



Country Report: Italy

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Recent Developments in Italian Environmental Law

Italian legislators are still struggling to consolidate the country's environmental legal framework.¹ The need for a systematic approach, taking into account the obligation to implement European Union law, continues to collide with emergency issues, requiring emergency legislation, and recurring political uncertainties that slow down the legislative process.

After the enactment of the *Decree No. 152* dated 3 April 2006 (commonly referred to as the *Environmental Code*) one would expect recent legislative developments to relate to amendments to the *Code*. This is not however always the case, as domestic legislators continue to enact sectoral laws that are not integrated within the *Environmental Code*. That said, the *Decree No. 128* dated 29 June 2010, does amend several aspects of the *Environmental Code*, in particular Part I (Principles), Part II (EIA, SEA and IPPC) and Part V (Air Pollution). The amendments to Part I modify certain of the principles underlying the *Environmental Code*. Unlike previous drafts, the amendments do not amend the entire set of principles. The amendments

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¹ See further: N. Lugaresi, 'Country Report: Italy' (2010) 1 *IUCNAEL e-Journal*, at 1.

to Part II introduce a new integrated environmental permitting scheme. They seek to bring Italy's domestic regime in line with *EU Directive 2008/1/EC*, concerning integrated pollution prevention and control. The Amendments to Part V aim at making the domestic air pollution regime more effective and simplify several procedures associated with it.

Part IV (Waste Pollution) of the *Environmental Code* has also been amended, but on this occasion by Decree No. 205 dated 3 December 2010. It provides for the domestic implementation of the *EU Waste Framework Directive (Directive 2008/98/EC)*, specifically incorporating a new Waste Control Traceability System. Part III (Water Management) and Part VI (Environmental Liability and Environmental Damage) of the *Environmental Code* have not been revised.

Certain other statutory developments have not related to the *Environmental Code*. *Decree No. 155* dated 13 August 2010, provides for the domestic implementation of *EU Directive 2008/50/EC* governing ambient air quality in Europe. It provides for the integrated regulation of several pollutants (sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter, lead, benzene and carbon monoxide) and ozone. These provisions are unfortunately not integrated into the *Environmental Code*, which perpetuates legislative fragmentation.

One of the most newsworthy developments in Italy in 2010, concerns the waste emergency that exploded again in some parts of Italy. Violent protests by local communities brought a standstill to the country's waste management system. These protests arose from local community opposition to the establishment of garbage dumps and waste treatment plants and the failure of central and local governments to find a participatory and integrated solution to the problem.

A Critical Consideration of the Recent Domestic Developments

The development of Italy's environmental regime is significantly influenced by the country's political crisis. The environmental reforms are not supported by a shared long-term vision and are accordingly often very piecemeal in nature. With the

exception of the various decrees providing for the domestic implementation of relevant EU Directives, the remainder of the legal reforms tend to be enacted by the ruling party, simply to be amended when a subsequent political party comes into power. This trend is evidenced by the amendments to Part 1 of the *Environmental Code*. One exception to this rule is the amendment to Part V of the *Environmental Code*, which secured comprehensive support across all political parties. A further trend is the failure to integrate all sectoral environmental laws within the *Environmental Code*. This is evidenced by *Decree No.155/2010*, which, while providing for integrated pollution control, is not integrated within the *Environmental Code*.

The primary problem undermining Italy's environmental regime remains the absence of a comprehensive and coherent framework for guiding legislative reform. While broad reform should be pursued, trying to do so in the absence of such a framework becomes problematic and has resulted in on-going and perpetual 'back-and-forth reforms'.

Regarding the waste protests, the main problem is the failure of the government to promote public participation and the attempts by regional and central government to resolve local issues. As a result, local communities fail to understand the broader public interests at stake, and regional and central governments fail to grasp the local political, economic, social and environmental climate. The resultant confrontation precludes any bi-partisan initiatives in the environmental arena, exacerbates the issues at stake, and undermines the attainment of mutually acceptable and beneficial solution. The problems associated with Italy's environmental regime reflect the deadlock of the political debate. The resolution of the impasse requires the adoption of a very different approach to that currently being utilized.

At this time, what is missing in Italy is a rational, comprehensive and thoughtful consideration of all environmental interests and issues to guide decision-making. The current trend of justifying existing decisions on the nebulous rhetoric of sustainable development does not provide clarity. What is furthermore required is increased public participation and a more open, transparent and accountable decision-making

process. Recent cuts to the budget allocated to the environmental sector do not bode well in this regard.

Possible New Research Agenda for IUCNAEL

Two possible research agenda's for the IUCNAEL emerge from the current Italian situation. The first relates to analysing recurrent environmental decision-making deadlocks with a view to formulating possible solutions applicable across jurisdictions. The second perhaps more ambitious pursuit is to give tangible content to the principle of sustainable development, so frequently used to unravel knotty environmental (and social, and economic) problems involving public participation and subsidiarity.