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Italy
ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Italy.

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1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

Legislative Decree no. 152/2006 (hereinafter, the "Code"), composed by eight parts and 64 annexes, has a central role in Italian environmental legislation. In Part I are codified the principles, the basis of Italy's environmental policy, like the principles of sustainable development, prevention, precaution and "the polluter pays" principle. The other seven parts of the Code are dedicated to the main sectors of environmental law. Part II is dedicated to the Environmental Impact Assessment (EIA), Environmental Strategic Assessment (ESA) and Integrated Pollution prevention and control (IPPC); instead Part III is about soil protection and water resources management; Part IV is dedicated to the waste management and remediation of contaminated sites; Part V is about air protection and air emissions; Part V-bis, formed by only one article, contains provisions for particular industrial installations; Part VI deals with compensation for environmental damage, while Part VI-bis contains the sanctioning system. However, many disciplines are excluded from the Code and find their source within separate pieces of legislation.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

With reference to environmental competences, the phenomenon of organizational complexity is particularly marked in Italy.

An important role is played by the Ministry of Energy and Energy Security (hereinafter ("Ministero dell'Ambiente e della Sicurezza Energetica", hereinafter "MASE") established in 1986. As the central body, its functions of environmental protection are increased over time. Recently some functions directly affecting the environmental interest, have been transferred to the MASE (e.g. energy) while others remain in the hands of other Ministries, such as the Ministry of Economic Development, the Ministry of Health and the Ministry of Agricultural Policies. Alongside the MASE, there are important technical bodies. As a back-up for the MASE, there is the Institute for Environmental Protection and Research (hereinafter, "ISPRA"), which coordinates the regional and provincial environmental agencies. Vertical organizational complexity is added to the horizontal organizational complexity: important administrative functions are also assigned to regional and local authorities, as well as to private entities, such as consortia of producers of certain goods. The entities described above take part in various capacities in the context of environmental proceedings, among which the following are the most important: planning procedures, environmental authorizations, the setting of standards, the provision of economic measures and also the powers of ordinance, sanctions and control.

3. What is the framework for the environmental permitting regime in your jurisdiction?

The Italian environmental authorization regime provides for a wide variety of authorities competent for environmental permitting, both at national level as well as on a local level (Region, Province, Municipality). The legal framework is essentially regulated by the respective sectorial environmental legislation, integrated by L. 241/1990 (as subsequently amended and modified) applying, in general, to all administrative proceedings. Italian environmental permitting regime is characterized by a tendency towards simplification by adopting the "single authorization model" in which various authorization procedures referring to the same activity are conveyed. Some of this are of European derivation (e.g. IPPC authorisations regulated by Part II of the Code). Others instead have been introduced by the national legislator with the primary task of simplifying the bureaucratic burdens for small and medium-sized enterprises, such as Environmental Single Permit (also known as "Autorizzazione Unica Ambientale" or "AUA"),

regulated by Presidential Decree no. 59/2013. The "Single authorization model" has also been set up for other sectors (e.g. renewable energy plants, remediation of brownfields, PAUR ("Provvedimento Autorizzatorio Unico Regionale") governed by art. 27-bis of the Code, etc.). In order to realise projects provided for in the National Recovery and Resilience Plan (hereinafter, "NRRP"), implementing Next Generation EU (hereinafter, "NGEU"), some authorisation procedures have been streamlined and simplified.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

In Italy there is a significant number of "environmental permits" of different kind and nature. All environmental permits are administrative acts. Each type of permit is subject to a specific discipline governed by different national and/or local (regional/provincial) regulations. In general, the transfer of authorization is possible, but requires involving the competent Authority (in general, the authority which has issued such authorisation). The procedures for transferring differ on a case-by-case basis, depending on the type of authorisation involved. Some may only require filing an application with the competent Authority, which, after having verified the existence of the requisites, adopts the necessary changes to the related environmental permit. Some others may require more complex procedures in which the Authority is entitled to make additional requests and investigations. Failure to transfer an environmental permit risks to be qualified as exercise of a non-authorised business, subject to sanctioning.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

Notwithstanding the right to ask the competent Authority to reconsider its ruling(s), the plant's manager ("*Gestore*") or any subjects with legal standing can file an appeal before the Regional Administrative Courts within 60 days of notification or publication of the administrative decision taken by the competent Authorities. For some sectors, Italian law provides a special shorter term of 30 days within which to take action. However, against many (not all) types of administrative decisions, it is also possible to file an appeal to the President of the Italian Republic in a longer term of 120 days. Rulings of the Regional Administrative Courts can be appealed in front of the Council of State ("*Consiglio di Stato*").

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Part II of the Code lays down procedural obligations (EIA) relevant to public and private projects that are likely to have significant effects on the environment. The EIA aims to identify, describe, and assess the direct and indirect significant effects of a project on the following factors: human beings, fauna and flora population and human health; biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; land, soil, water, air and climate and landscape; material assets, cultural heritage and the landscape; the interaction between these factors.

Projects falling under the scope of the EIA are divided into categories and listed in Annexes II, II-bis, III and IV of the Code. Projects listed in Annexes II and III are those that are considered as having significant effects on the environment and, as a rule, are subject to a mandatory assessment. Projects listed in Annexes II-bis e IV do not necessarily have significant effects on the environment in every case. Thus, they should undergo a determination process – commonly known under the term "screening" – to establish if they are likely to have significant effects on the environment. The EIA projects listed in Annexes II and II-bis fall within the competence of the Ministry for Ecological Transition, while those listed in Annexes III and IV fall within the competence of the single regions (which can also delegate the competence to their provinces).

The EIA decision might be to grant the development consent, and in that case, it has to include a reasoned conclusion, and any necessary environmental condition, a description of any measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as monitoring measures. In case of refusal of the development consent, the decision shall be reasoned and therefore state the main reasons for the refusal.

The decision might be challenged before the regional administrative court on the ground of formal issues, based on law violation, or on the ground of substantial issues, based on technical reasons. In the last case, since the decision entails the discretionary judgment of the administration, the challenge is issuable only if the decision is affected by significant logical or reasoning faults.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

The “core” of Italy’s brownfields-legislation is set forth in Part IV of the Code. However, both at national level as well as on local level (Regions, Provinces and Municipalities), further legislation exists. The Italian legal system on remediation is inspired by the “polluter pays” principle, according to which the responsibility for the remedial operations lies with the subject responsible for the contamination. The “polluter”, i.e. the subject to whom the pollution is attributable (at least from an objective point of view), has to carry out the remediation/rehabilitation actions if and to the extent that the contamination is attributable to his own conduct / omission. An owner, who is “innocent”, is not obliged to carry out remedial works. However, he has a patrimonial liability limited to the value of the site after it has been remediated.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

When an event arises that may potentially contaminate the site (soil and/or groundwater), the polluter is obliged to perform a preliminary investigation in the area. The results of such environmental investigations, that will influence subsequent actions, must be reported to the competent authorities. Under national law (Part IV of the Code), subjects, who are not responsible for the contamination, are not obliged to carry out investigations. However, they are entitled to carry out investigation and/or remediation operations on their own initiative in order to avoid patrimonial liability and, in any case, the arising of legal uncertainty regarding future criminal or compensation liabilities, or even the allowed uses of the land. Under some local legislation, however, a subject planning to develop a site might be required investigate potential soil and groundwater contamination prior to developing a site. Furthermore, in case of industrial installation subject to IPPC legislation, Italian legislation requires a base-line report to be carried out in order to investigate the status of the soil and groundwater.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

When an event arises that may potentially contaminate the site, the polluter and the “innocent” owner/operator are obliged to notify the competent Authorities immediately. Failure to give notification by the polluter is sanctioned. Duty of notification also applies to public administrations.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

According to the Code, the “polluter pays” principle also applies to historical contamination. If the polluter is identified, he is subject to remediation obligations. The owner of contaminated land affected by historical contamination can invoke extra-contractual liability of the previous owner or the operator who caused such contamination. However, the Italian Civil Supreme Court excludes dual liability (contractual as well as extra-contractual liability) in the event of damage to the right of ownership based on contract. In such case, the rights of action depend on the structure of the deal (asset deal/share deal) as well on the extent to which the provisions set forth by the Italian Civil Code are applicable.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

Italian waste legislation is very widespread. Its “core” is regulated under Articles 179 – 238 (Part IV) of the Code. Many details, however, are specifically governed by single ministerial decrees. Furthermore, depending on the type of waste (e.g. WEEE, batteries and accumulators, mineral waste oils, ships, vehicles, end-of-life tyres, etc.) specific regulations do apply. Also with regard to treatment operations, which waste may undergo, Italy has enacted specific legislation (e.g. Legislative Decree no. 36/2003 for landfills; various end-of-waste decrees relating to recovery/recycling operations; WSR for transboundary waste shipments; etc.).

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

Waste producers/holders, unless entitled to directly manage such waste, are obliged to hand over such waste to duly authorised third parties, including municipal waste management operators. In case the waste has been handed over to duly authorised third parties others than the municipal waste management operators, liability only ceases if the waste producer/holder receives back the duly completed certificate (confirming the receipt of such waste) within 3 months after such consignment. The precise boundaries of the aforesaid liability, also in case of transboundary shipments, are governed by art. 188 of the Code as well as by case law. The literal wording of said provision has sometimes been extensively interpreted, especially by criminal courts' decision (e.g. also including cases of unproper handling or disposing of the waste).

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Italy has introduced detailed regulations for the so called "extended producer responsibility" (hereinafter, "EPR"). This includes, amongst others, take-back obligation relating to waste resulting from certain consumer goods (e.g. packaging, electrical and electronic equipment, batteries, end-of-life vehicles, mineral waste oils, edible waste oils, tyres, PVC etc). The trend goes towards extending EPR also to other types of products. New EPR schemes are likely to be introduced in the future. The various EPR schemes do very much differ from one another though by 2023, common standards shall be applied by all of them (according to Directive (EU) 851/2018). Non-compliance with obligations set forth under the respective regulation governing the related EPR scheme is sanctioned.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

At national level, the key regime is regulated under Law no. 257/1992. Ministerial Decree of 6 September 1994 sets requirements for civil or commercial/industrial building structures, privately owned properties and/or open to the public. Owners and/or managers of the activities, that take place therein, must notify the local health authorities (local health service – "ATS") of the presence of asbestos containing materials (hereinafter, "ACM"). Furthermore, it is mandatory to designate a person responsible for the control and coordination of all maintenance activities involving ACM. The responsible person must document the location of ACM and ensure compliance with effective safety measures during any event that may cause a degradation of ACM. Owners and/or managers also provide proper information to occupiers about the presence of ACM in the building, potential hazards, and the behaviours to be adopted. Actions to be undertaken (including timing) depend on the state of conservation of the ACM, assessed by applying a so-called Degradation Index. Additional obligations may be set forth at local level

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

REACH Regulation (EC) no. 1907/2006, and CLP Regulation (EC) no. 1272/2008 and Mixtures and Regulation (EU) 2019/1021on Persistent Organic Pollutants (POPs) are mandatory in Italian jurisdiction. The provisions of REACH regulation are underpinned by the precautionary principle. In fact the scope of REACH regulation is to ensure a high level of protection of human health and the environment, imposing a system for registration, evaluation, authorisation and restriction of chemicals. The CLP regulation is based on the United Nations Harmonised Worldwide Chemicals Classification and Labelling System (GHS) and requires that manufacturers, importers or downstream users of substances or mixtures to properly classify, label and package hazardous chemicals prior to placing on the market. As the REACH Regulation the POP legislation is based on the precautionary principle and it aims to restrict the production and use of POPs in order to protect the human health and the environment.

Furthermore, under special product legislation, one can find, mainly based on European Legislation, further legislation acts (e.g. electronical equipment; packaging; etc.),

16. What provisions are there in your jurisdiction concerning energy efficiency

(e.g. energy efficiency auditing requirements) in your jurisdiction?

Energy efficiency is primarily regulated by national provisions transposing European law (Directive 2012/27/EU as emended, among others, by the Directive (EU) 2018/2002). Among these, Legislative Decree no. 102/2014 (as subsequently amended) plays an important role. Said decree establishes the necessary measures to achieve the promotion and improvement of national energy efficiency. The implementation of these measures is also necessary in order to achieve the energy saving objectives, set forth by the National Integrated Energy and Climate Plan ("*Piano Nazionale Integrato per l'Energia e il Clima*" ("PNIEC") according to Regulation (EU) 2018/1999). The approved NRRP includes many funds in order to achieve the energy efficiency.

Large companies perform energy audits and transmit the results of the auditing to the Italian National Agency for New Technologies, Energy and Sustainable Economic Development ("*Agenzia nazionale per le nuove tecnologie, l'energia e lo sviluppo economico sostenibile*" – in short: ENEA). ENEA establishes and manages a database of companies subject to energy audits that includes, among others, the energy diagnosis report ("diagnosi energetica"). Directive 2006/32/EC, repealed by Directive 2012/27/EU, on energy end-use efficiency and energy services has been transposed by Legislative Decree no. 115/2008 (as subsequently amended).

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

The European Emissions Trading Scheme (ETS), set forth by Directive (EU) 2018/410 (transposed by Legislative Decree no. 47/2020), introduces important changes compared to the previous Directive 2003/87/EC and accelerates the withdrawal of emission allowances available on the market. Under the cap-and-trade mechanism, emission limits are allocated to each installation or aircraft (CO2 allowances in tonnes). If actual emissions exceed the allocated allowances, the operator must buy allowances to surrender to cover its emissions. Italy has significantly exceeded European emission reduction targets in both the ETS and non-ETS sectors. Legislative Decree no. 28/2011 defines the tools, mechanisms, incentives and institutional, financial and legal framework necessary to achieve the objectives for energy from renewable sources up to 2020. The National Integrated Energy and Climate Plan ("PNIEC") sets out the guidelines to be followed and the objectives to be achieved in the field of energy and environmental protection, for the period 2021-2030.

In Italy, incentives for the installation of plants for the production of renewable energy are characterized by a multitude of mechanisms that take into account the type of source, the size of the plant and the date of construction (e.g. "Conto Energia" introduced by Legislative Decree no. 387/2003, and subsequent amendments, providing a cash incentive based on the electricity produced by exploiting solar energy; Ministerial Decree 23 June 2016; biomethane; etc.).

Important legislative measures to encourage the development of renewable energy sources are pending. Both the implementing decree on the identification of areas suitable for the construction of renewable energy plants and the RES2 decree, the implementation of which will provide incentives for a total of 4590 megawatts of plants, are being finalised.

Most recently, with Law No. 41 of April 21, 2023, converting Decree-Law No. 13 of February 24, 2023, known as PNRR Decree 3, were the exemption from environmental assessments (EIAs) until June 30, 2024 for projects of: photovoltaic plants, plants for the storage of electricity from renewable sources, refurbishment, upgrading or complete reconstruction of existing photovoltaic plants, repowering of existing wind power plants and offshore renewable energy production plants, which meet certain requirements

There are also several provisions in the budget laws (2019, 2020, 2021, 2022, 2023) that aim to achieve an important impact in terms of reducing emissions and climate change through public expenditure allocations.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

Italian legislation does not provide a domestic "net zero" target, thus referring to the Union-wide net zero target set out by Regulation (EU) 2021/1119 (European Climate Law) Art 2(1). Similarly, as to low-carbon targets, EU ETS scheme and Regulation (EU) 2018/1999 (see Art 2, point (11)) establishes EU-wide binding targets.

As to non-ETS sectors greenhouse gas emissions,

national-specific targets are set out by Regulation (EU) 2018/842 (Effort Sharing Regulation, hereinafter ESR). Pursuant to ESR Art 4(1) and Annex I, Italy shall, in 2030, limit its greenhouse gas emissions at least by 33% in relation to its greenhouse gas emissions in 2005. With respect to renewable energy, without prejudice to the Union's 2030 targets for energy and climate, Legislative Decree no. 199/2021 Art 3(1), transposing into domestic legislation the Directive (EU) 2018/2001 (Renewable Energy Directive II, hereinafter RED II), provides a binding national-level target of at least 30% for the share of the energy consumed.

A multitude of legal measures, both sector-based and cross-cutting, have been implementing in order to achieve such targets. Formerly, Italian decision-making bodies have already provided financial incentives and conditionality (renewable energy; waste and circular economy; agriculture), labelling obligations (waste and circular economy), tools for companies or consumer participation in the production processes (e.g., EPR schemes or renewably energy communities). As to cross-cutting measures, a crucial role for the achievement of the Union and national climate and energy targets is played by environmental permits and assessments (e.g., IPPC or EIA). Further, particularly with respect to those projects encompassed in the National Recovery and Resilience Plan or in the National Integrated Energy and Climate Plan, procedural fast track measures have been set out.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

The Italian legal system provides several market-based environmental protection tools, including voluntary labelling schemes.

EU Ecolabel and Eco-Management and Audit Scheme (EMAS), provided respectively, by Regulation (EC) 66/2010 (Ecolabel Regulation) and Regulation (EC) 1221/2009 (EMAS Regulation), are directly applicable and enforceable in the domestic jurisdiction. Whilst the former is intended to assess the products' environmental soundness, although using a LCA approach, the latter conformity assessment deals with management systems. The competent authority to award Ecolabel or EMAS conformity assessment is the Ecolabel-Ecoaudit Board, a public authority appointed by the Ministry for Environment and Energy Security ("Ministero dell'ambiente e della sicurezza energetica", hereinafter MASE) pursuant to Ecolabel Regulation Art 4 and EMAS Regulation Art 11. Companies, organisations or operators interested shall apply before the Board providing all the relevant requirements in order to be granted an Ecolabel or EMAS.

A similar framework is established with regard to food/feed sector conformity assessment, although the competent authority is the Ministry for Agriculture, Food and Forestry Policies rather than MiTE. Environmental concerns are particularly taken into account within the label of organic products provided by Regulation (EU) 2018/848.

Besides such purely public and environmental-oriented labels and audit schemes, economic operators may receive other environmental conformity assessments provided by the International Standards Organisation and falling under the scope of Regulation (EC) 765/2008, setting out the requirements for accreditation. To this regard, the National Accreditation Body for the purpose of Regulation (EC) 765/2008 is Accredia, a non-profit private legal entity whose member are public administrations and other public entities as well as private stakeholders. Thus, products' and operators' conformity may be assessed by any Conformity Assessment Body having been granted an accreditation certificate from Accredia.

Italian decision-making bodies have not yet issued binding legislative acts on greenwashing. Therefore, other regulatory authorities such as the Antitrust Agency, CONSOB (Commissione Nazionale per le Società e la Borsa, an independent administrative authority) and the Bank of Italy through policy documents come to the rescue.

CONSOB has listed the action to combat greenwashing phenomena among its strategic supervisory objectives in its 2022-24 plan. Specifically, supervisory activity will be developed on sustainable investments, offering documents, advertising, and the activities of advisors, consistent with the implementation timeline of ESG regulations, to improve disclosure of sustainability factors (https://www.consob.it/web/area-pubblica/finanza-sostenibile).

At the same time, in 2021, an Italian Court of First Instance (Tribunale di Gorizia, n. 2021/712) issued the first precautionary order on greenwashing, The use of precautionary protection in the fight against greenwashing has moved the paradigm from seeking compensation to preventing damage. The order recognized the claimant company's case and condemned the defendant company for having provided non-testable and misleading information about the

recycled material content of the product and ordered it to pay a fine and to publish the decision on its website for 60 days.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

The Antitrust Authority has the power to sanction unfair business agreements and merger operations between companies. Among these, in addition to the well-known green-washing practices, the Antitrust Authority can sanction all conduct that, in addition to harming competition in the market to the disadvantage of consumers, also generates undesirable effects on the environment, delaying the transition to more sustainable products or making it less convenient. Therefore, in order for the Antitrust Authority to sanction conduct contrary to environmental sustainability, at present, it is necessary for such conduct to be contrary to the protection of competition.

In its Annual Report on its activities in 2020 and 2021, the Antitrust Authority stated that “competition, while not having the primary purpose of promoting sustainable development, can contribute, by complementing existing instruments such as regulation and taxation, to furthering the process of transition to an environmentally sustainable growth model”; therefore, the Authority “stands ready to apply competition law in evolutionary terms and to consider, in coordination with the European Commission and other authorities in member countries, the possible expansion of the instruments available to accompany a development that is both sustainable and competitive”

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

A climate litigation lawsuit (renamed by the press “Universal Judgement”) has been brought in June 2021 before the Civil Court of Rome. The plaintiffs, a group of citizens and Environmental NGOs, have sued for damages the Italian Government as it would not have complied with international obligations deriving from UNFCCC and Paris Agreement. The third hearing took place on 13 September 2023 and the first instance is in its final stages. Moreover, in line with the international trend of filing lawsuits against private companies to push them to adopt a more sustainable industrial strategy, in May 2023 some NGOs sued a major Italian energy company, along with its major shareholders.

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

In order to tackle climate change, a number of legislative provisions have been introduced particularly within the National Recovery and Resilience Plan (PNRR) and the National Integrated Energy and Climate Plan (PNIEC) framework. Italian decision-making bodies are especially focused on renewable energies, waste management and circular economy, providing fast-tracks within strategic infrastructures’ administrative procedures, financial incentives, EPR schemes etc.. Despite such efforts, some sectors still seem to be neglected: in particular, little attention has been paid to land-use issues. Nonetheless, the debate on soil consumption is apparently moving forward both at European and at national level, thus making it a serious candidate for the next reform relation to climate change. In general, legislative changes or reforms in relation to climate change are to be expected.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

a) Administrative, civil and criminal liability arising from the violation of environmental regulations may also be attributed to a company having legal personality, which may be called upon, as civilly liable, to answer financially for administrative and criminal sanctions arising from violations committed by its employees, or by persons who have violated environmental regulations in the interest of the company or whose conduct is attributable to the company itself.

In the event of pollution, the company is obliged to carry out remediation activities and is liable for environmental damage in accordance with current legislation. In addition, the company is liable for damages caused by environmental violations or offences (committed by its employees) to third parties under the general civil liability regime of the Civil Code. If specific offences are

committed by its management or employees, the company may be subject to corporate liability under Legislative Decree no. 231/2001.

b) Environmental liability of shareholders follows the general principles of Italian company law. Generally, members of limited liability companies are not liable for the actions of the company itself. There are cases where their liability can be assessed (by piercing the corporate veil) if (i) they have taken on a de facto managerial role in the company; (ii) they have interfered in individual acts or abused powers of direction and coordination, in the case of a majority shareholding.

c) Directors represent the governing body of the company and, unless they have properly delegated environmental liability by proxy (the criteria and formalities of which are established by case law), will have direct environmental liability.

d) The liability regime of the parent company is similar to that applicable to the shareholders referred to in (b) above, given that a parent company plays a controlling and coordinating role pursuant to Article 2497 of the Civil Code. If the parent company has instructed its subsidiary to perform acts or transactions that have compromised the integrity of the company's assets in violation of the ordinary principles of proper administration, it shall be liable to creditors and other shareholders for the damage to the assets.

e) The lender's liability regime. Lenders, generally in Italy, are not liable for violations of environmental laws by borrowers, unless they have interfered in the decisions, by actions or omissions of due conduct, that caused the environmental violation, damage or pollution. Where lenders hold a property guarantee, they may acquire the position of innocent owners in the event of enforcement of the guarantee.

In general, however, case law is rapidly evolving therefore always requiring a case-by-case analysis.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

In the case of corporate operations characterized by the continuity of the company (for example, mergers, split ups etc.), even in the face of a formal change in the centre of juridical imputation, there is a general evolutionary-continuative principle of legal relations. Consequently, there is a succession on the civil law level in the obligations inherent to the phenomena of contamination of sites and environmental pollution. The principle accepted by the jurisprudence is that interventions of repair, safety measures, reclamation and restoration are the exclusive responsibility of the entity responsible for the contamination. The notion of the responsible entity also includes the universal successor. Therefore, obligations and responsibilities consequent to the commission of the offence must be considered transmissible as a result of extraordinary corporate operations that entail a universum jus succession among the subjects involved. In principle, the various implications from the point of view of environmental responsibility must, however, be assessed very carefully, taking into account the rapidly evolving case-law. Through due diligence processes, widely accepted in Italy also in relation to environmental matters, it is possible for the potential purchaser of a company to become aware of possible responsibilities/passivities on the part of the seller, and to negotiate instruments capable of transferring to the latter – at least on an economic level – the relative consequences, without prejudice to civil law remedies.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

Under civil law, precontractual and contractual liability can arise in dealings between a buyer and seller in case of failure to notify situations that do not meet environmental standards. Details depend also on the nature of the asset being sold. Under public law, a wide variety of disclosure obligations are set forth. The content of such disclosure obligations depends on the matrices affected by the environmental problems. Further disclosure obligations may also specifically originate from single environmental permits released. Recent legislation regulating social and environmental disclosure also imposes disclosure obligations on the subjects indicated therein. The exercise of environmental due diligences has become a commonplace in Italy, starting at least from the late Nineties.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is

environmental insurance regularly obtained in practice?

The role of insurance as a guarantee tool in environmental regulation is still in the process of development in Italian law. However, there are some significant experiences and evolutionary dynamics that deserve attention. An association of insurers and reinsurers (originally named *Pool Inquinamento*; however, the label changed to *Pool Ambiente* in 2019) offers insurance products to cover pollution damage. There are also different policies, depending on the type of activity. Cover is also available from insurance companies that are not part of the *Pool Ambiente*. These companies offer alternative insurance products to those generally available on the Italian market.

Companies that obtain ISO 14001 Certification or EMAS registration pay reduced insurance rates. State and regional laws provide for the insurance tool as a guarantee for an amount calculated according to pre-established criteria (e.g., activities that may cause an environmental impact). There is currently no comprehensive data on developments in environmental insurance coverage requirements. The degree to which environmental damage is effectively covered by environmental insurance is currently a critical issue.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

The reference text for the organic discipline in the matter of information and right of access is the Legislative Decree no. 195/2005, transposing Directive 2003/4/EC. Said decree requires public entities to make updated information relating to the environment available to the public, also through the setting up of databases. The obligation to publish environmental information on the administrations' website was also provided for by art. 40 of Legislative Decree no. 33/2013, according to which specific emphasis should be given to environmental information in a specific section called "Environmental information". Without being exhaustive, it should be noted that the documentation relating to the Environmental Impact Assessment (EIA), Environmental Strategic Assessment (ESA) and Integrated Pollution prevention and control (IPPC) is published on the website of the MASE, while the Register of contaminated sites is present on the regional sites. In addition, the most recent legislation is characterized by the provision of public registers such as the National Electronic Register for the traceability of waste, managed directly by the MASE, and the national register of producers, within the framework of Extended Producer Responsibility. Anyone who wants to obtain the access can make a request to the public administration, which must make the documentation available within 30 days from the date of receipt of the request or within 60 days in case of a complex or particularly wide request. In case of illegitimate refusal to request access, it is possible to request access to administrative remedies (ombudsman) and to the administrative judge.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

The right of access has a very broad scope both from a subjective and an objective point of view. In fact, the public administration must make the documents accessible to anyone who requests them, without the subject having to demonstrate an interest in them. At the same time, from an objective point of view, a very broad notion of environmental information has been envisaged, which can be contained in any material. The cases of exclusion of the right of access are mandatory and, in any case, the administration is required to justify its refusal

29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

Italian environmental regulation is certainly continuously evolving. In the last three years the development of environmental discipline has been as rich and fragmented as in the past. The Italian legislator has acted on four levels. A first level has concerned the implementation of the European legal framework, whose most significant domestic implementation measures are certainly the various Legislative Decrees implementing in 2020 the European "Circular Economy Package" (e.g. Legislative Decree no. 116/2020 implementing Directive 851/2018 and, most recently, the Legislative Decree introducing supplementary and corrective provisions to Legislative Decree no. 116) as well as Law Decree no. 111/2019, converted into Law no. 141/2019, regulating urgent measures for compliance with the obligations laid down in Directive 2008/50/EC on air quality, and the draft legislative decree implementing Directive (EU) 2020/2184 concerning the quality of water intended for

human consumption. A second level concerned the rules for the simplification of environmental and energy procedures (e.g. Legislative Decree no. 76/2020 and Legislative Decree no. 77/2021) or the review of the rules on environmental assessments at regional level with the introduction of single authorization procedures, such as the PAUR ("*Provvedimento Autorizzatorio Unico Regionale*") governed by art. 27-bis of the Code. A third level of environmental provisions are those contained in special laws adopted in order to tackle with the economic crisis and with COVID-19, the war in Ukraine and the energy crisis. There were several legislative interventions containing urgent measures on national energy policies. The fourth level relates to a series of regulatory initiatives to simplify and rationalize environmental obligations, especially in order to realise projects provided for in the National Recovery and Resilience Plan, implementing Next Generation EU (NGEU).

At last, in November 2023, the Minister of Environment appointed a commission of experts in order to prepare a proposal for reforming the Code and some other decrees. One of the goals of the reform is to bring Italian environmental legislation in line with the new provisions of the Italian Constitution, which in 2022 introduced environmental protection as one of the fundamental principles of the Republic. Further goals are simplifying and rationalising Italian environmental regulation.

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