

## **NATIONAL REPORT: ITALY**

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### **GENERAL**

Amendments to Title V of the Italian Constitution were introduced by means of the Constitutional Law 3/2001. The Constitutional Law contains a redefinition of the respective legislative competencies between the State and the Regions. In particular, pursuant to article 117 of the modified Italian Constitution the State enjoys an exclusive legislative competence in the fields of protection of the environment, ecosystem and cultural heritage. In various other fields, such as those related to protection of safety at workplace, protection of public health, management of production, transmission and distribution of energy, and land management, the legislative competence is “concurrent” between the State and the Regions.

In concrete terms, this means that in such cases the State has the duty to determine the fundamental principles to be respected on each specific matter and the Regions may enact concrete provisions. For any other matter not specifically reserved to the exclusive or concurrent legislative competence of the State, the Regions enjoy a full legislative competence. The present amendment to the Constitution is also relevant for the implementation of EC legislation in Italy, in particular in the environmental field. In fact, now the Regions, which before such an amendment were very active in the environmental sector, neither cannot adopt regional legislation in application of an EC directive before the adoption of a framework legislation of implementation by the State, nor after such an adoption they can adopt legislative provisions exceeding the boundaries of powers possibly conferred to them by the State.

In October 2001, the Italian Government presented to the Parliament a Draft Law<sup>1</sup> with the aim of obtaining a delegation of powers for the drafting of new decrees and consolidated texts in the environmental sector, which should re-organise and co-ordinate all the existing laws and regulations around some well defined subject-areas. The Government provisionally identified six subject-areas, which include: waste management and disposal and soil clean-up; water resources management and pollution prevention; soil protection and measures against desertification; protection of wild flora and fauna and management of natural protected areas; responsibility for environmental damage; EIA and IPPC procedures. Will the consolidated texts, if finally adopted, constitute an opportunity to resolve some outstanding issues of conflict between national law and EC law in the environmental field?

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<sup>1</sup> Draft Law No. 1798 presented to the Chamber of Deputies on 19 October 2001.

## **SIMPLIFIED PROCEDURES**

The present Italian Government does not appear to be very active in the environmental protection field. However, the development of major public works is one of the priorities of the Government. In this sense, a series of laws, regulations and other administrative provisions have been adopted with the aim of centralising and speeding the administrative procedures for the approval of public works and other works of a public interest. An example can be found in a recent legislative decree (Legislative Decree 190/2002) which has transferred some of the powers on the EIA previously in the hands of the Ministry of the Environment directly in the hands of the Government, through the Committee for Economic Planning (CIPE), or in a recent Ministerial decree which has eased the procedure for the approval of the projects for the construction of communication infrastructures (Legislative Decree 198/2002), or in another Ministerial decree which has eased the procedures for the construction of energy power plants in the name of the national interest (Legislative Decree 7/2002). In all these above cited cases, the environmental protection issues seem to have been set aside, if not completely forgotten. It remains to be seen how the practical implementation of such new legal provisions will work.

## **WASTE**

The Italian Government, although it is still failing to implement some important EC directives in the field of waste legislation, namely EC directive 1999/31 on waste landfills and EC directive 2000/76 on the incineration of waste, has shown an extreme activism in the long-debated issue of the definition of waste, by the adoption of an “authentic interpretation” of article 6 of the Legislative Decree 22/1997 (which reproduces the provisions of article 1 of the EC directive 75/442) through Legislative Decree 138/2002. The question which arises is the following: is this authentic interpretation of the concept of “waste” proposed by the Italian Authorities compatible with EC law?