The Environment and Climate Change Law Review

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EDITOR'S PREFACE

Environmental law is global in its reach. Multinational companies make business plans based on the laws and regulations of the countries in which they are headquartered and have manufacturing facilities as well as the countries in which they distribute and sell their products. Moreover, multinational companies have global environmental, health and safety goals and practices that tend to be worldwide in their scope for reasons of policy and operational consistency.

For these and other reasons, this first edition of *The Environment and Climate Change Law Review* is timely and significant. This book offers a review, by leading environmental lawyers, of significant environmental laws and issues in their respective countries around the world.

Climate change continues to dominate international environmental efforts, and we have also witnessed efforts to promote sustainability. Many countries are making efforts to promote conservation and renewable or green energy. Changes in reliance on coal and nuclear energy have impacts on the demand for other energy sources. All of these changes have impacts on efforts to reduce greenhouse gases.

Environmental law continues to change and evolve, as new regulations are adopted and existing rules are amended or challenged in courts or interpreted by agencies. In the United States, 2017 will witness a new President and an administration that is expected to have different priorities in the related areas of environment and energy. Future editions of this book will focus on changes and developments.

This book presents an overview and of necessity omits many details. The book thus should be viewed as a starting point rather than a comprehensive guide. Each chapter of this book, including mine, represents the views of the author in his or her individual capacity, and does not necessarily reflect the views of the authors' firms or clients, or the authors of other chapters, or my views as the editor. This book does not provide legal advice, which should be obtained from the reader's own lawyers.

I wish to thank the many authors who contributed their time and expertise to the preparation of the various chapters to this book. I also wish to thank the editors at Law Business Research for conceiving of this project and seeing it through. We hope this book helps you to gain a better understanding of environmental law in various countries around the globe.

Theodore L Garrett
Covington & Burling LLP
Washington, DC
January 2017

Chapter 8

ITALY

Gianluca Atzori[1]

I INTRODUCTION

Italian environmental law could be considered officially born on 8 July 1986, with the law setting up the Ministry of the Environment and providing for the first regulation on environmental damage.[2] Sector-based legislation was then adopted, until 2006, when Legislative Decree 3 April 2006, No. 152, introduced the Italian Environmental Code, governing the whole area. Most of the legislation in this field is due to legislation at the European level. However, Italian public opinion, like that in many other countries, is also increasingly sensitive to environmental matters, encouraging public institutions to act and adopt more stringent standards for the protection of the environment.

Indeed, Italian environmental law has recently been subject to significant substantive reforms. In particular:

a the Integrated Pollution Prevention and Control (IPPC) system has been redesigned, introducing significant changes in the contents of IPPC permits, and modifying the IPPC renewal and modification process and the sanctions system;[3]

b a comprehensive set of environmental crimes has been introduced both in the Italian Criminal Code and in the Italian Environmental Code. These new crimes

1 Gianluca Atzori is an associate at Cleary Gottlieb Steen & Hamilton LLP.

2 Law 8 July 1986, No. 349; it should be noted that other pieces legislation addressing sectorial environmental issues were adopted even before 1986.

3 Legislative Decree 4 March 2014, No. 46 amended the entire Title III *bis* of Part II of Legislative Decree 3 April 2006, No. 152, which is the title dedicated to the IPPC system within the Italian Environmental Code.

concern conduct that in the past did not have any criminal relevance and provide for much harsher penalties than those generally provided for in the past for the existing environmental offences;[4] and

c a special environmental law system was designed to address the complex scenario where allegations of mass pollution of the environment were made by the local prosecutor against the largest steel company in the country. However, at the same time, the plant that allegedly caused the pollution employed so many people in an economically depressed area that the Italian government adopted emergency laws to avoid the immediate shutdown of the plant, citing reasons of national interest. This special environmental law system, which as of today is applicable virtually only to this specific scenario, *inter alia*, provides a tool to pierce the corporate veil and attach liability to the shareholders of a company, if the company has caused significant environmental damage.[5]

While the Italian government was required by EU law[6] to implement the IPPC system reform, the new environmental criminal offences and the special environmental law system originated from internal public opinion.

On the issue of climate change, energy policies play a crucial role. In this respect, in the 2011 referendum, the Italian people voted against the development of nuclear power plants. Moreover, in 2013, thanks to a strong incentive policy, Italy already reached its 2020 goal for the production of renewable energy, which was established by the European Union.

The current Ministry of the Environment has declared its firm commitment to the Paris Agreement (COP 21), ratified by Italy in November 2016.

II LEGISLATIVE FRAMEWORK

The most important piece of legislation is the Environmental Code. The Environmental Code provides for: (1) the general principles of Italian environmental law; (2) the procedures for environmental impact assessments, strategic environmental assessments and IPPC permits; (3) norms for the protection of soil, the fight against desertification and the protection of water sources from pollution; (4) norms for waste management and clean-up procedures; (5) norms for air emissions and the protection of the atmosphere; and (6) norms for environmental damage. Other important sources of law are:

4 Law 22 May 2015, No. 68 amended both the Italian Criminal Code and the Italian Environmental Code, introducing a broad variety of new environmental crimes.

5 In particular, under certain conditions, the state commissioner – who, given the emergency, has replaced the administrative board of the company – is entitled to request a competent tribunal to release funds seized from the shareholders of the company in the context of investigations for alleged criminal offences even unrelated to environmental damage. The commissioner must then use the released funds to remediate the environmental damage caused by the company. See Section 11 *quinquies* of Article 1 of Law Decree 4 June 2013, No. 61, converted into Law by Law 3 August 2013, No. 89.

6 See Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

a Law 4 November 2016, No. 204, which ratifies the Paris Agreement of 12 December 2015 (COP 21);

b Legislative Decree 22 January 2004, No. 42, the Italian code of cultural heritage and landscape;

c Legislative Decree 17 August 1999, No. 334, on the control of major-accident hazards involving dangerous substances (the Seveso Law);

d Legislative Decree 8 June 2001, No. 231, which provides for the liability of legal persons for crimes committed by their managers and employees. Many environmental crimes trigger liability for legal persons under this Legislative Decree;

e Presidential Decree 13 March 2013, No. 50, which introduced the single environmental authorisation, an authorisation that materially reduced the regulatory burden on small and medium-sized companies, including a single authorisation for all of the necessary environmental permits (e.g., wastewater discharges and air emissions);

f Legislative Decree 13 March 2013, No. 30, establishing a scheme for greenhouse gas emissions allowance trading within the European Union, in respect of the Kyoto Protocol's mechanisms; and

g Legislative Decree 19 August 2005, No. 195, granting access to the public for all environmental information possessed by a public authority.

The Treaty on the Functioning of the European Union (Articles 191, 192 and 193) grants competence in the environmental field to the European Union. However, often Member States must implement EU directives and that implies a margin of appreciation. Moreover, and most importantly, Article 193 of the Treaty provides that the protective measures adopted by the European Union 'shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties.' That means that the environment is a field where there is minimum harmonisation: the EU sets a minimum threshold that Member States must meet. However, national law may impose stricter thresholds (so-called gold plating).[7]

III THE REGULATORS

In Italy, environmental law enforcement is managed through a multi-level governance system. The distribution of powers among the various government levels (national, regional, local, etc.) is inspired by the subsidiarity principle.

At the national level, the Ministry of the Environment and of the Territory and Sea Protection (MATTM) is the authority competent for the enforcement of environmental and climate change rules. The Ministry is both a source of regulation, through its decrees, and an enforcer, given that it has the power to grant the main environmental permits (such as IPPC permits and environmental impact assessments (EIAs) for the plants with the most significant environmental footprints) and to impose administrative sanctions for violations

7 In 2013, the President of the Council of Ministries adopted a guideline (Directive of the President of the Council of Ministries, 16 January 2013) forbidding any form of gold plating. Nonetheless, laws are a source hierarchically higher than the guideline and therefore can derogate from this prohibition.

of such permits. The Ministry is also in charge of the clean-up procedures for contaminated lands located in the most polluted areas of the country (sites of national interest). The technical branch of the Ministry is the Superior Institution for Environmental Protection and Research (ISPRA), which is a public entity under the supervision of the Ministry that provides technical support (e.g., through the monitoring of the compliance of the operators with the permits granted by the Ministry or through the performance of environmental assessments commissioned by the Ministry).

Regions are also key players, since they are also a source of laws and regulations (within the limits set out in national law), and they also have the power to grant certain environmental permits (EIAs) (such as IPPC permits and EIAs for plants with a smaller environmental footprint than those authorised at the national level). Regions are in charge of the clean-up procedures for contaminated lands located in areas different from the sites of national interest.

Certain competences are also administered at a local level by provinces or municipalities.[8] For instance, certain regions delegate their power to grant IPPC permits and EIAs to the provinces. Moreover, national law establishes that provinces are competent to grant certificates attesting to the successful completion of a clean-up operation.[9] Regions can also delegate to municipalities the power to manage clean-up operations concerning contaminated lands located within the municipality's territory.

Each region has its Regional Agency for the Protection of the Environment (ARPA), which plays a similar role to the Superior Institution for Environmental Protection and Research, but at a regional level. Thus, each ARPA provides technical environmental support to the region, the provinces and the municipalities.

Every decision adopted by the MATTM, the regions, the provinces and the municipalities can be challenged before Regional Administrative Tribunals (TAR) for violation of law, lack of competence of the authority that adopted the decision or 'abuse of power'. When the law grants a discretionary power to an authority, the court is not allowed to scrutinise the exercise of such power unless the decision is affected by serious flaws (e.g., obvious incoherence between the conclusions of the decision and the facts ascertained by the decision itself).

IV ENFORCEMENT

Liability for the violation of environmental laws can be civil, administrative and criminal. The same fact can result in the three kinds of liability. For instance, an unauthorised release of hazardous substances into the environment can lead to civil liability for damage caused to third parties, administrative sanctions (such as the suspension or withdrawal of the environmental

8 Italy is currently in a transition period where provinces are gradually being abolished and their competences are being redistributed between regions, municipalities and the new entities called 'metropolitan cities'.

9 Article 242, paragraph 13 of Legislative Decree, 3 April 2006, No. 152.

permit) and criminal liability for the crime of polluting the environment. However, many administrative sanctions apply only if the same facts are not punishable under criminal law in order to avoid the duplication of sanctions for the same fact.[10]

The administrative proceeding to enforce clean-up liabilities upon a release into the environment can be triggered either by a notification sent to the authorities by the polluter or the innocent landowner (which must notify the authorities immediately upon the discovery of the release) or autonomously by the authorities. In order to attach clean-up liability to an operator, authorities must demonstrate a causal link between the operator's activities and the pollution. Until not long ago, prospective buyers of industrial sites wanting to perform an environmental assessment in order to protect themselves from historical contamination, faced reluctance from prospective sellers. However, recent legislative reforms, amending the Environmental Code, have introduced for many industrial operators the duty to sample soils at least once every 10 years and groundwater at least once every five years.[11] Thus, going forward, thanks to the data from these samplings on the status of the site throughout such time, it should be easier to correctly establish responsibility for any pollution found.

V REPORTING AND DISCLOSURE

The main environmental permits usually provide for the duty to disclose to the competent authorities (indicated by the permit itself) any non-conformity, with specific regard to the emissions limit set for wastewater discharges and air emissions. The operator may claim that the non-conformity is due to a temporary malfunction of the plant, which sometimes is considered a justified reason for the violation of the emissions limits.[12]

Contamination of land, or suspected sudden or historical contamination, must immediately be disclosed to the competent authorities.[13] However, the Environmental Code only gradually introduced from 2014, for industrial operators, certain duties to carry out periodical sampling of soils and groundwater. Therefore, it cannot be ignored that a number of sites may still be affected by 'unknown' contamination, which has not been notified to any public authority.

The law does not provide for a specific duty to disclose potential environmental liabilities to prospective purchasers. However, general law imposes upon the parties to a negotiation the duty to act in good faith. Omitting to disclose information on known environmental liabilities could be a violation of this principle, therefore triggering contractual liabilities for the seller.

Currently, the law does not afford any specific protection for whistle-blowers in the environmental field.[14]

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10 For instance, Article 20 *quaterdecies*, paragraph 2, of Legislative Decree 3 April, 2006, No. 152.

11 Article 29 *sexies* of the Italian Environmental Code.

12 IPPC permits may allow a certain number of violations of emission limits for each year, but should never exceed 20 per cent of the maximum intensity allowed (Section 7 *bis* of Article 29 *sexies* of the Italian Environmental Code).

13 Article 242 of the Italian Environmental Code.

14 For future developments on this subject, and on other pending legislation regarding disclosure duties, please see Section VIII, *infra*.

VI ENVIRONMENTAL PROTECTION

i Air quality

The categories of industries that may generate emissions with a material impact on the environment are subject to air emission permits.

Among these plants, the ones with the lower environmental impact must obtain an air emission permit pursuant to Article 269 of the Environmental Code. This permit lasts 15 years, and it provides emission limits and monitoring requirements. In case of a violation of the air emission permit, the competent authority may: (1) order the operator to comply with it within a certain term; (2) order the operator to comply with it within a certain term and suspend the operation of the plant if there is a threat towards public health or the environment; or (3) revoke the air emission permit in case of a violation of the orders under point (1) and (2) above or when multiple breaches of the permit endanger public health or the environment.[15] Also, criminal and administrative penalties are provided, depending on the gravity of the violation of the permit.[16]

Plants with a higher environmental impact are likely to fall within the IPPC system and therefore need an IPPC permit, which includes a section dedicated to air emissions. Under the IPPC system, the emission limits must be coherent with the emission levels associated with the best available technique, established at the EU level.[17] As already highlighted in Section II, *supra*, Member States are allowed to require stricter limits (gold plating), but a guideline issued by the Italian President of the Council of Ministries should prevent Italian authorities from doing so. IPPC permits can last up to 16 years.[18] In the event of a violation of an IPPC permit, the competent authority has the same powers as those granted by the Environmental Code to the authorities for a violation of an air emission permit (i.e., order to comply, suspend and revoke the permit, under the same conditions laid down for air emission permits).[19] Moreover, criminal and administrative penalties are provided depending on the gravity of the violation of the IPPC permit.[20]

ii Water quality

The mechanism for the granting of wastewater discharges permits is designed similarly to the system for the granting of air emission permits.

Plants with lower environmental impact are subject to wastewater discharge permits,[21] while bigger plants fall within the IPPC system.

As to the first regime, in the event of a violation of a wastewater discharge permit, the competent authority may: (1) order the operator to comply with it within a certain term;

15 Article 278 of the Italian Environmental Code.

16 Article 279 of the Italian Environmental Code.

17 Article 29 of the Italian Environmental Code.

18 Article 29 *octies* of the Italian Environmental Code.

19 Article 29 *decies* of the Italian Environmental Code.

20 Article 29 *quattuordecies* of the Italian Environmental Code.

21 For industrial discharge and domestic discharges. Rainwater discharges are regulated at a regional level: it is up to each region to decide whether to require a specific permit for the discharge of rainwater. Wastewater discharge permits last four years (Article 124 of the Italian Environmental Code).

(2) order the operator to comply with it within a certain term and suspend the operation of the plant if there is a threat towards public health or the environment; or (3) revoke the wastewater discharge permit in case of a violation of the orders under point (1) and (2) above or when multiple breaches of the permit endanger public health or the environment.[22] Also, criminal and administrative penalties are provided depending on the gravity of the violation of the permit.[23]

As to the second regime, as already noted above in subsection (i) on air emissions, IPPC permits have to be aligned with the emissions level established at EU level. IPPC permits can last up to 16 years.[24] In the event of a violation of an IPPC permit, the competent authority has the same powers as those granted by the Environmental Code to the authorities for a violation of a wastewater discharge permit (i.e., order to comply, suspend and revoke the permit under the same conditions laid down for wastewater discharge permits).[25]

Moreover, criminal and administrative penalties are provided depending on the gravity of the violation of the IPPC permit.[26]

iii Chemicals

The regime for chemicals that are hazardous to health and the environment is regulated at the EU level. In order to guarantee coherence in the manufacture, placement on the market and use of chemical substances, the European Union adopted the 2006 Regulation concerning the registration, evaluation, authorisation and restriction of chemicals (the REACH Regulation),[27] which is – like every EU Regulation – directly applicable in all of the EU Member States, without the need to transpose it through national implementing legislation.

Under the REACH Regulation, the manufacture, placement on the market or use of certain substances, mixtures and articles may be subject to restrictions.[28] Manufacturers, importers and downstream users are forbidden to use, or place on the market for use, substances referred to in Annex XIV of the REACH Regulation unless, *inter alia*, the use or placement on the market of the substances has been authorised in accordance with the regulation.[29]

Pursuant to Article 68(1) of the REACH Regulation, where there exists an unacceptable risk to human health or the environment arising from the manufacture, use or placement on the market of substances that needs to be addressed on an EU-wide basis,

22 Article 130 of the Italian Environmental Code.

23 Articles 133 and 137 of the Italian Environmental Code.

24 Article 29 *octies* of the Italian Environmental Code.

25 Article 29 *decies* of the Italian Environmental Code.

26 Article 29 *quattuordecies* of the Italian Environmental Code.

27 Regulation (EC) of the European Parliament and of the Council of 18 December 2006, No. 1907/2006, concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396/1), as amended several times.

28 Id., Articles 68-73 and Annex XVII.

29 Id., Article 56.

Annex XVII of the REACH Regulation shall be amended by adopting new restrictions or strengthening the existing ones. Any such decision shall take into account the socio-economic impact of the restriction, including the availability of alternatives. In accordance with Article 69, such process is triggered by Member States or the European Commission and involves the EU Chemicals Agency. For a new restriction to be imposed it must be shown that: (1) the manufacture, placement on the market or use of a substance on its own, or in a mixture or in an article, poses a risk to human health or the environment and (2) such risk is not adequately controlled and needs to be addressed at the EU level.[30] The European Commission adopts the final decisions on proposals for restrictions submitted by Member States or the EU Chemicals Agency.[31]

Authorities proposing a restriction are also requested to perform a socio-economic analysis aimed at demonstrating that the net benefits to human health and the environment of the proposed restriction outweigh the net costs to manufacturers, importers, downstream users, distributors, consumers and society as a whole. In addition, available information on alternative substances and techniques shall be provided, including information on: (1) the risks to human health and the environment related to the manufacture or use of the alternatives, (2) the availability of alternative substances, including the respective time scale, and (3) their technical and economic feasibility.[32]

The REACH Regulation also envisages an authorisation system aimed at monitoring the risks posed by substances of very high concern,[33] which must be progressively replaced by suitable alternative substances or technologies to the extent that they are economically and technically viable.[34]

iv Solid and hazardous waste

Waste management is heavily regulated and violations in this field often lead to criminal penalties. The generation, transport and disposal of waste is regulated by the Italian Environmental Code.

30 REACH Regulation, Annex XV (Dossiers), Section II.3. Justification shall be provided that action is required on an EU-wide basis, and a restriction is the most appropriate EU-wide measure, which shall be assessed using the following criteria: (1) effectiveness (the restriction must target the effects or exposures that cause the risks identified and be capable of reducing these risks to an acceptable level within a reasonable period of time and proportional to the risk); (2) practicality (the restriction must be implementable, enforceable and manageable); and (3) monitorability (it must be possible to monitor the result of the implementation of the proposed restriction).

31 Id., Articles 70–73.

32 Ibid. See also REACH Regulation, Annex XVI (Socio-Economic Analysis), which, *inter alia*, sets out the information to be covered in a socio-economic analysis submitted in connection with a proposed restriction.

33 I.e., substances that are: (1) carcinogenic, mutagenic or toxic to reproduction; (2) persistent, bio-accumulative and toxic; (3) very persistent and bio-accumulative; and (4) seriously or irreversibly damaging to the environment or human health, such as substances damaging to the hormone system: id., Article 57.

34 Id., Article 55.

As a general rule, Article 188 of the Environmental Code provides for the liability of the waste generator for the whole chain of treatment of the waste. Indeed, the generator must verify that the transporter and the subject in charge of the recycling or disposal of the waste possesses all of the necessary authorisations, and that the documents that need to be filed to track each step of the waste management are duly drafted and managed.

Every operator involved in waste management must provide the competent authority with adequate financial guarantees. In particular, waste transportation, recycling and disposal, as well as the management of solid urban waste, are subject to material financial guarantees.

For years the Italian government has tried to switch from an inefficient waste-tracking system based on paper documents to an electronic tracking system, featuring GPS technology and a national database of the waste produced, transported and disposed of in the country (the SISTRI system). So far, the entry into operation of the new tracking system has been postponed several times due to technical malfunctions. Currently, the paper-based system is still in place, but operators are required to register with SISTRI and provide the system with their data. From 1 January 2017 onwards, only the SISTRI system should be used, but it is not possible to rule out further postponements.

v Contaminated land

The remediation of contaminated land and groundwater is based, in Italy and in the European Union, on the 'polluter pays' principle.[35] In other words, the system is designed to impose remediation duties and costs on the polluter. If the polluter cannot be identified or fails to adopt the necessary measures, and neither the owner of the site nor any other interested party adopts those measures, they are to be adopted by the competent administrative authorities at the expense of the polluter.[36] Innocent landowners may be required to reimburse the costs relating to the measures adopted by the competent authority that has remediated the site but only within the limits of the market value of the land, determined after the implementation of those measures. The owner or any other interested person may, however, intervene on a voluntary basis at any time in order to clean up the site that they own or use.[37] The innocent landowner that has remediated the polluted site on a voluntary basis is entitled to bring an action for damages against the polluter in respect of costs incurred and any additional damage suffered.[38]

In certain cases, in open contrast with the Environmental Code, innocent landowners have been requested by public authorities to remediate their site when the polluter could not be identified or failed to adopt the necessary measures to remediate the pollution. Recently, a minority of the case law has sustained the legitimacy of this approach.[39] However, the plenary assembly of the Council of State (i.e., the highest administrative court, in charge of solving case law conflicts, whose ruling is binding for lower administrative tribunals) has upheld the theory according to which the innocent landowner cannot be required to remediate pollution

35 The 'polluter pays' principle is mentioned by Article 191 of the Treaty on the Functioning of the European Union and Article 3 *ter* of the Italian Environmental Code.

36 Article 242 of the Italian Environmental Code.

37 Article 245 of the Italian Environmental Code.

38 Article 253 of the Italian Environmental Code.

39 See, *ex multis*, Council of State opinion of Section II, dated 23 November 2011, No. 2038/2012.

that it has not caused.[40] The plenary assembly had also requested a preliminary ruling from the Court of Justice of the European Union on whether EU environmental principles must be interpreted as precluding national legislation:

> *which, in cases where it is impossible to identify the polluter of a plot of land or to have that person adopt remedial measures, does not permit the competent authority to require the owner of the land (who is not responsible for the pollution) to adopt preventive and remedial measures, that person being required merely to reimburse the costs relating to the measures undertaken by the competent authority within the limit of the market value of the site, determined after those measures have been carried out.*[41]

The Court of Justice of the European Union ruled that EU environmental law did not preclude such national legislation.[42]

However, the consistency with EU law of the provision of the Environmental Code, as interpreted by the Plenary Assembly of the Council of State, does not exclude *per se* that the Court of Justice of the European Union might consider other interpretations of domestic law as compatible with EU law. Indeed, on the one hand, the Court stated that Italian legislation, as interpreted by the Council of State to the effect that it is not legitimate to impose the duty to carry out remedial actions on innocent landowners, is compatible with EU law. On the other hand, the Court pointed out that EU law allows Member States to adopt more stringent measures, including through the identification of additional responsible parties, provided that these measures are compatible with the Treaty on the European Union and the Treaty on the Functioning of the European Union. Therefore, it is not possible to exclude that a different interpretation of national legislation (hypothetically, the minority opinion in current Italian case law) could also be deemed compatible with the principles of EU environmental law.

VII CLIMATE CHANGE

Climate change is addressed in a number of ways in Italy. Italy firmly committed to the United Nations Framework on Climate Change (UNFCC). Italy has recently ratified the Paris Agreement by means of Law 4 November 2016, No. 204, and the Ministry of the Environment has declared that 'for Italy, a green economy is a clear and irreversible choice. On climate change there is no way back.'[43]

In 2006 greenhouse gas emissions trade was established, and it is now governed by Legislative Decree 13 March 2013, No. 30.

A number of incentives are in place for renewable energies and are generally granted for the whole duration of the life of the plant. Since 2017, due to European Union constraints, incentives for renewable energy plants will be awarded only through reverse auction systems, while in the past there were also forms of direct access to incentives, already pre-determined

40 Plenary Assembly of the Council of State, 25 September 2013, No. 21.

41 Plenary Assembly of the Council of State, 25 September 2013, No. 21.

42 Court of Justice of the European Union judgment 4 March 2015, C-534/13, Fipa et al.

43 *L'Unità*, 9 September 2016, interview with Mr Galletti, Ministry of the Environment.

by law. Also, renewable energy dispatching is prioritised in respect of other sources of energy. Thanks to these incentives, Italy is already satisfying more than 17 per cent of its energy needs through renewable energy, reaching the goal established by the European Union for 2020.

Energy efficiency is also incentivised, through the so-called white certificates, also known as energy efficiency certificates (EECs). EECs are granted by the competent public authority (GSE) upon proof of the achievement of energy saving through energy efficiency improvement projects. Electricity and natural-gas distributors are required to achieve yearly quantitative energy savings targets, expressed in tonnes of oil equivalent saved. Each certificate is worth one tonne of oil equivalent saved.

Finally, Article 29 of the Environmental Code provides that IPPC permits must include greenhouse gas emissions limits when necessary to prevent local pollution of the environment.

VIII OUTLOOK AND CONCLUSIONS

Currently, the Italian parliament is considering two legislative reforms that would have an impact on the national environmental law system.

Both reforms are required by international commitments made by Italy. The first reform is required by the need to implement Directive 2014/95/EU. The second reform is among the obligations arising from the ratification of the 2003 United Nations Convention Against Corruption, which occurred in Italy through Law 6 November 2012, No. 190.

The first reform will provide for the duty of large corporations to disclose certain environmental information in financial statements. According to the draft Legislative Decree available, from the financial year starting on 1 January 2017 or during the calendar year 2017, listed companies, insurance companies and financial institutions will have to include in their management reports a non-financial statement on corporate social responsibility matters, including their environmental policies. In particular, the companies subject to this obligation will have to disclose: (1) their energy consumption, indicating the percentage of renewable energy used and their water consumption; (2) their greenhouse gas emissions and their polluting air emissions; and (3) the impact, in the short and medium term, on the environment of the activity of the company, its products and its commercial relationships. The Italian government must adopt the final Legislative Decree by 1 January 2017.

The second reform concerns the protection of whistle-blowers in relation to the denunciation of environmental non-compliance. Indeed, while the Italian legal system already affords a certain degree of protection to whistle-blowers in certain specific fields (e.g., banking law), such protection is not currently afforded to the environmental field. The pending piece of legislation would require companies to provide for such protection in their organisational models. If this law is approved, companies will be obliged to provide whistle-blowers with protection, applicable, *inter alia*, to the disclosure of a number of environmental non-compliance matters.

In conclusion, the recent reforms described in Section I, *infra* (namely, the reform of the IPPC system, the introduction of new environmental crimes and the special environmental law system), and the pending legislation mentioned in this section, all present a common element. This common element is the tendency of the system towards real, actual and substantial protection of the environment, as opposed to the old schemes, which often focused on formal obligations that constituted unnecessary burdens on operators and were not always linked to a concrete environmental benefit. One example of this tendency is the

new sanctions system applicable to violations of an IPPC permit. Before the reform, every IPPC permit violation, even a minor one with no impact on the environment, constituted a criminal offence and was punished with modest penalties. Today, only the violations that actually impact the environment constitute criminal offences, but the sanctions are generally higher than they were in the past.

Thus, national environmental law seems to move, slowly but steadily, towards more effectively protecting the environment, removing unnecessary constraints on operators and strengthening the sanctions for conduct that actually impacts the environment.

Appendix 1

ABOUT THE AUTHORS

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Gianluca assists leading companies in the energy, chemical, pharmaceutical, and iron and steel fields in connection with regulatory and litigation issues, arising from environmental and administrative matters.

In the context of M&A and financing transactions, Gianluca advises on the drafting of contracts, with specific regard to the management of environmental liabilities.

He also deals with sustainable development issues: green public procurement, climate change, also with reference to the related financial and non-financial disclosures for large corporations, banks and insurance institutions.

In 2016, Gianluca has advised the World Bank in relation to the Italian section of the worldwide project Enabling the Business of Agriculture, on the laws and regulations affecting agricultural productivity, market access, and the policy environment for agriculture.

Gianluca regularly publishes on environmental law matters. He graduated *summa cum laude* from Cagliari Law School, where he also lectured in corporate human rights compliance and corporate social responsibility from 2011 to 2015. In May 2009, he obtained an LLM degree with honors in international human rights law from Northwestern University – School of Law. Gianluca is a member of the Milan Bar.

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