The Legal 500 Country Comparative Guides

Italy - Environment

This country-specific Q&A provides an overview to laws and regulations that may occur in Italy - Environment.

For a full list of jurisdictional Q&As visit [here](#)
1. **What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?**

In the Italian jurisdiction, the key pieces of environmental legislation are now contained and consolidated within Legislative Decree no. 152 of 3 April 2006 (called “Environmental Consolidated Act” or “ECA” – “Testo Unico Ambientale”), as subsequently amended.

ECA is divided in six parts covering fundamental principles and specific sectors regulations as follows:

- Part I: General principles,
- Part II: Environmental Impact Assessment (EIA), Environmental Strategic Assessment (ESA) and Integrated Pollution prevention and control (IPPC),
- Part III: soil protection and water resources management,
- Part IV: waste management, package management and remediation of contaminated sites,
- Part V: air protection and air emissions, and
- Part VI: environmental damage.

There are, anyway, still matters and procedures regulated under specific laws (mostly constituting the implementation of European Directives), such as, by way of example only: Presidential Decree no. 59/2013 regulating the environmental single permit (AUA) for industrial plants not subject to EIA, Legislative Decree no. 49/2014 regulating WEEE management, Legislative Decree no. 166/2010 regulating ambient air quality, Legislative Decree no. 188/2008 on waste batteries and accumulators.

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

Under the Italian Constitution (article 117) the environmental matter is reserved to the exclusive legislative competence of the central State which (under the scope of article 11 of the Italian Constitution) implements the European Union regulations. Based on specific provision of primary legislation, the Italian Regions may issue implementation regulations provided that they be more stringent in compliance with the precautionary principle and are aimed at increasing the level of environmental protection.

The main central environmental administrative authority in Italy is the Ministry of the Environment and Protection of Land and Sea (hereinafter, also the “MATT” or “Ministry of the Environment”), that assumes general functions in relation to the protection of the environment and of the ecosystem.

Other public authorities involved in the environmental regulatory and administrative process are the Ministry of Health, the Ministry of Economic Development and the Ministry of cultural and landscape heritage.
Scientific or specific agencies at a central level, such as the National Institute for Environmental Protection and Research (ISPRA) and Superior Health Institute (ISS) are involved in and contribute to the regulatory proceedings under a technical specialist approach.

Locally, Regions, Provinces (including Metropolitan Cities) and bodies formed by their institutions or association (Permanent Conference State Regions, Ambit Authorities for the regulation on water or waste), along with other local bodies such as the local environmental protection agencies (ARPA), the local health and safety agencies (ATS), play leading roles on the administrative proceedings relating to the territory.

Enforcement is mandatory and is ensured through the application of criminal and/or administrative sanctions set forth by environmental laws.

Enforcement is carried out by administrative authorities with respect to administrative sanctions and by judicial authorities, at the initiative of the public prosecutor, with respect to criminal sanctions. The investigations are carried out by the environmental police and other public officers pertaining to the controlling and supervisory administrative bodies of the competent agencies.

Breach of environmental law entails the application of administrative and criminal sanctions (in this latter case including monetary and also jail sentences). The most serious environmental crimes, involving environmental disaster or significant environmental pollution, were introduced in the Italian Criminal Code by law 68/2015.

With respect to corporate liability, Italian Law (Legislative Decree no. 231 of 2001 as specifically amended by legislative decree no. 121 of 2011) includes specific environmental crimes within those triggering the criminal liability for corporate entities.

Defence against the enforcement of environmental regulation is ensured in full to individuals and enterprises through the Italian judiciary system before the civil, criminal and administrative jurisdictions under the inviolable right of defence ensured by the Italian Constitution (articles 24 and 113).

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

As a result of the different environmental key regulations, the Italian environmental permitting regime is still made up of a varied set of authorisations and permits notwithstanding the general trend to simplification which has tried to integrate the multiple permits pertinent to the different matters into more general and inclusive permits.
Without purporting of being exhaustive, the most important permits for operations can be summarised as follow:

- IPPC permit required for all the plants carrying out activities falling under the scope of the IPPC regulations as consolidated in the ECA, Part II: it replaces air emission permits, wastewater discharge permit, treatment of waste, disposal of equipment containing PCBs and PCTs;
- Environmental single permit (AUA): it generally applies to all the plants not obliged to get an IPPC permit and replaces permits relating to wastewater discharge, air emission, noise pollution and others.

Single permits for waste management, water discharge may be necessary for single activities or plants or to carry out specific activities, under the applicable regulations.

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

   Environmental permits are administrative deeds issued by the public agencies, therefore they cannot be transferred to third parties through a process of assignment, transfer or marketing. However, the practical transfer of the permit is ensured by the possibility of the successor to step into the predecessor’s rights and obligations, getting the same permits renamed in the successor’s name.

   Such process, which involves generally the preventive communication to the agencies and possibly the verification of specific requirements, may have different nuances depending on the nature of the permit and needs to be handled with a view to avoiding situations of lack of permitting which would entail the applications of sanctions and, in worst case scenarios, the suspension of the activity.

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

   All decisions refusing to grant environmental permits may be appealed against before the competent judicial authorities. In particular, such decisions may be appealed before the Regional Administrative Courts (Tribunale Amministrativo Regionale – TAR) generally within 60 days of notification (or becoming aware of them, except where specific shorter deadlines be provided for particular sectors and/or authorisations), or within 120 days by means of the extraordinary appeal to the President of the Italian Republic. Against the decision of the TAR the interested party may bring appeal before the Court of second instance (Council of State).

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?**
ECA (Part II) imposes on certain projects, assumed to cause significant and negative effects on the environment and cultural heritage, the obligation to run through an environmental impact assessment procedure (EIA). Annexes II and III to Part II of the ECA indicate the projects subject to EIA such as: integrated chemical plants, waste disposal facilities, infrastructures construction.

EIA is aimed at ensuring that the project approved comply with the objectives of protection of human health, improvement of the environment and quality of life, maintenance of species and reproductive capacity of the ecosystem.

The competent public authority assesses – as a preventive measure – the significant effects (direct and indirect) of the project on the population and human health, biodiversity, land, soil, air and climate, as well as the effects resulting from the vulnerability of the project to the risk of serious accidents or disasters.

The analysis includes the comparative assessment between the social and economic benefits deriving from the construction of the plant and the environmental impact of the same, considering also the “zero option” (i.e., the benefits of not authorising the project).

The EIA projects listed in Annex II of the ECA fall within the competence of the Ministry of the Environment, while those listed in Annex III are the competence of the Region (or, if so delegated, by the province).

The procedure is triggered by a submission from the interested party – which needs to evaluate all the different aspects of the project – and is assessed technically, economically and legally by the competent agency which, in most cases, impose prescriptions, conditions and regulations to which the applicant needs to abide by in the completion of the project.

The environmental impact assessment outcomes (denial, acknowledgement, prescriptions etc.) can generally be challenged before the competent regional administrative court on the basis of violation of law or technical reasons, taking into consideration that the proceedings entail discretionary decisions of the public agencies that may be challenged only if affected by logical, assumptive or representation 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 Italian legal system applies the “polluter pays” principle and liability for remediation is allocated on the basis of the causation link. Liability for environmental damage deriving from contamination is based on fault.
The legal framework to assess and impose liability for contamination is contained in the ECA, Part IV, Section V, which contains the regulation for investigating, communicating and carrying out other activities such as preventive measures, characterisation plan, risk assessment and remediation or permanent mitigation of the environmental conditions.

If the person responsible for the pollution is not identified or – if identified – does not have the necessary resources to proceed with the remediation, the local public authority has to carry out the remediation. Costs borne by the agency for the reclamation can be claimed back from the polluter (if ever traced) or recovered from the innocent owner of the site who has an obligation to reimburse such costs up to the fair market value of the site after reclamation. In this case the site is subject to a registered lien (onere reale) which ensures the enforcement against the innocent owner (and any successor thereof) of the obligation to pay the remediation costs to the agencies.

Without prejudice to the above any interested person is entitled to – even if not requested by the law – proceed to the remediation activities. In this case, according to case law, the innocent owner may be required to complete the reclamation operations.

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?**

Under Italian law, while there is no specific general obligation to investigate a site in ordinary conditions, there are different cases where a positive obligation of verification and communication of the existence of any contamination to the competent authorities exists.

Under article 242 of ECA, in case of occurrence of event potentially causing contamination of the soil or the groundwater, the person responsible for such event has to immediately communicate to all the competent authorities all the relevant information and has to implement the necessary preventive measures.

The same obligation exists should an historical contamination be detected.

Moreover, in most of the cases of construction (greenfield or brownfield), the city planning instruments and the building permits require a prior investigation on the quality of the soil and groundwater.

If any potential contamination (exceedance of certain thresholds) is detected, there is a positive obligation to communicate it to the agencies: defaulted compliance with such obligation of notification is criminally sanctioned.

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?

In all cases where the existence of potential contamination or the presence of polluting substances is assessed, whether they be migrating or not offsite, there is a positive duty to report this contamination to the relevant authorities. The violation of such duty is criminally sanctioned under article 257 of ECA.

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?

The owner of a land that is affected by historical contamination may have a private right of action against a previous owner of the land based either on contract liability or tort liability regimes.

Generally, Italian transaction (share deal or asset deal) entailing an environmental risk are fully regulated by contract (and exclude the general remedies available in contract law and tort law under the civil code and also under the ECA).

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

Waste is generally regulated under Part IV of the ECA with respect to the waste management principles and regulations and the permitting for the operation of the waste management plants.

Certain types of waste (WEEE, WBA, mineral oils, sanitary waste and PCB) are governed by specific regulations.

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)?

Liability for the correct management of the waste is extended up to the final destination.

Under art. 188 of ECA, all the parties involved in the waste management cycle share joint liability, from its production to its final recovery or disposal: each waste producer must verify and oversee the other parties involved in waste management.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?
Italy is bound to implement Directive 2008/98/EC as amended by Directive 851/2018/EU which provides for the possibility of introducing a system of extended producer liability, imposing on the producer specific take-back obligations.

As of today, the amendments introduced by Directive 851/2018/EU have not yet been implemented however, the Italian legislation in force provides for certain specific hypotheses of extended producer liability requiring the producer to take back waste originated from the products.

Producers of end-of-life vehicles, under Legislative Decree 209/2003 must take back end-of-life vehicles and waste used parts resulting from vehicle repairs, organizing, directly or indirectly, on an individual or collective basis, a network of collection centres distributed throughout the national country.

Producers of portable batteries and accumulators have similar financial and organisational obligations under Legislative Decree 188/2008.

Producers of EEE are obliged under Legislative Decree no. 49/2014 to finance and organise the take-back of WEEE from the municipal collection centres (not the end-users up to now, January 2020, but the regulation is under discussion) while similar provisions apply to distributors and service technical centres.

Similar systems are also provided in ECA for packaging and exhausted oils.

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?**

Buildings and plants in which asbestos is detected have to be notified to the local health authorities with the purpose of registration and monitoring under the appropriate regulations. Asbestos found in the soil may be considered a waste or a contaminant and therefore needs to be handled according to the appropriate regulation under the ECA.

Specific duties of census are charged upon the owners or operators of buildings destined to public use (schools etc.) and upon employers in relation to occupational health and safety matters.

Enterprises and consultants specifically expert and authorised to operate on asbestos containing materials need to intervene with a view to assessing the risk and providing for the appropriate action plan which could include the control and monitoring, or the sealing of the asbestos or the remediation.
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.**

Italy is bound by all the product regulations in force in the European Union, as REACH regulation no. 1907/2006/CE and CLP regulation no. 1272/2008/CE.

The aim of the REACH regulation - as amended by the CLP regulation - is to protect human health and environment, focussing on substances and imposing a system for registration, evaluation, authorisation and restriction of chemicals. European Chemicals Agency (ECHA) is responsible for implementing REACH. Manufacturers have the burden of proof to demonstrate to ECHA that their products are safe and non-hazardous under REACH.

CLP Regulation deals with classification, labelling and packaging of chemicals and mixtures in accordance with the United Nations Globally Harmonised System (UN GHS) and shares the purposes of the REACH Regulation. The principal aim of CLP regulation is to establish whether the chemicals or mixtures display properties that lead to a hazardous classification with a view to providing for the appropriate labelling.

16. **What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?**

Italy is bound by all energy efficiency regulations in the European Union. Under EU Energy Efficiency Directive (EED) (Directive 2012/27/EU, as amended), Italy ensures that certain companies carry out energy efficiency audits every 4 years, with notification of the assessment to ENEA and ISPRA.

This regime is applicable to the large undertakings and a small or medium undertaking to the extent they are in the corporate group of a large undertaking. Italy implemented the above-mentioned Directive by Legislative Decree no. 102/2014.

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?**

Italy ratified in 1994 (by Law no. 65 of 15 January1994) the United Nations Framework Convention on Climate Change (FCCC) and accessed in 2002 the Kyoto Protocol (Law no. 120 of 1 June 2002), implementing internally a series of measures with a view to complying with the GHG targets set forth by the international agreements deriving from this initial package (Paris Agreement, Doha amendment etc.). Italy is therefore committed to develop, publish and regularly update national emission inventories of GHGs as well as formulate and implement programmes to reduce them.

Italy is also bound by the European Commission Clean Energy Package (November 2016) (“Winter Package”), which includes several legislative measures in the sectors of energy efficiency, renewable energy and the internal electricity market. The package includes Regulation (EU) 2018/842 with regard to greenhouse gas emissions; the Directive (EU) 2018/2002 on Energy Efficiency, which provides for an energy efficiency target of 32.5 % by 2030, and the Directive (EU) 2018/2001 on Renewable Sources, which provides that the share of energy from renewable sources in the Union’s gross final consumption of energy in 2030 should be at least 32%.

To date, Italy has adopted a large number of measures for the implementation and compliance with the objectives set at an European level (e.g. Inter Ministry Decree 16 February 2016 regarding the incentives to increase energy efficiency and for the production of thermal energy from renewable sources, so-called “Thermal Account”; Decree of 23 June 2016 to promote electricity produced from renewable sources other than photovoltaics; Inter Ministry Decree of 16 September 2016 regarding the implementation of the programme of interventions for the improvement of the energy performance of the buildings of the Public Administration under art. 5, Legislative Decree n. 102/2014; Decree of 15 May 2018 on calculation of the quantity of electricity supplied to road vehicles and the intensity of GHG emissions).

As far as the renewable energy incentives and specifically wind power sector is concerned, Ministry Decree 4 July 2019 (FER 1 Decree) has recently provided for specific incentives for new (greenfield) “on-shore” wind turbines, complete reconstruction of existing wind turbines, reactivation of systems decommissioned for more than 10 years or repowering (power increase) of existing systems; new photovoltaic systems (also replacing asbestos roofs of industrial and rural buildings); new hydroelectric plants, or complete reconstruction of existing hydro plants (excluding aqueduct systems), reactivation of plants decommissioned for more than 10 years or repowering (power increase) of existing hydro plants.

Finally, to date Law Decree no. 111/2019 converted with amendments into Law no. 141/2019 (referred to as the “Climate Decree” sets forth with urgent measures in all sectors considered vulnerable to climate change. The aim is to encourage virtuous behaviour and actions by programming a series of multi-level interventions.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and/or ESG public reporting becoming more common?

In the past, Italy has proved to be slower than other European countries to acknowledge and
consider environmental social and governance (ESG) issues.

Sensitiveness to ESG issues have become more significant in recent years and the number of companies that have voluntarily decided to draw up their own sustainability report has increased. Directive 2014/95/EU made the sustainability report mandatory for the large undertakings. Italy implemented Directive 2014/95/EU by Legislative Decree n. 254/2016.

ESG public reporting has, then, become relatively more common in connection with the fact that large companies, having to report also their responsibility and traceability of the whole supply chain, have induced even the medium and smaller companies to give evidence of their ESG information.

ESG due diligence is, also, progressively becoming a more common tool in assessing the value of the target in a prospective outlook.

19. **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 Italy the polluter pays principle as source of primary liability vis à vis the public agencies for environmental remediation cannot be technically transferred to the buyer. However private agreements may regulate the step-in of the buyer in the any phase of the remediation (or other environmental) proceedings. No specific “agreements on liabilities” endorsed by the public agencies (similar to those executed in the UK) is possible in Italy, while it is very common that by contract indemnification provisions and reverse indemnification provisions are established.

   Such private agreements are fully enforceable among the parties, but – in the event that the party having assumed the burden becomes insolvent or is incapable to satisfy the environmental liability – the public agencies will keep the right to pursue the polluter.

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

   In general, the seller is obliged to behave fairly and in good faith in the context of the sale. This means that the seller is obliged to inform the buyer of the characteristics of the assets and of any situation from which he may suffer loss or damage to his property.

   In Italy, environmental due diligence is common practice in the legal market of any size of transaction, either it be a share deal or an asset deal.

21. **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?

In Italy environmental insurance is generally available, while not widely spread, as a kind of first-party or third-party liability insurance or in the form of the clean-up cost cap insurance.

As a consequence of the Seveso incident, some of the main Italian insurance companies established a consortium with a view to privately regulating and covering environmental insurance policies. On the market, brokers and international insurance companies are also present offering different products.

The insurance products known in the Italian market include: (i) environmental liability insurance (RC inquinamento) which covers damages caused to third parties (onsite or offsite) in connection with polluting activities or events of contamination and (ii) third-party liability insurance (RC terzi) covering damages caused to third parties (in this respect the most common is the one on transportation of hazardous materials or waste).

Clean-up cost cap insurance coverage is also available (but not frequently used) with a view to limiting the risk of environmental liabilities in the transactions. It covers the risk that a remediation exceeds the estimated clean-up costs.

22. 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?

Italy ratified the Aarhus Convention of 25 June 1998 by Law no. 108 of 16 March 2001. Italy has then issued Legislative Decree no. 195/2005 and the general procedure access law as amended (Law 241/90) which allows any person to have access to environmental information without having to allege a specific interest.

Environmental information is also generally available on public registries and on the internet at the agencies’ websites: for example, longform IPPC permits are available on the national or regional registries, the registries of contaminated sites held by the Regions are publicly available on the website and news and developments on procedures related to Sites of National or Regional Interest (large sites subject to remediation) are also available.

The right to access environmental information is enforced through a request submitted to the public agency without specific interest, and the agency is obliged to render the information available within 30 days of the request, save the agency may oppose a legitimate denial (which is consented in very limited and exceptional cases).

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

Under article 5 of Legislative Decree no. 195/2005 the information can be denied if the request is clearly unreasonable or too general; concerns documents whose elaboration is still in progress; undermines the best national interest (e.g. international relations, national defence or public security).

These cases of exclusion from the right of access are extraordinary and are applied by the public authority restrictively and any refusal must always be adequately motivated.

24. 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?

The updates in environmental law are constant and many, mostly as a consequence of the implementation of European Directives or as a consequence of international undertakings.

It is impossible to cite all the updates, some of the most significant updates include:

- Climate Decree: i.e. Law Decree no. 111 of 14 October 2019 converted into Law no 141 of 12 December 2019 regulating urgent measures for compliance with the obligations laid down in Directive 2008/50/EC on air quality;
- Decree on excavated soils: Presidential Decree no. 120 of 13 June 2017 introducing a regulation on the handling and management of contaminated soils or by-products;

A significant reform is expected by the implementation of EU Directive 2018/851 amending the waste framework directive 2008/98/CE in the context of the circular economy package.