part in procedures that govern the issue of environmental permits and file related objections.
- Challenge the issue of permits or other decisions made in the administrative courts alleging a breach of environmental law.
- File a petition with the public prosecutor to start criminal investigation.

A group of NGOs recognised by the MoE can also (*Law No. 349 of 8 July 1986*):

- Claim judicial review in order to challenge the legitimacy of acts or omissions of the public administration.
- Intervene in proceedings already started for the restoration of environmental damage.

For example, Greenpeace, LegaAmbiente, LIPU (*Lega Italiana Protezione Uccelli*) and WWF-Italia have sent the President of the Calabria Region, the Alderman of Environment and Regional Councillors a letter challenging the controversial Decree of the President of the Council of Ministers dated 15 June 2012. This decree authorised the construction of a coal-fired power station in Saline Joniche (Reggio Calabria province), declaring it environmentally friendly despite high levels of pollution and carbon dioxide emissions. This is usually a standard preliminary step undertaken by NGOs before launching legal proceedings.

Environmental permits

4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

Integrated/separate permitting regime

Part II, section III-*bis* of the Environmental Code establishes an integrated permitting regime (as required under Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive)) regulating the operation of activities listed in Annex VIII of the Environmental Code. These are generally the most polluting industrial activities including, for example, chemical installations, smelting operations and power generation facilities. For these activities, an operator must obtain an IPPC permit.

In addition to plant operations, the IPPC regime regulates the construction and operation of new plants, as well as any substantial modifications or adaptations of existing plants.

Under Legislative Decree No. 387 of 29 December 2003, a single authorisation (following the IPPC procedure) can be requested by an operator to construct and operate a new or substantially modified renewable energy plant, in effect bringing these plants into the IPPC regime.

Activities not covered by the IPPC regimes are regulated by individual sectoral regimes as set out in *Questions 6* to *7* and *Questions 12* to *14*, and operators require separate permits under those regimes.

5. What is the framework for the integrated permitting regime?

Permits and regulator

The IPPC permit includes, among other provisions, authorisations for:

- Air emissions.
- Waste water discharges.
- Disposal (in any form), and recovery, of waste.

Under the Environmental Code, certain listed developments will have the IPPC permit granted as part of the EIA

process (*see Question 11*). The developments that will benefit from this simplified procedure are:

- Refineries.
- Power plants with thermal power exceeding 300MW.
- Steel plants.
- Chemical factories producing specific products such as polymers, synthetic rubber and fertilizer.

The MoE grants IPPC permits to plants engaged in the combined IPPC/EIA process above and to other plants of national importance. For other IPPC-regulated plants (as listed in Annex VIII of the Environmental Code) the competent authority is the relevant regional authority.

Length of permit

In general, an IPPC permit is valid for five years. The operator may file an application for renewal for a further five years to the competent authority, six months before the expiry of the IPPC permit.

However, different time limits may apply in certain cases:

- Six years, if the plant is certified under environmental management system standard ISO 14001.
- Eight years, if the plant is recorded under Regulation (EC) 761/2001 allowing voluntary participation by organisations in a community eco-management and audit scheme (EMAS).
- Ten years, for plants that intensively rear poultry or pigs.

An IPPC permit can be re-examined on a specific request filed by a public authority (for example, a municipality), or because:

- Pollution caused by the plant necessitates air emission limit values to be revised or additional limits to be applied.
- The best available techniques (BAT) in relation to the relevant industry have changed substantially, allowing a significant reduction in air emissions without excessive costs.
- It is considered necessary for safety reasons.
- New national or EU legislation requires re-examination.

Restrictions on transfer

An IPPC permit can be transferred from one operator to another without any restrictions, but the competent authority must be notified of transfer by both the transferor and the transferee within 30 days of the date of transfer.

Penalties

Where an operator is operating without an IPPC permit or fails to comply with the terms of the IPPC permit, the competent authority can:

- Require the operator to comply within a certain period.
- Suspend the authorised activity for a certain period of time, if further non-compliance would endanger the environment.
- Revoke the IPPC permit and shut down the plant if the irregularity has not been rectified within the required time or there are repeated violations causing risk and danger to the environment.

Where the operations of an installation create a risk of harm to the environment or danger to public health, the competent authority can adopt urgent measures to protect the local community. These can include suspension of the polluting activity.

Operating without a permit or failure to comply with the conditions of the IPPC permit or with the requirements of an enforcement notice or suspension notice, is a criminal offence, punishable by:

- Imprisonment of up to one year or a fine ranging from EUR2,500 to EUR26,000 if an activity set out in Annex VIII is carried out without an IPPC permit, or after its suspension or revocation.
- A fine ranging from EUR5,000 to EUR26,000 in event of non-compliance with the conditions of the IPPC permit.
- Imprisonment ranging from six months to two years, or a fine ranging from EUR5,000 to EUR52,000 for operating activities after the plant is shut down by the competent authority.
- Other financial penalties, in the case of a failure to comply with the operators' duty to communicate data relating to control of emissions to the competent authorities.

If the operation of an installation causes soil damage (contamination), the competent authority may also impose a clean-up requirement on a case-by-case basis.

Regional authority representatives can impose fines and other financial penalties in relation to matters of national interest.

Water pollution

6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

Permits and regulator

The regulation of water pollution is set out in Part III of the Environmental Code.

Water discharges must generally be authorised by permit. For IPPC activities, the IPPC permit governs the discharges and the regulator is the relevant authority that grants the permit.

For non-IPPC activities, discharges to water courses or industrial water discharges connected to the sewage system require a water permit. Domestic water discharges connected to a sewage system do not require a water permit. This permit is granted by the competent regional authority. Water permits are valid for four years, but the operator can apply for renewal within one year before its expiry. The renewal is now effectively a new application for a permit, since the Corte Costituzionale (Constitutional Court) recently held that the competent authority cannot treat the renewal procedure effectively as an automatic renewal subject to a simple application (*Judgment of Corte Costituzionale No. 133 of 31 May 2012*).

Prohibited activities

Activities that are generally prohibited but may be permitted include:

- Waste water discharges into surface or groundwater, soil or the public sewage system, which are prohibited without obtaining the relevant permit.
- Discharges to soil and underground water, which are rarely permitted except in certain limited circumstances.

Activities that are permitted subject to conditions include:

- Direct waste water discharges into surface water, which are generally permitted, subject to certain conditions and limit values being imposed on the permit.
- Waste water discharges into the public sewage, which are always permitted, subject to certain standard conditions being imposed on the permit.

The regions also have the power to adopt additional conditions and limitations on permits, subject to complying with the Environmental Code.

Clean-up/compensation

The MoE can act against any person who has caused pollution whether or not in contravention of a permit and order them to adopt preventive measures to avoid danger to the environment. The MoE can also file a claim for:

- The restoration of the damaged resource to its original state.
- Compensation, if water pollution caused damage to water, soil or natural habitats.

Third parties, holding a legitimate interest in the matter (including NGOs) can file a claim against the polluter to the competent civil court to obtain damages for restoration.

Penalties

Criminal sanctions apply to:

- Waste water discharges made without the relevant authorisations.
- Non-compliance with the terms of the permit (in certain circumstances).
- Violation of the discharge limit values set out in the Environmental Code.
- Suspension or revocation of permits.

The principal criminal sanctions provide for imprisonment of up to two or three years for the main offences.

In addition, violations of the principal waste water discharge regulations are also administrative offences punishable with a fine of up to EUR120,000.

Air pollution

7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

Permits and regulator

The air emissions regime is set out in Part V of the Environmental Code.

In particular, an authorisation is required for any activities producing air emissions and for the installation, substantial modification, or transfer of plants that conduct such activities. In the case of IPPC activities, the IPPC permit governs air emissions and the MoE (or competent authority appointed by the region) is the relevant authority granting that permit.

For non-IPPC activities, an authorisation is required for any plant or activity making emissions (except for certain activities relating to burning of waste). An air emission authorisation is valid for 15 years and can be renewed by filing an application with the competent authority at least one year before its expiry. The issuing authority is the relevant region or other public authority indicated by the regional law.

The MoE issues authorisations for offshore platforms.

Prohibited activities

Any failure to comply with the air emissions regime is prohibited.

In particular, it is a criminal offence to:

- Produce air emissions without an air emission authorisation or that are not in compliance with an authorisation.
- Exceed air emission limit values set out in the authorisation, otherwise required by the competent authority or set out in national legislation, plans and programmes.
- Install or carry out substantial modification to a facility in the absence of an authorisation or to continue operating after the suspension or revocation of an authorisation.

Clean-up/compensation

The MoE can order a polluter to adopt preventive measures to avoid danger to the environment, and file a claim for compensation if air emissions have caused damage to water, soil or natural habitats.

In addition, any third party holding a legitimate interest in the matter (including NGOs), can file a claim in the competent civil court against the polluter in order to obtain damages.

Penalties

The enforcement powers requiring compliance, suspension and closure of the facility are similar to those applying to the IPPC permitting regime (*see* Question 5).

Producing air emissions without the relevant authorisation is also a criminal offence, punishable by imprisonment of up to two years or a fine of up to EUR1,032.

Exceeding air emission limit values is also a criminal offence punishable by imprisonment of up to one year or a fine of up to EUR1,032.

Climate change, renewable energy and energy efficiency

8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is there a national strategy on climate change, renewable energy and/or energy efficiency?

Emissions targets

Italy is subject to Kyoto Protocol targets (*see* Question 9). In addition, under Legislative Decree No. 28 of 3 March 2011, Italy implemented Directive 2009/28/EC on the promotion of the use of energy from renewable sources (Renewable Energy Directive) as part of the EU climate change and energy package, to meet the EU 20-20-20 targets (that is, a 20% reduction in greenhouse gas emissions, a 20% improvement in energy efficiency, and a 20% share of renewables in EU energy consumption).

In 2012, the MoE created a technical board containing experts of the major national research institutes and authorities (for example, the Institute of Atmospheric Sciences and Climate of the National Research Council and the Institute of Biometeorology) who collaborate to focus on the impact, vulnerability and adaptation scenarios of climate change.

The board's work is a first step towards the development of a national adaptation strategy (that is, NAS) for climate change, according to the deadlines set out in the White Paper of the European Commission. In particular, the board has focused its activity on:

- Natural resources (that is, agriculture, forest and water supplies).
- Health.
- Biodiversity.
- Coastal areas.
- Subsoil use.
- Hydrological risk.
- Eco-tourism.

- Infrastructure.

With regard to infrastructure, MoE is focused on increasing awareness of waste management and reducing energy costs. For example, under Ministry Decree No. 544/2012, MoE aimed to improve air quality, through the modernisation of the fleet designed for local public transport in the main municipality and it provided the necessary resources.

Increasing renewable energy

The Renewable Energy Directive requires renewable energy to form 20% of total EU energy consumption by 2020, although this may be raised to 30% in future. Italy's contribution to the EU-wide target is 17% by 2020. This is reflected in Italian national policy. In addition, the Renewable Energy Directive imposes an obligation on member states (including Italy) to ensure that at least 10% of overall transport fuel consumption comes from renewable sources.

Increasing energy efficiency

The 2011 Legislative Decree also contains provisions seeking to improve energy efficiency through, among other things, a system of public incentives. In particular, developers of new buildings (and the significant renovation of existing buildings) must provide information on the use of renewable sources for energy, heating, and air conditioning, and must achieve certain energy performance standards set out in Annex 3. The fulfilment of these thresholds is a condition for obtaining a building permit.

On 25 October 2012, the EU adopted the Directive 2012/27/EU on energy efficiency. This Directive establishes a common framework of measures for the promotion of energy efficiency within the Union. This is to ensure the Union achieves a 20% headline target on energy efficiency by 2020 and to lead the way for further energy efficiency improvements beyond that date. It lays down rules designed to remove barriers in the energy market and to overcome market failures that hinder efficiency in the supply and use of energy. In particular the Directive provides for the establishment of indicative national energy efficiency targets for 2020 and a compulsory requirement for large companies to have energy audits every four years. Member States are required to bring into force the laws necessary to comply with the Directive by 25 June 2014 (*Article 28(1)*).

Italy is preparing to implement the energy efficiency Directive 2012/27/EU. According to Law No. 96/2013, the Government will introduce provisions enabling the Authority for Electricity and Gas (AEEG) to adopt one or more measures to replace the current structure of electricity tariffs under which higher volume usage costs progressively less, with rates based on cost of service, in order to promote energy efficiency.

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

Parties to UNFCCC/Kyoto Protocol

Italy is a party to both the UNFCCC and the Kyoto Protocol. The EU's emissions reduction target under the Kyoto Protocol was to reduce its greenhouse gas emissions by 8% from 1990 levels in the period 2008 to 2012 (the end of the first commitment period). The EU's target was redistributed among member states, and Italy agreed to a 6.5% reduction for the first commitment period. Italy has fully complied with the agreement made in the Kyoto Protocol and has reduced greenhouse gas emissions by an average of 7% in the first commitment period.

A second commitment period has now been agreed until 2020 with parties setting their own reduction objectives. Italy has not yet accepted a particular level of reduction, as the objective will be jointly fulfilled with the EU.

The parties have also agreed to an amendment to the Kyoto Protocol to provide for an overall objective of reducing the emissions by 18% below the levels seen in 1990 by 2020 (while the original objective was a 5% reduction below 1990 levels in the first commitment period). The EU and Member States have committed to this target on a joint basis (and the EU has pledged to strengthen the commitment to a 30% reduction if a strong international agreement is reached). Parties that have signed up to the second commitment period will review their emissions reduction objectives in 2014.

Implementation

The Italian Government has been implementing policies and measures to comply with the requirements under UNFCC and the Kyoto Protocol to reduce greenhouse gas emissions.

In particular, the MoE, together with the Inter-Ministerial Committee for Economic Planning (CIPE) has developed

national programmes to achieve a 25% reduction in greenhouse gas emissions by 2020. Specific actions include:

- Legislative Decree No. 28 of 3 March 2011 which regulates the grant of incentives for:
  - the production of thermal energy;
  - small works to increase energy efficiency; and
  - white certificates (that is, documents certifying that a certain reduction of energy consumption has been attained) for other works that meet energy efficiency qualifications.
- Decree 5 May 2011 of the Ministry of Economic Development, which promotes the production of electricity through photovoltaic sources on the basis of feed-in tariffs (payments to renewable energy generators for the renewable energy produced). These tariffs are granted, under specific conditions, for 20 years.
- Legislative Decree No. 83 of 22 June 2012, which provides incentives for emerging businesses in the green economy. In particular, the Decree extends the availability of a special fund for green companies that develop technologies relating to:
  - new technologies for renewable energy;
  - second and third generation of clean fuel;
  - energy efficiency;
  - mitigation of hydrological or seismic risks.

10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

European Union Emissions Trading System (EU ETS)

As an EU member state, Italy is covered by the EU ETS, which works in three compliance stages:

- Phase I of the EU ETS ran from 2005 to 31 December 2007.
- Phase II ran from 1 January 2008 to 31 December 2012.
- Phase III started on 1 January 2013 and will run to 31 December 2020(see below, *Phase III*).

The EU ETS applies to specified heavy industrial activities and establishes a mandatory cap-and-trade system. Participants must surrender allowances (or other credits) at the end of each compliance period to match their emissions. In addition, the operator must still return the missing allowances. Each allowance represents the emission of one tonne of carbon dioxide.

Following allocation and auctioning, allowances are subsequently traded on an online registry (*see below, Phase III*), enabling companies to purchase additional allowances to meet their obligations. Each trading transaction must be duly registered and a participant must have an account on the online registry to obtain and surrender allowances. Operators can also obtain credits (that can be traded in the EU ETS) by investing in:

- Qualifying projects to reduce emissions in industrialised countries and certain countries in economic transition (known as joint implementation (JI) under the Kyoto Protocol).
- Projects to reduce emissions in developing countries (known as the clean development mechanism (CDM) under the Kyoto Protocol).

Operators can surrender any such credits as well as EU allowances to comply with their obligations under the EU ETS.

In Italy, in addition to surrendering allowances (or other credits) to match their emissions, participants in the EU ETS must also obtain a greenhouse gas permit (*Legislative Decree No. 216 dated 4 April 2006*). The permit application must be filed at least 90 days before operations commence at the plant.

Aviation

From 1 January 2012, the EU ETS covers any aircraft operator, whether EU or foreign-based, operating international flights on routes to, from or between EU airports. There will be certain exemptions for light aircraft, military flights, flights for government business and testing flights. Various complaints were made by non-EU countries at the inclusion of flights to or from destinations outside the EU into the EU ETS. As a result the EU excluded such flights during 2012 from the EU ETS, pending discussions at international level over the future position of international aviation in the scheme.

Phase III

Phase III will commence on 1 January 2013. The main changes in Phase III are as follows:

- There is a single EU registry for all users, which was activated on 20 June 2012, rather than national member state registries.

- There is a single EU-wide cap on emissions, which will decrease annually meaning that the former National Allocation Plans will no longer be required.
- Other greenhouse gases and industrial sectors will be included.
- Allocation of allowances will be replaced to a large degree by auctioning with at least 50% of allowances auctioned from 2013.
- The use of credits from JI and CDM projects is limited.

Environmental impact assessments

11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope

Annexes II, and III to Part II of the Environmental Code list the projects that are deemed to produce significant and negative effects on the environment and as a result require an EIA before the project can be constructed:

- Annex II projects are projects identified on the basis of certain strictly technical characteristics of plants, which are most likely to have a major environmental impact. For example, oil refineries or plants built to extract asbestos must always be subject to EIA.
- Annex III projects are other projects that are likely to have less environmental impact, such as thermal plants for the production of electricity, steam and hot water with total heat capacity exceeding 150MW. These are subject to the jurisdiction of regions and provinces of Trento and Bolzano. EIA must be carried out before construction of the relevant plant.

Permits and regulator

The bodies that oversee the EIA procedure are:

- The MoE for Annex II projects.
- Each interested region (or body designated by it) and provinces of Trento and Bolzano for all other projects.

When filing the application for the EIA, all other authorisations, licences, permits, opinions, clearances obtained in connection with the plan/project, must be filed simultaneously (or must be submitted beforehand).

The EIA is carried out by the relevant authority and is a prerequisite for all other project authorisation procedures to take place. For certain listed developments, all necessary environmental authorisations can be determined as part of the EIA process (including the IPPC permit, *see* Question 5). If the conclusions of the EIA are negative, the relevant authorisations will not be issued and the project cannot go forward.

There are specific provisions and procedures dealing with projects that have an effect in more than one region.

Penalties

Authorisations issued without an EIA where required, can be annulled, and the competent authority can order the suspension of the activity and the restoration of the site to its previous condition (*Article 29, Environmental Code*).

Where third parties have a legitimate interest (for example NGOs), they can seek annulment of a building permit if an EIA has not been obtained.

Waste

12. What is the regulatory regime for waste?

Permits and regulator

The regulatory regime for waste control is contained in Part IV of the Environmental Code. Where an IPPC-regulated plant conducts any waste activities, the IPPC permit will govern those activities.

For Non-IPPC waste activities, different requirements apply to town waste (generally household and similar non-hazardous waste) and special waste (for example, waste from agriculture, industrial trading, healthcare, construction activities, manufacturing, vehicles, plant and equipment and fuel). The Environmental Code governs the production, storage, transfer, recycling and disposal of waste. Management of all types of waste (that is, storage, transfer, recycling and disposal) requires a waste permit.

Businesses producing special waste must obtain a waste permit. The production of town waste does not, however, require a waste permit.

Town waste must be disposed in such a way as to facilitate waste recovery (that is, by municipal collection, re-utilisation or recycling).

Special waste can only be disposed of:

- By delivery to a licensed disposal facility or a duly authorised third party.

- By delivery to the town waste manager under specific agreements.
- By export out of Italy under specific conditions.

Each region has responsibility for regulating these activities in its area.

The region or province (depending on regional regulations and the nature of the infrastructure) grants authorisations to build and operate plants for the storage, recovery and disposal of waste.

For the export of waste from Italy, operators must provide a statement by the authority of the destination country confirming that the environmental standards in place in that country are no less stringent than those laid down by EU Law.

Prohibited activities

The abandonment and uncontrolled disposal of waste on land is prohibited, as is the introduction of any waste (whether solid or liquid) into surface water or groundwater.

Operator criteria

Once a waste permit has been issued, operators of waste management and disposal activities are recorded in a special register (*Albo Nazionale dei Gestori Ambientali*). Companies producing waste to be disposed of must comply with various provisions of the Environmental Code, such as keeping a register recording the quantity and quality of waste produced and transferred.

For the construction and operation of landfill sites, Legislative Decree No. 36/2003 sets out specific requirements with which operators must comply:

- Having qualified personnel in place for the management of landfills.
- Undertaking suitable surveillance and control programmes.
- Providing bank guarantees for the performance of relevant conditions.
- Undertaking underground water monitoring.
- Preparing land management plans even if the landfill is no longer operational.

Special rules for certain waste

More stringent and specific requirements apply to production, storage, transfer and disposal of hazardous waste.

Waste Electrical and Electronic Equipment Directive (WEEE Directive). As a result of measures implementing the EU WEEE Directive, retailers, installers, and providers of after-sale services of electrical and electronic equipment must:

- Carry out the collection of waste produced from domestic and professional use of that equipment.
- Transport it to special collection centres to undertake specialist treatment and recovery.

Producers and retailers have duties to inform customers about the take-back requirements and other collection arrangements and corresponding prohibitions. Producers and retailers have set up several consortia to collect electrical and electronic equipment.

Waste packaging. Similar rules apply to waste packaging. The Environmental Code provides for a consortium *Consorzio Nazionale Imballaggi* (CONAI), which is responsible for, among other things, managing the collection, disposal and recycling of waste packaging, co-operating with the operators and promoting agreements among authorities, producers and users of packaging.

Penalties

A number of different criminal sanctions apply for breaching the requirements applicable to waste management. These include:

- **Management of waste without a waste permit.** Imprisonment of up to two years or a fine of up to EUR26,000.
- **Fly-tipping waste.** Imprisonment of up to one year and administrative fines of up to EUR1,550.
- **Pollution of soil and water as a result of waste activities.** This is a criminal offence subject to imprisonment of up to one year, or a fine of up to EUR26,000. In cases involving dangerous substances, sanctions may extend to imprisonment of one to two years, or a fine of up to EUR52,000.
- **Unlawful trading in waste for profit (including any conspiracy to do so).** This is a criminal offence subject to imprisonment of up to six years (eight years for highly radioactive waste).
- Breach of rules relating to waste packaging. Fine of up to EUR46,500.

Recent development

Recently, the Italian Government implemented the regulations on the system of control for the traceability of waste (that is, SISTRI), built by MoE. The system simplifies the procedures and requirements for businesses and managers of hazardous waste, guaranteeing greater

transparency and control for manufacturers and carriers. It has now been established that the original producers of hazardous waste and organisations that collect or transport hazardous waste on a professional basis must adhere to SISTRI.

Asbestos

13. What is the regulatory regime for asbestos in buildings?

Recent development

In March 2013, the Ministry of Health approved a National Plan (Plan) for asbestos, containing guidelines for State and local authorities on asbestos management. The plan involves three main areas:

- Health protection.
- Protection of the environment.
- Safety for workers.

In relation to environmental issues, the Plan refers to Law 257/1992 and it promotes:

- New investigative tools that assist in the identification of asbestos contamination.
- More effective management interventions.
- Urgent targets and mapping of asbestos-containing materials.
- Processes of reclamation of materials containing asbestos.
- Asbestos disposal sites.

In the national interest, the MoE is currently taking emergency action to secure remediation of asbestos-contaminated sites. Law No. 426/1998 and Ministerial Decree No. 468/2001 and subsequent amendments, identified numerous sites requiring such remediation. The National Plan has now developed this legislation in order to intervene where specific sites have contamination that is considered to be more hazardous. This includes:

- Broni-Fibronit (MI).
- Priolo-Eternit Siciliana (SR).
- Casale Monferrato - Eternit, Bala - Cava Monte S. Victor (TO).
- Bagnoli Napoli – Eternit, (29).

Prohibited activities

The use and production of asbestos is regulated by Law No. 257/1992 and the Ministerial Decree of 6 September 1994.

The use of asbestos in buildings or building materials has been prohibited since 1992. Law No. 257/1992 also provided that all buildings containing asbestos must be identified and the asbestos removed or treated through prescribed procedures.

Main obligations

The Decree of 6 September 1994 establishes three categories to evaluate the risk of asbestos-containing materials (ACMs):

- Intact ACMs not subject to damage.
- Intact but potentially damaged ACMs.
- Friable ACMs.

The Decree provides for the following obligations, depending on the quality of asbestos present in the building:

- A building owner must adopt a programme to control and maintain ACMs in the building and put in place necessary organisational arrangements to prevent ACMs being damaged.
- Where ACMs have been damaged leading to a risk to human health, the owner of the building must take action in relation to the ACMs as appropriate for their condition (for example, encapsulation or clean-up works).

Section II of Legislative Decree No. 81 of 2008 establishes that:

- The costs of any removal works are to be borne by the building owner.
- The removal and replacement of ACMs asbestos is a last resort measure to be adopted and is required only if other technical responses (for example, treatment, encapsulation) are unsuitable to avoid the dispersion of asbestos fibres into the air.
- Asbestos removal works (and consequently disposal) must be carried out by a skilled and authorised company for the disposal of asbestos. Such works must be certified by the local health unit.

Other obligations apply to asbestos in the workplace including, for example, asbestos exposure thresholds. Local health authorities must monitor compliance with the thresholds and record all buildings containing asbestos in a specific register.

Permits and regulator

Prevention departments of local health authorities have a duty to safeguard safety at work, hygiene and public health. This includes enforcing the rules relating to asbestos in

buildings and verifying compliance with the thresholds for acceptable levels of asbestos (*see above, Main obligations*).

As well as being authorised to carry out such work, companies managing, disposing and/or cleaning up asbestos must be registered in a special section of the register of companies disposing waste. They must also send a technical annual report to their relevant regional and local health authority.

Penalties

A breach of the legislation concerning asbestos is punishable with a fine of up to EUR25,822 and/or imprisonment of up to one year, in addition to potential civil liability for harm caused to employees or third parties.

Contaminated land

14. What is the regulatory regime for contaminated land?

Regulator and legislation

Part IV of the Environmental Code bases the contaminated land regime on the "polluter pays" principle.

The relevant local authority is responsible for the enforcement of the contaminated land regime.

However, the MoE is the enforcing authority for certain contaminated land identified as sites of national interest.

Investigation and clean-up

Anyone (including the site owner) who becomes aware of a site being contaminated must communicate relevant information to the public authority. If the local authority identifies that a site is or might be contaminated, it must begin an investigation procedure and can order further investigation of a specific site. This will be carried out by a regional environmental protection entity or a suitably qualified commercial company.

If the site is found to be contaminated (that is, the site contains substances exceeding certain thresholds provided in Ministerial Decree No. 471/1999), or there is a significant threat of contamination, the competent local authority must make an order to require:

- A clean-up of the contaminated site in accordance with the requirements imposed by the competent authorities.
- Adoption of safety measures to avoid the migration of any contamination.

Any failure to comply with these provisions is a criminal offence.

Clean-up activities can be carried out by third parties (anyone who is not the polluter for example, the owner or another interested party, such as a buyer), subject to them complying with conditions set by the competent authority.

Penalties

Causing land contamination and non-compliance with a clean-up order issued by the competent authority are criminal offences, punishable by:

- A fine of up to EUR52,000.
- Imprisonment of up to two years (particularly in cases where the contamination is from hazardous substances).

15. Who is liable for the clean-up of contaminated land? Can this be excluded?

Liable party

The polluter is liable for carrying out, or paying for, the environmental investigation and clean-up, even where the pollution was accidental.

Where the site is subject to clean-up obligations and the polluter cannot be identified or fails to carry out the clean-up works, the works can be carried out either by the local authorities, the owner or any other interested party. Where the authority or the owner or other interested party carries out the clean-up work, the costs can be recovered from the polluter.

Owner/occupier liability

If the current owner of the site is not the polluter, the owner is not liable for the clean-up of the contaminated land. The owner is obliged only to carry out such works as are needed to prevent greater harm being caused by the contamination.

However, if the local authority carries out the clean-up operations, the local authority will recover expenses by securing a privilege over the property. The costs of clean-up can also be recovered by the local authority, through forced judicial sale of the relevant land if necessary. The owner must indemnify the authority for the related costs within the limit of the market value of the site. This is the reason why the owner of the site, even if he is not the polluter, usually takes care of the clean-up works.

Previous owner/occupier liability

Once an owner/occupier has disposed of its interest in the site/ceased occupation, it cannot be held responsible for contamination of the site unless it was the polluter.

Limitation of liability

Where the local authority carries out the clean-up operations, the current owner's liability is limited to the current market value of the land (*see above, Owner/occupier liability*). Moreover, Italian legislation provides for restoration of damages causing harm to third parties.

16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

Lender liability

Lenders do not usually incur liability simply through their lending activities. However, a lender may be liable as a polluter according to the environmental legislation, in certain cases, if it:

- Has control of the land in question.
- Is involved in activities causing contamination.

If a lender enforces its security and takes possession of property it may also have liability to remediate as an owner.

Minimising liability

Lenders can be exposed to several indirect risks. For instance, borrowers may be unable to meet their loan repayments because they have incurred significant liabilities or losses as a result of environmental problems at the property. Also, the value of the land over which the lender has taken security may be adversely affected by environmental issues.

17. Can an individual bring legal action against a polluter, owner or occupier?

Where damage is suffered due to contamination (including the movement of any contamination), any third party can commence legal proceedings against the polluter to obtain payment of:

- Costs to carry out the clean-up of its site.
- Compensation for damage caused.

Environmental liability and asset/share transfers

18. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

Asset sale

When acquiring assets, a buyer risks incurring liability under the contaminated land regime as the owner of the land.

When the buyer is proposing to buy an asset it also needs to consider whether:

- The asset has all the necessary environmental permits to operate.
- The permits currently held by the seller are transferable to the buyer.
- The seller has complied with all applicable environmental laws.

While the buyer is not liable for pre-acquisition breaches of law or permits, it needs to know if there are any issues it must address to continue the business lawfully after the sale (for example, any necessary upgrades to plant or equipment).

Liabilities in asset acquisitions are often structured in the same way as in a share acquisition, so a buyer may agree contractually whether to assume the seller's pre-acquisition liabilities.

Share sale

In principle, when acquiring a company, the buyer also acquires any liabilities incurred by the target, as liabilities remain with the target after the sale. This is the case whether the liabilities:

- Exist before the acquisition.
- Arise after the acquisition but relate to acts, omissions or circumstances before the acquisition.

A buyer is concerned primarily about the risk of the target bringing with it liability for:

- The target's compliance with environmental laws and permits.
- Contamination on the target's current properties and on any properties it formerly owned, used or occupied.

19. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

Asset sale

A seller generally remains liable for any pre-disposal liabilities relating to a breach of environmental law or an environmental permit. This includes any contamination caused, or knowingly permitted, by the seller before the asset disposal in compliance with the "polluter pays" principle.

Share sale

In general, the seller is not liable for events in relation to the target company before the sale, except where there are contractual warranties in the sale and purchase agreement.

In certain cases, the seller may also be considered liable if its operations have a major influence over the target company (that is, where the corporate veil can be pierced), but past cases have proven that this is hard to establish.

20. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

Asset sale

A seller of assets or shares is generally not required by law to disclose environmental issues to a buyer. However, a seller can be liable to the buyer if it makes a misrepresentation or misleads the buyer through its conduct.

A buyer generally requires a seller to give environmental warranties concerning the environmental condition of the business and its assets, to encourage the seller to disclose environmental information. Unless the seller makes a full disclosure of all relevant environmental information to the buyer, the seller is potentially liable to pay damages to the buyer if the warranties prove to be incorrect and the buyer suffers loss.

Share sale

See above, *Asset sale*.

More information is generally disclosed in a share sale, as the environmental warranties may be more extensive because the liabilities move with the target.

21. Is environmental due diligence common in an asset sale/a share sale?

Scope

It is common for environmental due diligence to be undertaken in commercial transactions. The scope of environmental due diligence depends mostly on the nature of both the target's activities and the sale.

Areas usually covered are:

- Environmental permits and authorisations.
- Potential breaches of environmental law.
- Historic environmental reports (such as surveys on the presence of hazardous substances or asbestos).
- Criminal proceedings.
- Notices of pollution in the land or water and any required remediation measures.

Due diligence on climate change-related issues and sustainability is increasingly being undertaken due to the subsidies that are often available to support sustainable activities, such as renewable energy generation.

The due diligence starts to see an increase with respect to aspects of sustainability relating to climate change because of specific circumstances which allow companies to invest in activities sustained by financial measures, such as renewable energy which falls under a strategy for preventing the effects of climate changes.

Types of assessment

Environmental due diligence can take the following form:

- A desktop environmental assessment (see *Question 22*).
- Pre-contract enquiries of the seller and reviewing information contained in a data room.
- Appointing environmental consultants to carry out interviews with management and in particular with those responsible for environmental management (occasionally this may also be undertaken by means of a questionnaire set by the consultant).
- Detailed environmental assessments, including compliance reviews and potential soil and groundwater investigations.

Environmental consultants

Sellers may commission their own environmental due diligence in advance of the transaction and provide the buyer with copies of this to discourage an insistence on

warranties or indemnities. In these circumstances buyers generally seek a letter of reliance or a collateral warranty from the sellers' environmental consultants so that the buyer can rely on the report.

However, buyers often engage their own environmental consultants to assist in identifying material environmental risks because the scope of the seller's consultant is unlikely to meet all of the buyer's requirements. Environmental consultants, and legal counsel usually work together to analyse all the aspects of an environmental issue.

22. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?

Whether or not sellers provide environmental warranties and/or indemnities to buyers in commercial transactions depends on a number of factors, such as:

- The nature of the target's business and the likelihood of significant environmental impacts.
- Whether significant environmental issues have been identified during due diligence.
- The parties' attitudes to the allocation of environmental risk.
- Whether it is a competitive auction or a private sale.
- The bargaining strength of each party.

Asset sale

A seller usually grants environmental warranties confirming that:

- The target business has all of the environmental permits necessary to operate.
- The permits are not subject to review or renewal for a certain period of time.
- No adjustments or modifications to the plants are foreseen for a certain period of time under the provisions of environmental permits.
- The target business has complied with all applicable environmental laws and permits.
- The business is not subject to any environmental proceedings, claims, investigations or complaints by the regulatory authorities or by private entities.
- There is no contamination or pollution present on any of the target company's properties to be transferred, as far as the seller is aware.
- The seller has disclosed all environmental information relating to the business of the properties to be transferred.

Sellers usually seek to limit as many warranties as possible by reference to seller awareness and materiality.

If the seller agrees to give an environmental indemnity, it is usually limited to liabilities associated with any contamination present on the target's properties before the sale and generally to specific issues identified during the due diligence process.

Share sale

In general, the environmental warranties in a share sale are the same as in an asset sale. However, the warranties usually also cover the pre-acquisition period and the activities performed by the company during that time.

23. Are there usually limits on environmental warranties and indemnities?

Environmental warranties are nearly always limited by time and subject to a cap. The cap often includes all warranty claims and is linked to a percentage of the purchase price. Time limits and caps for environmental indemnities vary according to the scope of the indemnity and the environmental losses it is intended to cover.

An environmental indemnity is usually also subject to trigger events that must occur before a buyer can make a claim. Limitations on liability due to events after completion are usually included.

Reporting and auditing

24. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

Public registers

In general, each competent authority holds public registers recording the emissions of plants subject to IPPC permits.

In addition:

- The National Agency for the Protection of the Environment and the Technical Services (APAT) keeps the register of waste, which is publically available.

- Each region holds a specific list of areas where clean-up works have occurred and this list must be reflected in the town plan issued by each municipality.

Third party procedures

In general, the relevant registers are available for inspection by any interested party.

In particular, environmental information held by each regulatory authority must be available to the public for viewing in their offices.

Article 5 of Legislative Decree No. 195/2005 specifies the circumstances under which information is not available to the public and includes circumstances where the information relates to trade secrets or confidential industrial information, tax forms, IP rights or personal data.

25. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Environmental auditing

Environmental auditing is not compulsory. However, environmental auditing through the environmental management system standard ISO 14001 and recorded in the EU EMAS system may provide the following advantages:

- Simplifying the renewal process of authorisations (for example, the IPPC permit).
- Reducing the level of bank guarantees required for the disposal of waste.
- Replacing the renewal of authorisations for the operation of a waste plant with a self-certification procedure (under the EMAS system).

Whilst environmental auditing is voluntary, where an EMAS statement is prepared as part of an audit, it must be submitted to the relevant Member State under Regulation EC/2009/1211.

All documents submitted to the authority for the issuance of the IPPC permit are available for inspection at the offices of the relevant competent authority.

Reporting requirements

In general, each authorisation contains an obligation to file all information with the public authorities concerning the emissions or discharges from the permitted plant.

There are no other compulsory reporting requirements, but voluntary environmental reporting through an audit process may provide certain benefits (*see above, Environmental auditing*).

26. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

It is obligatory to report knowledge of contaminated sites (*see Question 14*).

In addition, information about all other types of environmental incidents causing harm to the environment must immediately be reported by the responsible entity to the municipality, province, region and MoE.

27. What access powers do environmental regulators have to access a company?

Each inspecting authority has different powers, but all have the ability to:

- Access the site.
- Carry out technical verifications.
- Collect samples.
- Acquire information through informal interviews of employees (but these cannot be used in any subsequent trial).

Environmental insurance

28. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

Types of insurance and risk

Insurance policies are available for pollution risks in Italy. However, they do not usually cover environmental damage to natural resources, but only:

- Personal injury.
- Physical damage to property.

- Damage arising from the closure or suspension of agricultural, commercial or industrial activities.
- Damage arising generally from not being able to use assets sited in the polluted area.
- Remediation costs, but only in certain cases when the pollution arises from sudden, unforeseen and involuntary events.

Obtaining insurance

The insurance market covering pollution risks is growing, but in practice riskier activities will still find it difficult to obtain environmental insurance.

Environmental tax

29. What are the main environmental taxes in your jurisdiction?

The main environmental taxes currently in force are:

- **A tax on emission of sulphuric anhydride and nitrogen oxide.** This is paid by the operators of large combustion plants that exceed specific technical thresholds as listed in the Decree of the President of the Republic No. 416/2001. Since January 2008, the tax has been EUR106 and EUR209 per tonne emitted for sulphuric anhydride and nitrogen oxide respectively, and is paid in four instalments per year.
- **Tax on waste disposal on landfills.** This is a regional tax aimed at reducing the production of waste and to encourage recycling. The Environmental Code provides that the payment is a consideration for services received, although in practice, it acts like a tax.

Reform

30. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

Industrial Emissions Directive implementation

Italy is preparing to implement the Industrial Emissions Directive 2010/75/EU through Law No. 96/2013. A further legislative decree is expected to be made based on these principles:

- Implementing further requirements for power plants exceeding 300MW.
- Simplifying authorisation procedures.
- Using the funds from administrative fines to strengthen the regime of routine environmental inspections.

Emissions quotas

In April 2012, a proposal to introduce new regulations relating to the setting of emission quotas from 2013 was submitted to the Ministry of Economics and Finance (*see Question 10, Emission quotas*). This defines the criteria for allocating the proceeds from the auctioning of carbon dioxide allowances from January 2013 to 2020 and governs the grant of emission allowances to operators regulated under the EU ETS.

The regulatory authorities

Ministry of Environmental Protection of Land and Sea

Main activities. The Ministry is responsible for the protection of the environment, land, sea and natural habitats and regulates waste, climate change, sustainable development and energy. It also issues opinions concerning EIAs, together with the Ministry of Cultural Goods. It can also appoint members of the National Committee for the issuance of binding opinions on EIAs and recognising NGOs.

W *www.minambiente.it*

Ministry of Cultural Goods

Main activities. The Ministry is responsible for protecting the cultural and landscape heritage of Italy. In particular, it can, together with the Ministry of Environment and Protection of Land and Sea, issue its opinion on EIAs and agree to the issuance of an EIA decree.

W *www.beniculturali.it*

Ministry of Economic Development

Main activities. The Ministry is responsible, together with the Ministry of Environmental Protection of Land and Sea, for sustainable development and also has a role in relation to opinions and issuing of EIA decrees.

W *www.sviluppoeconomico.gov.it*

Online resources

W *www.normattiva.it*

Description. This is the official website of the Italian Parliament through which all legislation currently in force can be obtained (in Italian).

W *www.minambiente.it*

Description. This is the official website of the Ministry of Environment and Protection of Land and Sea, containing news in relation to environmental legislation.

Appendix: Author details

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