

REAL DEAL country profile

# Italy



**REAL  
DEAL**

RESHAPING CITIZENS'  
DELIBERATION FOR THE  
EUROPEAN GREEN DEAL



# 1

## Overview

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Italy is a democratic republic composed of Municipalities, Provinces, Metropolitan Cities, Regions, and the State, with these subnational units as “autonomous entities having their own statutes, powers and functions,” and have some significant degree of decentralised regionalism.

The power to legislate on environmental matters falls within the exclusive competence of the State (Art. 117.2 Italian Constitution). However, Art. 117.3 of the Italian Constitution gives Regions concurrent legislative competence in many areas relating to the environment, such as urban planning, health, civil protection, production, transportation, and energy distribution. Furthermore, several provisions of the Environmental Code (Legislative Decree 152/2006, or the “EC”), allow Regions to maintain or introduce more stringent protective measures. Rules enacted at the regional level have, however, a limited impact on matters regulated by the EC, as they usually reproduce State legislation. For example, legal standing, including in environmental matters, is an area falling under the exclusive competence of the State. National rules on standing thus apply to the entire territory of the State. The EC as amended by decree 128/2010 transposed Directive 2001/42 and started the reorganisation of the Italian legislation allowing the former integration of the environmental *acquis communautaire*.

The reform was also subject to criticism insofar as its final version was less comprehensive and far-reaching than expected. For example, several commentators have criticised the limited reach of this reform, including the missing explicit reference to the fight against climate change. Yet this reform is important as it finally embeds environmental protection as one of the key fundamental principles of the Italian legal system. Moreover, the amended text of Article 41 provides a unique legal provision insofar as it explicitly orients economic activities towards, among other things, the achievement of the overarching environmental objectives set out in the international and EU environmental and climate change regimes.



# 2

## Dimensions of environmental governance

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In Italy, the environment is fully recognised as an autonomous discipline since the constitutional reform of 2001 that revised the text of Article 117 on the divisions of competences between the state and the regions, containing specific mention of the “protection of the environment and the ecosystem.” Later in 2016, the country adopted the Italian National Plan on Business and Human Rights for 2016-2021, undertaking the implementation of the United Nations 17 Sustainable Development Goals and encouraging companies to realise the goal of decent work for all and to enhance the use of indicators of quality, sustainable development, equality, and gender.

The constitutional law 1/ 2022 confirmed this epistemological autonomy of environment and proves the efforts to promote environmental sustainability, to reduce social inequality and reform Italy’s economic development model. Ecological values have been embraced by some political parties of the spectrum, however, the right-wing coalition (Brothers of Italy and the League) that won the elections of 26 September 2022 were totally absent from the “go green” debate and proposal of the former government (with the exception of their sporadic warnings about the huge social and economic consequences of implementing the Green Deal).

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### 2.1

#### Transparency (access to information)

The regulation concerning environmental information can be found in the internal system, starting from the Law 8 July 1986, n. 349 (established by the Ministry of the Environment), which in art. 1, paragraph 3, provides that the Ministry adopts, with the media, the appropriate initiatives to raise public awareness of the needs and problems of the environment. With regard to environmental information, it is necessary to mention the Legislative Decree 195/2005, in particular, which is aimed at guaranteeing the right of access to environmental information by establishing the terms, conditions and methods of exercise, and ensuring, for the purposes of broader transparency, that the information itself is made available to the public and also disseminated using technological channels.



The Legislative Decree 14 March 2013, n. 33 (so-called Transparency code) has reorganised the regulations concerning the obligations of publicity, transparency, and the dissemination of information by public administrations. Article 40 provides for the obligation for public administrations to publish environmental information on their institutional sites, which they hold for the purposes of their institutional activities, giving specific emphasis within a specific section called “Environmental Information”.

Regarding the collection and monitoring of environmental information, the main hub is the SINA (National Environmental Information System). Access to this network data is guaranteed to all citizens regardless of the existence of a legally relevant interest.

For the implementation of correct and transparent information to the public, the *Ministero della Transizione Ecologica* (Ministry of Ecological Transition) drew up the 2021 Communication Plan, whose operational objectives are:

- Provide complete, fully accessible information on environmental priorities and key issues.
- Make people aware of the importance of environmental policies as tools for improvement not only for the environment but also for society and the economy, and of the fact that failure to implement them and the worsening of environmental threats pose a serious risk to well-being, health and economic development.
- Involve a diverse public, highlighting the role of individual citizens, in order to make them more responsible and engaged in a process that aims to spread the culture of sustainability throughout the country.

***The power to legislate on  
environmental matters falls  
within the exclusive competence  
of the State.***



## 2.2

### Participation

Public participation in decisions on environmental matters and activities established in article 6 of the Aarhus Convention is mainly implemented by Legislative Decree no. 152/2006 as amended by Italian Legislative Decree no 91/2014 (converted into Italian Law 116/2014) and Ministerial Decree 30/03/2015 (regarding projects under the responsibility of the Regions and Autonomous Provinces). In fact, in part II Italian Legislative Decree 152/2006 regulates the procedures for the Valutazione Ambientale Strategica (Strategic Environmental Assessment), the Environmental Impact Assessment and the Integrated Environmental Authorisation providing for consultation mechanisms with all social stakeholders.

The principles underlying the SEA are the principle of sustainable development, the principle of prevention, the principle of participation and the right of access to information, with the principle of participation, direct interference by the public interested in the procedure. A good participation in the procedure therefore presupposes a right of access to information, above all because the interested party can make their own observations when consultations take place, a typical phase of the EIA. Consultations therefore play a central role, as they are a guarantee of transparency of the entire procedure.

The application of the SEA process through the specific components of the process, such as the verification of the sustainability of the plan objectives, the analysis of the significant environmental impacts of the plan measures, the construction and evaluation of reasonable alternatives, the participation in the process of the subject interested parties and the monitoring of the environmental performance of the plan, represents a support tool for both the proponent and the decision-maker for the definition of guidelines and choices of sustainable planning.

Important, then, was the transposition at national level of Directive 2003/4, again on the subject of public access to environmental information, which took place by the Legislative Decree lgs. n. 195 of 19 August 2005. Article 1 states the objective of “guaranteeing the right of access to environmental information held by public authorities” by setting the terms, the basic conditions and the relative methods of operation. The latter has implemented a kind of revolution in relation to the role of the Public Administration which, from a simple passive provider of information, becomes a provider of the same. In Article 3, relating to “access to environmental information on request”, the provisions set out in Article 8 on “dissemination of environmental information” are added.



Article 5 (q) of the ED defines “public” as one or more natural or legal persons, as well as, pursuant to the legislation of national practice, associations, organisations or groups of such persons, in the previous paragraph (p) consultation is defined as all forms of participation, including direct, of the others administrations and the public interested in the collection and evaluation of data and information that constitute the necessary cognitive framework to express the compatibility with the environmental judgment of a specific plan or programme or of a specific project.

Public awareness of SEA procedures is ensured by the competent authority (Ministry of Ecological Transition or regional competent authorities), which for the duration of the public consultation phase envisaged by the regulation, publishes on its website an announcement of commencement of the procedure, the proposal of the plan or programme and the environmental report, as well as the procedure for submitting comments. The competent authority is responsible for publishing a notice in the Official Journal of the Italian Republic or in the Official Journal of the region or autonomous province concerned.

Italian Legislative Decree no. 152/2006 and subsequent amendments (see in particular Italian Legislative Decree no. 128/2010) “Environmental regulations” transposes EU Directive 2001/42 and reorganises the Italian legislation on the environment, updating it with the regulations deriving from the relevant European directives. Part Two, Title II regulates SEA, which can be considered the primary instrument for public participation in policy-making processes. At the local level, public participation is also promoted through numerous legislative and/or statutory provisions. One example is the Regional Law of Emilia Romagna no. 3/2010, art. 6 which establishes various instruments for promoting participation, for example through “a special annual session on the participation of the Legislative Assembly” and a “report on participation in the territory of the region”.

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## 2.3

### Access to Justice

Public interest lawsuits for the protection of the environment fall exclusively under the jurisdiction of the administrative courts, comprised of the Tribunale Amministrativo Regionale at first instance, and the Consiglio di Stato on appeal. These courts provide remedies in relation to acts and omissions of the public administration.

Any individual or group of individuals may take legal action against a decision or omission of the public authority that infringes their legitimate right or interest. Furthermore, Italian Law 349/1986 gives environmental protection associations, recognised by MiTE according to the criteria established by Article 13 of the same law, the right to file appeals with administrative courts for the annulment of administrative acts harmful to the environment, and to intervene in proceedings for environmental damages.

Established case law also gives environmental protection to associations that are not recognised pursuant to Article 13 of the aforementioned law standing to bring suit based on an actual and non-occasional commitment to environmental protection as an institutional task of the association. Specific rules apply for the compensation of environmental damages. Italian Legislative Decree no. 152/2006 and subsequent amendments attributes the right to act for compensation for environmental damages to MiTE.

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## 2.4

### Compliance assurance, accountability, and effectiveness

Italy's environmental policy is based, amongst others, on the principles of sustainable development, prevention, precaution and the "polluter pays" principle. An important role is played by the MITE and important administrative roles are also assigned to regional and local authorities. Technical surveys and assessments are carried out by technical organisations, such as the Institute for Environmental Protection and Research which provides back-up for the MITE and coordinates the regional and provincial environment agencies.

The protection of legitimate rights and interests is guaranteed through access to judicial remedies that provide for two degrees of judgement. Inspections, sanctions, and other restrictive measures are allowed only to the extent envisaged by law and in compliance with constitutionally guaranteed rights of freedom and fairness. Environmental regulations are mandatory and enforced through criminal and/or administrative sanctions. Investigations are conducted by the public officers of the relevant supervising administrative body and the environmental police. Criminal proceedings are initiated by the public prosecutor. Criminal sanctions were extended to companies by Legislative Decree no 231/2001.

An environmental association has lodged a complaint with the Aarhus Convention Compliance Committee regarding the onerous costs that non-profit associations must bear in order to bring an action before the Italian Environmental Judicial Authority. After considering the issue raised to be admissible and not irrelevant (ACCC/C/2015/130 of 3.7.2015), the Compliance Committee proceeded with a series of requests for clarification, documentation, and direct discussion with the parties to reach the final findings and recommendations.

In the Italian system the problems related to procedural costs can essentially be traced back to three points:

The unified registration fee, which is a fee to be paid to start a trial.

The legal costs that the Party that has initiated a legal dispute must reimburse to the other party, the winner in the proceedings.

The recognition of free legal aid only to entities and individuals with an income not exceeding about €11,000.

The issue of reducing procedural costs is under consideration by this Ministry, which is seeking to coordinate with other competent administrations in the field (Ministry of Justice and Ministry of Economy and Finance).





# 3

## Institutional context

The state has exclusive competence in environmental regulation (*Italian Constitution*). The principal national authority is the Ministry of Ecological Transition (*Ministero della Transizione Ecologica*).

Other national regulatory authorities include the:

- Ministry of Health (*Ministero della Salute*).
- Ministry of Economic Development (*Ministero dello Sviluppo Economico*).
- Ministry of Cultural and Landscape Heritage (*Ministero dei Beni Culturali e Ambientali*).
- Interministerial Committee for Ecological Transition (*Comitato Interministeriale per la Transizione Ecologica*) (CITE).
- Scientific agencies with a regulatory role including the:
  - National Institute for Environmental Protection and Research (*Istituto Superiore per la Protezione e la Ricerca Ambientale*) (ISPRA); and
  - Superior Health Institute (*Istituto Superiore di Sanità*) (ISS).

Where they have delegated legislative powers, the regions can issue environmental regulations. Local authorities have the power to grant permits. These authorities include the:

- Regions, provinces, and metropolitan cities.
  - Ambit Authorities (*Autorita' d'Ambito*) (ATO) (which organise and govern integrated water supply).
- Regional Environmental Protection Agencies (*Agenzia Regionale per la Protezione Ambientale*) (ARPA).
- Local Health and Safety Agencies (*Agenzie di Tutela della Salute*) (ATS).



# 4

## Sustainable development

# Role of Civil Society

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“Partecipa” is the digital platform of the Italian government devoted to the processes of public participation and consultation. In Partecipa people can participate and decide on different topics, through the spaces you see in the top menu: Processes, Assemblies, Initiatives, Consultations. Within each one you will find different options to participate: make proposals - individually or with other people- take part in debates, prioritise projects to implement, attend face-to-face meetings and other actions (including environmental matters).

The National Strategy for Sustainable Development (SNSvS) provides that the Ministry of Ecological Transition ensures the functioning of a multi-actor Forum, open to civil society, non-state actors and experts in various subjects, to be involved through multilevel consultations. To this end, the Ministry has facilitated the construction of the National Forum for Sustainable Development intended as a shared work space, based on the meeting of public policies with social energies, in which to bring out and affirm sustainability subjects and practices.

This space is based on the principles of Open Government and intends to experiment with the activation of new participation models.

The Sustainable Development Forum, which has the function of ensuring the active involvement of civil society in the implementation of the Strategy, also has a specific working group on education for sustainable development.

The Ministry also organised a public event open to civil society and the private sector at La Spezia entitled “Achieving the objectives of the Paris Agreement: a global challenge that passes through a local commitment”, open to delegates participating in the workshop and to Italian civil society, involving representatives of both the private sector and subnational governments, with the aim of reasoning about what the country is doing in terms of climate action with particular reference to the voluntary actions of non-state actors and their essential contribution to achieving the objectives of the Paris Agreement.



## **Cooperation at international level**

Italy regularly promotes intra- and inter-ministerial coordination to align its position within the framework of the international forums it participates in. On these occasions, the principles of the Aarhus Convention and the Almaty Guidelines are considered. Conferences called “General Assemblies” are periodically organised with the aim of listening to civil society on hot topics such as climate change. Information about international fora is increasingly circulated through electronic channels, specifically social media (especially Twitter and Facebook) and portals managed by public administrations, civil society, and private sector organisations.

Particularly noteworthy is the activation of a Twitter account in view of the Pre-COP and the youth event. There have also been several initiatives to promote public participation in international forums. As part of the UNFCCC climate negotiations, Italy continues its practice of accrediting at least one NGO representative in the official delegation. Moreover, in order to facilitate broad participation in COPs, where possible, Italy also accredits representatives of the press and other governmental and non-governmental actors who have requested it as “overflow”.

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