

COUNTRY REPORT: ITALY
Introduction Italy Environmental Law in 2013:
The Waste Management Policy

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This country report reviews two Italian waste management laws that came into effect in 2014, specifically the national waste management law of November 2014¹ and the *Land of Fires Decree* of February 2014.² The report begins by considering the European Union position on waste management, the incorporation of European waste policy into Italian law, and the division of legislative powers within Italy with regards to waste management.

The Approach of European Union to Waste Policy: Directive 2008/98/EC

Directive 2008/98/EC provides that the first aim of any waste policy should be to minimise the negative effects on human health and the environment caused by the production and management of waste. The Directive further provides that waste policies should aim to reduce the use of resources and favour the practical application of a waste hierarchy. These priorities position the Directive within the wider environmental legal framework of the European Union. For example, the *Treaty on the Functioning of the European Union* cites environmental improvement and human health protection as sustainable development priorities. The European Union *Charter of Fundamental Rights* confirms the need for integration between European policies and environmental and health protection.³ The

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¹ N. 133 of 12 September 2014 (passed into law n. 164 of 11 November 2014)

² Law Decree n. 136 of 10 December 2013 (passed into law n. 6 of 6 February 2014). The name comes from the serious environmental emergency in Campania (especially in the territory between the provinces of Naples and Caserta) affected by the burning of toxic waste, called *Land of fires*.

³ The Charter of Fundamental Rights (so called Charter of Nizza) was drawn up by a convention consisting of a representative from each EU country and the European Commission, as well as members of the European Parliament and national parliaments. It was formally proclaimed in Nice in December 2000 by the European Parliament, Council and Commission. In December 2009, with the

important role of waste management in environmental law is confirmed by the sheer number of European regulations and directives on waste, including directives on:

- landfills;⁴
- the prevention and reduction of incinerators pollution;⁵
- the reduction of packaging;⁶
- waste electrical and electronic equipment;⁷
- end-of-life vehicles;⁸ and
- industrial waste treatment.⁹

Directive 2008/98/EC in Italy

European statistical data indicates an overall reduction in waste production. Italian statistics suggest a similar trend, with waste reduction corresponding to higher levels of separate collection. Regardless, the amount of waste produced by Italy is still very high.¹⁰ There is a long road ahead to achieve the smart, inclusive and sustainable economy that Europe requests.

Italy transposed *Directive 2008/98/EC* into national law by modifying existing national laws.¹¹ The modifications aim to facilitate better uniformity in waste management among national, regional, provincial and municipal governments. The modifications allow the State to determine the procedures and criteria used to classify dangerous waste, and to define

entry into force of the Lisbon Treaty (which in 2009 modified both the TEU and the TFEU), the charter was given binding legal effect equal to the Treaties. To this end, the charter was amended and proclaimed a second time in December 2007 (http://europa.eu/index_en.htm).

⁴ Directive 1999/31/EC

⁵ Directive 2000/76/EC

⁶ Directive 94/92/EC

⁷ Directive 2002/96/EC

⁸ Directive 2000/53/EC

⁹ Directive 2010/75/EU

¹⁰ The Higher Institute for Environment Research and Protection (ISPRA) report on *Quality of Urban Environment – 2014 Edition* (www.isprambiente.gov.it) shows that the 2013 national waste production has been of 29,6 million tons, with a decrease of about 400.000 tons, with a decrease trend observed in 2012 and 2011. The separate collection in 2013 was of 42,3% in respect of 65% provided for 2012 but the value is increased compared to previous years.

¹¹ By virtue of Legislative Decree n. 205 of 3rd December 2010 which modified the Legislative Decree n. 152/06 in the Fourth Part on waste

recovery and disposal activities that administrative bodies must include in their authorising provisions.¹² The modifications also allow the State to determine:

- actions to prevent waste production and to reduce the risks they pose;
- criteria for sector plans aimed at reducing and optimising waste flow;
- programs for waste disposal and recovery plants; and
- prevention aims on waste production.

The modifications allow regional governments to devise regional waste management plans and related actions, approve the building of new waste management plants and issue authorisations for waste management and recovery activities.¹³

The Division of Legislative Powers with regards to Waste Management

The aforementioned division of powers between State and Regional legislatures appears to reflect the environmental provisions of the Italian Constitution,¹⁴ specifically article 117 that grants the State exclusive competence with regards to environmental matters, cultural goods and ecosystem protection. On the face of it, article 117 allows the State to define waste laws and waste management tools, with regional governments allowed to regulate only those aspects of waste management connected to regional powers.

The Italian Constitutional Court has taken a more nuanced view of the environmental protection powers of regional governments. It is possible to distinguish two opinions from the Constitutional Court cases.¹⁵ Up until 2008, the Court considered the environment a cross-cutting issue that should be considered in all programs and projects at all levels of government. For example, in 2002, the Court affirmed that the 'environment' is not a field in the strict sense because it is intertwined with other interests and competences.¹⁶ For this reason, the Court considered that State and regional legislatures share competence for the environment, and regional legislation could modify standards fixed by State law.

¹² Article 195 of Legislative Decree n. 152/06

¹³ Article 196 of Legislative Decree n. 152/06

¹⁴ Provided by Legislative Decree n. 152/06

¹⁵ D. Amirante, *Profili di diritto costituzionale dell'ambiente*, in P. Dell'Anno, E. Picozza (edited by), *Trattato di diritto dell'ambiente*, Padova, Cedam, 2012, 264; M. Cecchetti, *La materia "tutela dell'ambiente e dell'ecosistema" nella giurisprudenza costituzionale: lo stato dell'arte e i nodi ancora irrisolti*, in *Federalismi.it*, n. 7/2009 (www.federalismi.it).

¹⁶ Judgment n. 407

In 2008, the Constitutional Court held that the 'environment' consists of different legal goods which can be subjected to different regulations. For example, the Court found that woods and forests comprise at least two legal goods, being an 'environmental multifunctionality' connected to environmental protection and an economic production function.¹⁷ Regional legislatures can exercise concurrent powers on environmental matters where the exercise of power is incidental to an exercise of a power within the competence of regional legislatures.¹⁸ In 2013, the Constitutional Court confirmed that regional laws can include environment protection matters when those matters are an indirect effect of an authorised exercise of regional power.¹⁹ This suggests that regional legislatures can include environmental protection aims in their waste management plans.²⁰

The National Waste Management Law

The national waste management law of November 2014, commonly known as the *Unlock-Italy Decree*, promotes the building of new waste plants and introduces a package of measures intended to ensure the capacity of each waste disposal plant to receive waste from every part of Italy. These measures contradict the principles of proximity and self-sufficiency laid out in the Italian *Environmental Act* of 2006²¹ and the European Union *Waste Framework Directive*.²²

The *Environmental Act* of 2006 recommends the use of waste disposal plants near the place of waste production, with the use of special plants for certain kinds of wastes. Additionally, the Act encourages self-sufficiency in urban waste disposal through regional plant networks and the use of best-available technology. In contrast, the 2014 waste management law

¹⁷ Judgment n. 105

¹⁸ D. Amirante, 272; P. Maddalena, La tutela dell'ambiente nella giurisprudenza costituzionale, in *Giornale di Diritto Amministrativo*, 3, 2010, 311.

¹⁹ Judgment n. 188 of 3 July 2013 on Environmental Impact Assessment (EIA) and Judgment n. 58 of 25 March 2013

²⁰ Judgements referencing article 196 of Legislative Decree n. 152/06

²¹ Legislative Decree No. 152/06 of 3 April 2006; the Legislative Decree No. 152/06 of 3 April 2006 is the Italian Environmental Act. Indeed, it regulates the environmental impact assessment (EIA) and the International Plant Protection Convention (IPPC), water and soil protection and management, wastes, air pollution and environmental damage.

²² Directive 2008/98/EC.

permits the disposal of waste in any Italian waste disposal plant. Regional governments are seriously worried that this provision will cause excessive flows of waste from other regions.

The European Union *Waste Framework Directive* requires Member States to adopt national measures to realise self-sufficient waste disposal.²³ In 2010, the European Court of Justice confirmed the need for Member States to adopt waste policies that support national self-sufficiency, taking into account territorial peculiarities.²⁴ In this regard, Member States may choose the optimal geographical area through which to manage waste, as long as the system provides for a network of plants and meets the principle of proximity.²⁵ In reviewing the regional waste management strategy in place in Italy at the time, the European Court of Justice confirmed that inefficiency at the regional level inevitably produces inefficiency on national scale. Importantly, the Court held that Member States must ensure the treatment and disposal of waste as close as possible to the place where it is produced. This reflects the *Treaty on the Functioning of the European Union* that prioritises the remedying of environmental damage at the source in order to limit the transportation of waste. Provisions in the Italian waste management law of 2014 that promote the disposal of waste at any Italian plant conflict with these directions from the European Court of Justice and the European Union *Waste Framework Directive*.

The Land of Fires Decree

The *Land of Fires Decree* passed into Italian law in February 2014. The Decree was drafted in response to waste emergencies in Campania and Puglia in December 2013.²⁶ The most important provisions introduced by the Decree concern the criminalisation of illegal waste burning and the monitoring of agriculture land. For example, the Decree provides for technical investigations to map the extent of agricultural land contamination caused by abusive waste disposal, including waste burnings, in Campania. The Decree introduces specific measures to suppress the burning of waste in streets. Specific penalties include imprisonment, forfeiture of the means used to transport waste and obligations to restore

²³ Directive 2008/98/EC.

²⁴ *European Commission v. Italian Republic*, case no. C-297/08 of 4th March 2010, Reports of Cases 2010, I-01749.

²⁵ In this regard, you can see also the Directive 2006/12/EC.

²⁶ Law Decree n. 136 of 10th December 2013 (passed into law n. 6 of 6th February 2014). The name comes from the serious environmental emergency in Campania (especially in the territory between the provinces of Naples and Caserta) affected by the burning of toxic waste, called *Land of fires*.

contaminated area to their original state.²⁷ The penalties increase in the event that the crime is committed by an enterprise or concerns dangerous waste. Although there were few incidents of street burning at the time of enactment of the Decree, the media campaign surrounding these episodes prompted the Government to intervene. Some scholars have criticised the deterrent capability of the Decree because it was adopted especially to satisfy public opinion.²⁸ On the other hand, the Decree may be justified in light of repeated European Court of Justice actions concerning waste emergencies in Campania.

The first waste emergency in Campania occurred in 1994 in relation to landfill, the ordinary mode of waste disposal in Campania. In 1997, the Italian Government entrusted the then President of the Campania Region to draft a *Waste Regional Plan* that directed the building of incinerators and the separate collection of waste. Despite these measures, the continued widespread use of landfills continued up until 2000 due to the unsuitableness of waste disposal plants in the Campania region. Over time, Italy was forced to find other countries willing to accept waste from Campania (e.g. Germany). In 2008, the European Commission commenced proceedings against Italy in the European Court of Justice on the basis that Italy did not have a network of waste disposal plants or respect the principle of self-sufficiency.²⁹ Although the waste emergency in Campania formally stopped in December 2009, waste emergencies still occur. Indeed, Campania and other Italian regions still do not have plant networks capable of ensuring the self-sufficiency of waste disposal. These situations make it difficult to properly implement the *Land of Fires Decree* and the waste management policies of the European Union.

²⁷ The Decree introduced the article 256 bis of the Legislative Decree n. 152/06 which provides for these penalties.

²⁸ A. Scarcella, *Campania sì, Campania no, la terra dei fuochi...: dal decreto alla legge di conversione*, in *Ambiente&Sviluppo*, 4/2014, 257; Actually Italian law already provides administrative and penal sanctions about uncontrolled waste storages and arson.

²⁹ Case no. C-297/08)