Accès à la justice dans le domaine environnemental

Italie

Pour obtenir de plus amples informations nationales sur l'accès à la justice en matière d'environnement, veuillez cliquer sur un des liens ci-dessous:

Dernière mise à jour: 28/04/2022

Access to justice at Member State level

1.1. Legal order – sources of environmental law

Italy is a non-federal State with a certain degree of decentralisation. In 2001, a Constitutional reform changed the Italian Constitution and adopted a sort of federal model of distribution of competences between the central State and the Regions. Art. 117.2 of the Italian Constitution, as modified in 2001, identifies a list of areas in the exclusive competence of the State. Article 117.3 establishes matters of concurrent competence between State and Regions. In this case, the Regions have the legislative competence, to be exercised in accordance with the fundamental principles elaborated by the central State. Furthermore, the Regions alone have legislative competence in all matters which are not listed as exclusive State or concurrent State and Regional matters (Regional exclusive competence).

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.[1] 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.

Today, most Italian environmental laws are transpositions of EU laws, as harmonised and codified in the EC.

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

In the Italian national system, the environment is considered as an absolute primary value, and it is protected as both as a matter of public interest with primary constitutional value[2] and as a fundamental personal good.[3] The Ministry of the Environment and of the Territory and Sea Protection ("MATTM") is the competent authority for the enforcement of environmental policies and granting environmental permits for plants with the most significant environmental footprints. The MATTM can also impose fines for infringements of such permits. It also oversees the clean-up procedures on contaminated land located in the most polluted areas of the country.

Another important role in environmental matters is played by the National Superior Institute for Environmental Protection and Research (ISPRA), together with the Regional Agencies for Environmental Protection (ARPA)[4] and the Provincial Agencies for Environmental Protection (APPA), whose main activities are:

environmental research and monitoring (e.g. situation of coasts, soil, watercourses, pollution, meteorology);

providing technical support for the environmental impact assessments;

surveying the territorial impact of human activities by conducting technical inspections.

Finally, the national police forces (which have also a specialised maritime police section), the local police forces, the specialised section of the *Carabinieri* for environmental protection, the forest guards (which were absorbed by the Arma dei Carabinieri in 2016), and the customs officials have wide powers of inspection to ensure compliance with the environmental law provisions. The Ecological Operational Unit of the *Arma dei Carabinieri* (*Nucleo Operativo Ecologico dei Carabinieri*), in particular, is placed within the functional remit of the Ministry of the Environment and of the Territory and Sea Protection for the surveillance, prevention, and punishment of violations committed against the environment. Should these authorities find a breach of the environmental legislation or a failure to meet permit requirements, they are entitled to:

apply administrative fines;

suspend the permits;

report the violation to the public prosecutor.

In the Italian system, individuals and environmental NGOs having a legitimate interest in the decision-making process can challenge the lawfulness of public authorities' actions in environmental matters. Legitimate interest (so called '*interesse legittimo*') is the interest of the party in obtaining an administrative decision. A legitimate interest may thus arise every time a public entity exercises, or fails to exercise, an authoritative power affecting individuals (Art.7 Code of Administrative Procedure, "CAP", Legislative Decree 2 July 2010, no 104). Individuals and environmental NGOs are also entitled to participate in environmental decision-making and to be granted access to environmental information. Furthermore, they are entitled to claim compensation before civil and criminal courts for both financial and non-financial damages they have suffered as a direct result of environmental wrongs.[5]

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The Italian Constitution does not contain any explicit provisions protecting the environment. Nevertheless, the protection of the environment can be inferred from the following combined provisions:

Art. 9 dealing with the protection of the “natural landscape and the historical and artistic heritage”;
Art. 32 on the protection of “health as a fundamental right of the individual and as a collective interest”;
Art. 41 dealing with the prohibition of “economic enterprise against the common good”;
Art. 44 on the “rational use of land”;
Art. 117(s) which provides for the exclusive legislative competence of the State (and not of the Regions) in matters regarding the “protection of the environment and the ecosystem”.
The Constitution contains explicit provisions on access to justice. Art. 24 states that all persons are entitled to take judicial action to protect their individual rights and legitimate interests. The right of defence is inviolable at every stage and level of the proceedings. Those in need are assured, by appropriate measures, of the means for legal action and defence in all levels of jurisdiction. In addition, Art. 113 of the Constitution states that the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted against acts of the Public Administration (“PA”). Such judicial protection cannot be excluded or limited to particular kinds of appeal or to particular categories of act.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

In 2006, Italy enacted the EC (Legislative Decree 3 April 2006, no 152), which, as mentioned above, harmonised and codified national environmental laws with EU Directives. The EC sets out the legal framework applicable to: Pollution Prevention and Control (IPCC); Environmental Impact Assessment (EIA); Strategic Environmental Assessment (SEA); soil protection; water policy and management; waste and packaging management; contaminated land management; air quality; environmental damage and sanctions.
Access to information, including information on access to justice, is regulated by Law 241/990 (Arts 22-28),[6] in conjunction with Legislative Decree 195 /2005 (Art. 7) and Legislative Decree 104/2010 (Art.116). Furthermore, Art. 3 EPC regulates the right to access environmental information and the right to participate in the decision-making process in environmental matters, and establishes that anyone, without having to prove the existence of an interest, can have access to information regarding the state of the environment and the landscape.
Public participation and access to justice in relation to unlawful decisions by the PA are regulated by Law 241/1990, as amended and implemented in the provisions of the EC[7] regulating participation in specific environmental procedures, including EIA, SEA and IEA procedures. Access to justice in relation to decisions, acts or omissions of the PA is regulated by the EC as amended by Legislative Decree 128/2010 and the by general procedural rules set by Law 241/1990.

4) Examples of national case-law, role of the Supreme Court in environmental cases

The Italian Supreme Court (*Corte di Cassazione*) is the highest judicial body, although it cannot be considered as a third instance court. This Court is competent only to assess violation or the misinterpretation of the law by the lower courts. It also adjudicates on conflicts of competence, jurisdiction and powers within the judiciary. In civil and criminal matters it has the power to re-examine decisions or orders on appeal from lower courts but only on points of law (decision on legitimacy); that is, to confirm whether the court dealing with the merits has applied and interpreted the law correctly.
The Italian Supreme Court has played an important role in the interpretation of national provisions related to the environment. Although the Italian system does not recognise a separate right to a healthy environment, the Italian Supreme Court has interpreted Art. 32 of the Constitution, which guarantees the individual right to health, as the individual right to live in a ‘healthy environment’. The Supreme Court affirmed the inviolability of this right, which cannot be suppressed by the Public Administration even for reasons of public order, as it constitutes an absolute right.[8]

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

Parties to administrative or judicial proceedings can rely on an international agreement only in so far as they refer to the internal act that ratified it.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Italian judicial system is divided into ordinary and non-ordinary jurisdiction. The Constitutional Court is not part of the judiciary although its functions are substantially judiciary. Among the different powers, it judges on controversies relating to the constitutional legitimacy of laws and enactments having the force of law from the State and Regions. It also decides on conflicts of powers between the different institutions of the State, between State and Regions and between Regions.
Ordinary jurisdiction deals with civil or criminal matters and is administered by ordinary judges and honorary judges who form the judiciary. Honorary judges are judges who are not professionals and they have jurisdiction over minor civil and criminal cases (for example, justice of the peace or ‘*giudice di pace’*).
The first instance jurisdiction, either in civil or criminal matters, is exercised by judicial bodies as follows:
Justices of the Peace, a monocratic honorary body which deals with minor claims (for example claims not exceeding 5000 euros) or predetermined minor crimes;
Ordinary Tribunal, which may sit as a court with a single judge court or a panel of judges depending on the procedural rules applicable to the case at hand;
Court of Assizes (*Corte D'Assise*), which deals only with predetermined very serious crimes (for example terrorism);
Juvenile Court (*Tribunale per i minorenni).*
The second instance jurisdiction, either in civil or criminal matters, is exercised by judicial bodies as follows:
Court of Appeal (*Corte d’appello*), which reviews the judgments delivered by the courts of first instance. It can (totally or partially) amend the judgment rendered in the first instance or dismiss the application;
The Court of Assizes of Appeal (*Corte D'Assise d’appello*), reviews the judgments of the Courts of Assizes. It can (totally or partially) amend the judgment rendered in the first instance or dismiss the application.
The non-ordinary jurisdiction includes the:
Court of Auditors (*Corte dei Conti*)
Military Courts
Administrative Jurisdiction
The administrative jurisdiction aims to guarantee respect by the PA of the principle of the rule of law and to protect individual rights and legitimate interests. As mentioned earlier, legitimate interest is the interest of the party in obtaining an administrative decision. A legitimate interest may thus arise every time a public entity exercises, or fails to exercise, an authoritative power affecting individuals. All administrative decisions may be challenged before the administrative judiciary, including those issued by the highest level of the administration (such as acts issued by the executive). Only political acts cannot be challenged before the administrative judge. The administrative jurisdiction is composed of the Regional Administrative Tribunals (*TAR*), in the first instance, and the Council of State (*Consiglio di Stato)*, in the second and final instance.

The highest judicial body in civil and criminal matters is the Supreme Court of Cassation. It is not, however, a third instance Court. The Supreme Court of Cassation is in fact competent only to assess violation or the misinterpretation of the law by a lower court. Cases of conflict of competence between special judges or between special and ordinary judges are also referred to the Supreme Court of Cassation, which rules in a joint sitting of all sections (*Sezioni Unite*).

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

In criminal proceedings, territorial jurisdiction is determined by the place where the crime was committed. Depending on the type and seriousness of the offence, the crime will be tried before a Justice of the Peace, Ordinary Tribunal, or Court of Assizes. Cases of conflict of competence or jurisdiction can be challenged by the parties or by court's own motion at every stage of the trial proceedings (Art. 20 Code of Criminal Procedure).

In civil proceedings the general rule is that the competent court is the one in the defendant's place of residence or domicile (Art. 18 Code of Civil Procedure). Depending on the economic value of the claim, the case will be tried before the Justice of the Peace or the Ordinary Tribunal. Cases of conflict of competence or jurisdiction can be challenged by the parties or by court's own motion at every stage of the trial proceedings (Arts. 37 and 41 Code of Civil Procedure).

There are 20 TARs, seated in the 20 regions of Italy. In administrative proceedings, the general rule is that territorial jurisdiction is determined by the place where the PA (responsible for the contested decision, act or omission) operates (Art. 13 CAP). Conflicts of jurisdiction can be challenged by the parties or by the tribunal's own motion during the first instance proceedings (Art. 9 CAP).

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

The Italian legal system does not provide for special judicial bodies or for special judicial proceedings in environmental matters. These are mainly dealt with by the administrative jurisdiction, which follows the general rules of the administrative procedure.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion.

Appeals against administrative acts fall within the exclusive competence of administrative judges. The administrative jurisdiction has a general competence over the legitimacy of acts issued by the Public Administration which are alleged to infringe upon "legitimate interests" (i.e. a violation of an individual's interests caused by a decision of the PA). In this case the administrative tribunal can order the reversal of an administrative decision which has been found invalid due to lack of competence, a breach of the law, or abuse of power. When administrative judges quash an administrative decision, they can specify suitable measures to ensure implementation of the judgment (Art. 34.1 CAP). Since 2000,[9] an administrative judge can also order the PA to pay a compensation for damages suffered by an individual due to acts or omissions of the PA (Art. 30 CAP).

Furthermore, the administrative jurisdiction has a residual exclusive competence over some matters (Art. 133 CAP), for example:

access to administrative documents;

decisions of the PA regarding energy production;

management of the waste cycle;

decisions adopted in violation of environmental damage regulations.

The exclusive competence does not challenge a specific act issued by the PA, but it is used to enforce a right recognised by law. The administrative judge can order the PA to award damages, to do or give something, or to provide a specific service (so-called *reintegrazione in forma specifica*) (Art. 34 CAP).

As a general rule, a tribunal cannot on its own motion adjudicate on claims which have not been brought before it and it must rule within the limits of the request. Once a proceeding has been initiated by the parties, judges have limited powers of own motion. By way of example, the judge can on his own motion:

undertake preparatory enquiries or appoint a technical expert as a consultant (so-called *Consulente Tecnico d'Ufficio* - CTU) tasked with assessing the technical aspects of the decision under consideration (see question 1.5);

seek clarifications and request further documents from the parties to substantiate the case during the inquiry phase of the proceedings (Art. 63);

decide who has to bear certain costs of the judicial proceedings (Art. 26);

declare an administrative act void in the cases prescribed by law (Art. 35);

specify suitable measures to ensure implementation of the judgment.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

In the Italian national system, the administrative framework refers to the State, regional administrations, provinces, municipalities, and any bodies which perform public duties (Art. 41-43 Constitution). The MATTM has competence with regard to: permits for waste disposal in marine waters; measures concerning power lines with tension over 150 KV; environmental impact assessment (EIA), strategic environmental assessment (SEA) and integrated pollution prevention and control (IPPC/IED) procedures for sites of particular significance.

Regions have planning and programming competences. Moreover, Regions are entrusted with the power to adopt specific administrative measures such as waste management permits, air emission permits, and EIA and IPPC procedures when not reserved to the State and not delegated to Provinces by the Regions.

As the Regions have the option to delegate administrative powers to municipalities, the precise nature of the powers of municipalities varies, although in general the competences conferred in environmental matters have been limited in scope.[10]

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Administrative environmental decisions can be appealed before the competent *TAR* within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended). Administrative remedies do not have to be exhausted before taking a case to a Tribunal (Art. 20 of Law 1034/1971). The decision of the TAR is appealable before the Council of State within 60 days from notification of the tribunal decision. In the national system, there is no time limit for the tribunal to deliver a judgment. Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[11] Furthermore, Art. 2.2 CAP requires the administrative judge and the parties to cooperate to achieve a reasonable duration of the trial.

3) Existence of special environmental courts, main role, competence

The Italian legal system does not provide for special judicial bodies or for special judicial proceedings in environmental matters. These are mainly dealt with by the administrative jurisdiction, which follows the general rules of the administrative procedure.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Along with judicial remedies, the Italian legal system provides for non-judicial proceedings to challenge administrative acts (*ricorsi amministrativi* – Decree of the President of the Republic 1199/1971). These include:

the *typical hierarchical appeal*: submitted to the superior organ of the PA that adopted the decision;

the *atypical hierarchical appeal*: submitted to a different organ of the PA from the one that adopted the decision in absence of a hierarchical relationship;

the *opposition appeal*: submitted to the same organ of the PA that adopted the decision.
Against administrative environmental decisions, individuals and NGOs can resort to both non-judicial and judicial remedies. In non-judicial remedies, the administrative organs before which the act has been appealed have to deliver the decisions within the time limit provided by law, which varies according to the different procedures involved. For example, the time limits can be 30, 60, 90 or 120 days from the submission of the request (Decree of the President of the Republic 1199/1971). The decision adopted by the administrative organ as result of the non-judicial remedy can be challenged before the *TAR* and the Council of State. These non-judicial proceedings review not only the legality, but also the merits – the appropriateness – of the decision and they are not a precondition for the judicial administrative appeal. On the other hand, these procedures do not preclude the possibility of going before the administrative tribunal (*TAR*) if the *PA* dismisses the appeal.
Administrative environmental decisions (EIA, SEA, IPPC) are appealable before the body that is hierarchically superior to the one that issues the decision (*hierarchical appeal*). The applicant has to file the appeal within 30 days from notification of the decision affecting his or her interests. This procedure has to be concluded by the PA within 90 days.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

The system of non-judicial proceedings provides for an extraordinary and residual means of appeal, so-called *Appeal before the President of the Republic* (*Ricorso Straordinario al Presidente della Repubblica*), through which only the legality (not the merits) of a definitive act of the PA can be challenged. Once this remedy is chosen, the judicial administrative appeal is precluded. An appeal before the President of the Republic can be filed within 120 days from notification of the contested decision and is decided according to the mandatory advice of the Council of State.
Furthermore, at every stage of the judicial proceedings, parties can ask the judge to submit a request for preliminary reference to the CJEU. As general rule, the judge has discretionary power on whether to refer the preliminary question. The obligation to refer arises when domestic judicial remedies are no longer available and an opinion on the application of EU law is needed in order to reach a decision. The reference also becomes mandatory even for a court of first instance when a question as to the validity of EU law is raised. This is because national courts have no jurisdiction to declare void measures taken by the EU institutions.[12]

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

In the Italian judicial system, alternative dispute resolution mechanisms, such as mediation and conciliation, are compulsory only in civil procedures and they concern only specific matters (Legislative Decree 28/2010). Therefore, alternative dispute resolution mechanisms are not available in the context of administrative judgments dealing with environmental matters.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

In Italy, Law 127/1997 introduced the Ombudsman at the regional level and in the autonomous Provinces, but there is no Ombudsperson at the national level.[13] They can assist the public in the preparation of an appeal (they cannot, however, bring the claim to court themselves) and can request the PA to review a contested action or omission (Art.16 Law 127/1997).
Private criminal prosecution is not available in the Italian legal system. Only the public prosecutor has the power – which is also an obligation – to initiate criminal proceedings (Art. 112 of the Constitution). However, natural and legal persons can lodge a complaint with the public prosecutor against criminal acts harmful to the environment and health.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

The EC defines the 'concerned public' as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. NGOs promoting environmental protection and meeting the requirements under national law are considered by law to have an interest (Art. 5, letter v) EC).

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

For the above actors (within the meaning of the concerned public) there are no rules applicable in sectoral or procedural legislation such as EIA, IPPC. Legal standing is granted to any subject whose interest is affected by the decision of the PA (Art.7 CAP).

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

The Italian legal system provides members of the public having a legitimate interest in an administrative decision with the possibility to participate in the environmental decision-making process. This right is further enhanced by the possibility to challenge the final decision resulting from the decision-making process before an administrative or judicial body, provided that their right or legitimate interest might have been infringed.
As regards individuals, it has been noted that administrative case law on standing seems to rely on vague and flexible concepts like 'vicinitas' (a stable and relevant link between the claimant and the environmental area at stake, to be verified on a case-by-case basis).[14] For instance, being the owner (or living in the boarders) of a piece of land affected by environmentally harmful activities or a source of pollution may suffice to establish standing.[15]
Moreover, the recognised environmental NGOs accredited with the Ministry of Environment under Article 13 of Law No 349/1986 are considered to have an interest in environmental decisions, acts or omissions. In order to be officially recognised by the Ministry of the Environment and to have legal standing, the associations need to fulfil certain requirements: they need to act across the whole Country or in at least 5 Regions; to have democratic internal rules; to pursue objectives of environmental protection; and to have continuity of action.
According to Italian administrative case-law, legal standing can also be conferred by the judge upon organisations and ad hoc groups representing an interest that could be impaired by the decision, once a concrete and stable connection with the territory is established. Standing of groups and associations can thus be granted, on a case-by-case basis, provided that the group or association is effectively and consistently involved in the protection of the environment and represents the local community affected by the measure challenged.[16]
According to Italian administrative case-law, legal standing can also be conferred by judges upon foreign NGOs representing an interest that could be prejudiced by the decision.

4) What are the rules for translation and interpretation if foreign parties are involved?

As a general rule, judicial proceedings must be held in Italian (Art. 122 of the Italian Code of Civil Procedure). Nonetheless, the law provides for some exceptions with regard to Regions and autonomous Provinces. For example, in Trentino-Alto Adige, German has equal status with Italian with reference to specific acts in the proceedings. In Valle d'Aosta, French has equal status with Italian, and in Friuli-Venezia Giulia, specific rights are granted to the Slovenian-speaking minority. Outside these exceptions, when a non-Italian speaker has to be heard or when the judge needs to examine documents not written in Italian, an interpreter can be appointed. In criminal proceedings the defendant is granted free assistance from an interpreter (Art. 111 of the Constitution and Art. 143 of the Code of Criminal Procedure). In administrative and civil proceedings, the judge decides which party has to pay the interpreter's fee (Art. 53 of the rules implementing the civil procedure code). The Italian legal system applies the 'losing party pays' principle, so the loser must pay the costs of the interpreter. Nevertheless, the judge can limit the losing party's liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary.

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

The rules that apply to evidence in environmental cases derive from the civil, criminal and administrative codes of procedure. In particular, two basic principles regulate the collection of evidence: the burden of proof is on the applicant; and the collection of evidence follows the adversarial principle (*contraddittorio tra le parti*).

It is the responsibility of the parties to provide to the judge the evidence that is available to them. Parties to a dispute can provide documentary submissions and request the judge to order the appointment of an expert, inspections of persons or things, exhibition of documents or other objects, or hearing of witnesses. The judge can uphold or dismiss these requests with a motivated decree.

Furthermore, if further information is needed, the administrative judge can on his/her own motion:

ask the parties to present documents or clarifications (Art. 63 CAP);

order third parties to exhibit documents and other things (Art. 63 CAP);

admit written testimonial evidence (Art. 63 CAP);

admit other evidence envisaged in the Code of Civil Procedure, excluding formal interrogation and oath (Art. 63 CAP);

undertake preparatory enquiries or appoint a technical expert as a consultant (so-called *Consulente Tecnico d'Ufficio* - CTU) tasked with assessing the technical aspects of the decision under consideration (Art. 63 CAP);

order the PA to provide useful information and documents (Art. 64 CAP).

The evidence is evaluated by the judge in accordance with the principle of free and wise assessment of the judge (Art 64.4 CAP, Art.192 Code of Criminal Procedure, Art. 116 Code of Civil Procedure).

2) Can one introduce new evidence?

All of the allegations and requests from the parties must be submitted within the deadlines established by the judge during the inquiry phase (*fase istruttoria*), otherwise they will be declared inadmissible. The inquiry phase ends once all evidence has been submitted within the provided deadlines. The collection of evidence can also be made before the start of the inquiry phase when there is a serious risk that the evidence will perish or change significantly with the passing of the time. Late submissions of briefs or documents may be exceptionally authorised by the judge at the request of a party (Art. 54 and Art. 73 CAP)

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

The Code of Administrative Procedure does not expressly provide or regulate the ability of the parties to nominate their own experts (*Consulente Tecnico di Parte* - CPT). The Council of the State, however, has established that the parties can nominate their own CPT who is entitled to participate in the enquiry by the expert nominated by the judge (CTU).[17] Generally, parties can request the judge to nominate an expert from among civil servants or professionals enrolled in the Expert Register held within each Tribunal.[18]

3.1) Is the expert opinion binding on judges, is there a level of discretion?

The opinion of the expert is not strictly binding on the judge. The judge can decide differently from the expert opinion provided that he or she justifies the decision.

3.2) Rules for experts being called upon by the court

CTUs are nominated by the judge with a tribunal order. With the same tribunal order, the judge formulates the questions to the CTU and sets the deadline within which the appointed expert must appear before the magistrate delegated for this purpose to take up the assignment and take the oath (Art. 67 CAP).

3.3) Rules for experts called upon by the parties

As mentioned above, parties can request the judge to appoint an expert. The rules set forth in 3.2 therefore apply.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

With the same tribunal order nominating the CTU, the judge defines the expert's fees. Specifically, with the tribunal order (*decreto di nomina*) the judge generally orders payment of the first instalment, while the final expert fees are cleared by the judge at the end of the procedure, at the request of the CTU. The judge's auxiliaries (CTU, interpreters, technical experts, *etc.*) are entitled to reimbursement of any fees, travel expenses, subsistence allowances and other expenses incurred in fulfilling the assignment. Expert's fees vary on a case-by-case basis and are based on the table provided for in DPR 115/2002 and DM 30/05/2002, which include the amounts of fixed and variable fees for experts and technical consultants. For services not listed in the table, fees correspond to the so-called *vocazioni*. Each vocation lasts 2 hours. The fees for the first vocation are 14.68 euros, decreasing to 8.15 euros for each subsequent vocation. The judge cannot assign more than four vocations per day.[19]

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

In the Italian legal system, lawyers are the sole actors entitled to represent and defend the interests of a party in judicial proceedings. Legal counsel is always compulsory in judicial proceedings, except in access to information cases brought before the administrative judge and in civil disputes before the Justice of the Peace when the value of the controversy does not exceed 1,100 euros (Art. 82 of the Code of Civil Procedure).

Lawyers act within the limits of the mandate received in written form from their client and must comply with the principles of morality, integrity, and loyalty provided for by the Code of Conduct (*Codice Deontologico*). The local and national bar associations guarantee the enforcement of this Code and can impose disciplinary sanctions.[20]

Furthermore, Law 27/2012 [21] establishes that all professionals, lawyers included, must give their clients an advance estimate of the costs of the professional activity as well as an indication of the degree of complexity of the case. Lawyers' fees are determined according to the parameters (*parametri)* identified by Decree of the Ministry of Justice no 55/2014, as last amended by Decree of the Ministry of Justice no 37/2018. Lawyers' fees can be negotiated with the client.

1.1 Existence or not of pro bono assistance

In Italy, there are no express provisions on pro bono assistance. However, the principle of freedom of the parties to determine the applicable fees for legal services[22] is usually interpreted to allow lawyers who are ethically or socially motivated to provide this service. No specific license is required by lawyers to provide pro bono legal services in Italy; the only requirements are to be a lawyer registered with the Italian Bar Association (*Ordine degli Avvocati*) and to offer pro bono legal services in compliance with the applicable legislation and the Professional Rules.[23]

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

As mentioned earlier, in Italy there are no express provisions on pro bono assistance; however, some law firms and environmental NGOs provide this service (see section 1.3 below).

1.3 Who should be addressed by the applicant for pro bono assistance?

Some environmental lawyers have formed associations that provide counsel in environmental matters.[24] Furthermore, some NGOs have opened specialised offices advising citizens on environmental matters.[25] Citizens can contact law firms and lawyers specialised in environmental matters directly or through the NGOs.[26]

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

In Italy there is no specific section of the bar or register of environmental law specialists. As mentioned above, environmental expert registers exist within each Tribunal.[27]

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

The website of the Ministry of the Environment provides a list of environmental NGOs active in Italy.

4) List of international NGOs, who are active in the Member State

Several international NGOs are active on the national territory. Examples are:

- Greenpeace Italia
- WWF Italia
- Earth Council Italia
- Society for International Development Italy
- World Farmers' Organization (WFO)
- Action Committee for the Three Global Conventions (CA3C)
- Friends of the Earth Italy.

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).

Environmental administrative decisions (VIA, VAS and AIA) are appealable before the body that is hierarchically superior to the one that issued the decision (*Hierarchical appeal* – Art. 17 of Decree of the President of the Republic 1199/1971). The applicant has to file the appeal within 30 days from notification of the decision affecting his or her interests.

2) Time limit to deliver decision by an administrative organ

The procedure has to be concluded within 90 days with the final adoption of a new administrative decision which is appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). If, after 90 days from the appeal, the PA has not communicated the decision to the interested party, the appeal is considered to be rejected. The rejection can be appealed before the TAR and the Council of State.

3) Is it possible to challenge the first level administrative decision directly before court?

Environmental administrative decisions can also be appealed directly before the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended). Administrative remedies, therefore, do not have to be exhausted before taking a case to the administrative tribunal (Art. 20 of Law 1034/1971).

4) Is there a deadline set for the national court to deliver its judgment?

In Italy, there is no deadline set for the national court to deliver its judgment. However, Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Generally, an average of three years is needed by administrative tribunals to decide.[28]

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

Natural and legal persons can challenge environmental administrative decisions before the TAR within 60 days from notification of the decisions. All the allegations and requests from the parties must be submitted within the inquiry phase (*fase istruttoria*) otherwise they will be declared inadmissible by the judge.

The parties can produce documents up to 40 days before the hearing, memos up to 30 days and replies to new documents and new briefs up to 20 days before the hearing. Late submission of briefs or documents may be exceptionally authorised by the judge at the request of a party (Art. 54 and Art. 73 CAP).

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

When challenging an administrative decision, neither the administrative appeal nor the application for judicial review have automatic suspensive effect. Under Art. 55 CAP, the applicant can ask the tribunal for suspension of the effects of the challenged decisions or for the adoption of any suitable interim measures. The administrative tribunal will annul the decision when the grounds raised by the applicant are well-founded.

Execution of the administrative measure can also be suspended for serious reasons, and for the time strictly necessary, by the same body that issued the measure or by another body required by law. The suspension deadline is explicitly indicated in the act that orders the suspension and can be extended or deferred only once, or reduced if this is considered necessary by the PA (Art. 21-*quarter* of Law 241/1990).

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

As far as administrative proceedings are concerned, an injunction can be granted only at the request of the claimant and it has to be addressed to the competent tribunal. The decision on the granting of injunctive relief is challengeable before the Council of State within 30 days from notification of the measure or within 60 days from publication of the measure in the official law journal (Art. 55, 56 and 58 CAP).

As far as administrative procedures are concerned (*ricorsi amministrativi*), suspension of the administrative act can be granted by the hierarchically superior PA either on its own motion or at the request of the claimant (Art. 2 Decree of the President of the Republic 1199/1971).

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

A request for injunctive relief in environmental matters can be introduced after the adoption of the final decision and has to be addressed to the competent tribunal.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Generally, the administrative decisions can be immediately executed irrespective of any appeal or an action submitted to the tribunal.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

When an administrative decision is challenged, neither the administrative appeal nor the application for judicial review have automatic suspensive effect. Claimants wishing to suspend an administrative decision need to address the request to the competent PA or to the administrative tribunal.

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

The criteria for granting injunctive relief before the administrative judge are defined by the CAP: once the request is made, the judge has to decide on the matter during the first available hearing after notification of the request and after 10 days from lodging of the appeal. The parties are allowed to submit documents until two days before the decision on the request and are entitled to appear before the tribunal.

In order to take the decision, the judge has to verify whether execution of the contested act could do serious and irreparable damage to the claimant's interests. Once this condition is verified, the judge can issue an order containing the reasons why the injunctive measure should be granted. The injunctive measure can then be enforced by the claimant and it may contain an order:
to suspend the contested decision;
to pay a sum of money.
It can also provide for other types of injunctive measures, such as judicial attachment or urgent actions.
If the decision on injunctive relief has irreversible effect, the judge may decide to grant it only upon payment of bail. Furthermore, if the decision on the injunction is not executed, wholly or in part, the interested party can request the tribunal (TAR) to take the appropriate enforcement measures. The decision on the granting of injunctive relief is challengeable before the Council of State within 30 days from notification of the measure or within 60 days from publication of the measure in the official law journal.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

The cost categories faced by an applicant when seeking access to justice in environmental matters are:
the court fee (*Contributo Unificato*);
the stamp duty (27 euros);
the lawyers' fees;
the experts' fees (when needed).
The court fees vary depending on the type of proceedings and on the value of the dispute declared by the applicant (Art.13 of Presidential Decree no 115 /2002 on judicial fees).[29] In administrative proceedings, the court fee might vary from a minimum of € 650 to a maximum of € 6,000. In case of appeal, it may vary from a minimum of € 925 to a maximum of € 9,000.
Few examples relevant to environmental administrative proceedings can be made:

Type of Administrative Appeal	Court Fee
Proceedings concerning access to environmental information	Free
Proceedings concerning access to administrative documents	300 euros
Proceedings against the silence of the PA	300 euros
Proceedings concerning the execution of judgments	300 euros
Appeal before TAR and Council of State	650 euros
Extraordinary appeal before the President of the Republic	650 euros

If the claim is successful, the claimant is reimbursed by the losing party/ies, unless the judge rules that each party shall bear its own costs.
Under Art. 9.4 of Law 21/2012, all professionals, lawyers included, must give their clients an advance estimate of all the costs linked to the professional activity as well as an indication of the degree of complexity of the case.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

The court fee for injunctive relief/interim injunction follows above-mentioned rules but it is reduced of 50%, and stamp duties are mandatory. A deposit/cross-undertaking in damages can be offered by the applicant or ordered by the judge. As mentioned, if the decision on the injunctive relief has irreversible effect, the judge may decide to grant it only upon payment of bail.

3) Is there legal aid available for natural persons?

In the Italian system, financial assistance for indigents is a fundamental right enshrined in the Italian Constitution (Art. 24). Decree of the President of the Republic no 115/2002 therefore provides that legal aid must be granted by the State (*patrocinio a spese dello Stato*) to natural persons who have an annual income below € 11,493.82. This threshold is updated every two years by a decree of the Ministry of Justice, in line with inflation.
In civil, criminal, and administrative proceedings, a request filed on unstamped paper must be submitted to the competent bar association,[30] which might ask the applicant to produce further documents in order to prove his or her economic status. Within 10 days from the request the bar association has to uphold or dismiss the application. If the request is upheld the applicant can choose a lawyer from the list held by the bar association, and the court fee as well as the lawyers' fees are paid by the State. If the request is rejected, the applicant can reapply directly to the judge who is presiding in the case.

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

Art. 119 of Decree of the President of the Republic no 115/2002 extends legal aid also to entities and associations, provided that they do not operate for profit; that they do not engage in economic activities (both criteria need to be met); and that they have an annual income not exceeding € 11,493.82. The request for legal aid by entities and associations follow the same rules provided for natural persons.[31]

5) Are there other financial mechanisms available to provide financial assistance?

While natural persons can only request legal aid or pro bono assistance from law firms, environmental associations in Italy can also rely on different channels for funding. For example, they can ask to be included in the list of non-profit entities to which citizens can devolve 5/1000 of their taxes due to the State. They can also draw on EU, State, regional and local special funds.[32]

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

The Italian legal system applies the 'loser party pays' principle (Art. 91 of the Code of Civil Procedure). Nevertheless, judges can limit the losing party's liability for costs at their own discretion if they find that the costs incurred by the winning party are excessive or unnecessary. In circumstances prescribed by law the judge can also rule that each party must bear its own costs. This applies, for instance, when one party won on one controversial point while the other party succeeded on another, or for other exceptional reasons set forth in the judgment (Art. 92 of the Code of Civil Procedure).

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

In some matters the law provides for exemption from the court fees, considering the importance of the rights involved. By way of example, there are no court fees for:
access to information cases;
civil action in criminal proceedings when asking for generic compensation.
Furthermore, environmental protection associations recognised by the MATTM can enjoy exemption from payment of the court fees, provided that they act to protect common collective interests in environmental matters.[33]

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

Detailed information on access to justice is provided here.
The NGO Legambiente also provides practical information on instruments of access to justice, including templates for exercising the right of access to environmental documents and for reporting suspected violations of environmental law.[34] Furthermore, in 2003 the ISPRA Public Relations Office was set up to facilitate citizens' access to environmental information at the national level.
The Italian legislator has also provided for other forms of structured dissemination:
The National Environmental Information System - SINA (*Sistema Informativo Ambientale*) is the national system for the collection and monitoring of environmental information.
The environmental assessment portal provides information about ongoing environmental assessments.
Detailed information on inspections planned and performed under the Industrial Emissions Directive is made available by ISPRA.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Information on environmental administrative decisions is published on the website of the competent PA and made available in the national **GU** (*Gazzetta Ufficiale della Repubblica italiana*) or regional **BUR** (*Bollettino Ufficiale Regionale*). Information on access to justice is provided in each administrative decision published by the PA.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There are no sectoral rules applicable for EIA, IPPC procedures.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

Under Art. 3 and Art. 8 of Law 241/1990, every decision of the PA notified to its addressee must indicate the competent authority – together with the deadlines – before which it is possible to obtain judicial review. Furthermore, Art 8.2.d of Law 241/1990 (and Art. 40-41 and 64-*bis* of Legislative Decree no 82 /2005) provides for telematic means of access to environmental information and access to justice.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

As a general rule, judicial proceedings have to be conducted in Italian language (Art. 122 of the Italian Code of Civil Procedure). Nonetheless, the law provides for some exceptions with regard to Regions and autonomous Provinces. For example, in Trentino-Alto Adige German has equal status with Italian with reference to specific acts of the proceeding. In Valle d'Aosta French has equal status with Italian, and in Friuli-Venezia Giulia, specific rights are granted to the Slovenian-speaking minority. Outside these exceptions, when a non-Italian speaker has to be heard or when the judge needs to examine documents not written in Italian, an interpreter can be appointed. In criminal proceedings the defendant is granted the free assistance from an interpreter (Art. 111 of the Constitution and Art. 143 of the Code of Criminal Procedure). In administrative and civil proceedings, the judge decides which party has to pay the interpreter' s fee (Art. 53 of the rules implementing the civil procedure code). The Italian legal system applies the 'losing party pays' principle, so the loser should pay the costs of the interpreter. Nevertheless, the judge can limit the losing party's liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned?

The EIA (*Valutazione di Impatto Ambientale - VIA*) applies to construction projects with a potential adverse effect on the environment. The main legislative act covering the EIA procedure is the EC as modified by Law 128/2010 and Legislative Decree 104/2017, which implements EU Directive 2014/52/EU. In this procedure the PA determines the need for an environmental impact assessment (screening); defines the object of the environmental impact study (scoping); consults the applicant and the interested public; evaluates the results of the environmental impact assessment together with the results of the consultations; decides on release of the project authorisation; makes public the decision and monitors the environmental effects of the authorised activity (Art. 19 EC).
As regards the screening procedure, this is the process of determining whether or not an EIA is required for a particular project. According to the general rules on public participation in decision-making process, natural and legal persons likely to be affected by the decision, as well as anybody having a private or public interest, including associations representing common interests, can participate in the screening procedure when such interests are likely to be affected. According to the rules on public participation set forth in the EC, the party proposing the activity shall send to the competent authority the preliminary environmental impact study. The preliminary study is then published on the website of the competent authority and the public concerned can submit comments within 45 days (Art. 19 EC). The competent authority adopts the final decision within the next 45 days. All documentation relating to the procedure and the final decision, including comments and opinions presented by the public, is published by the competent authority on its website.[35]
The final screening decisions on whether or not an EIA has to be carried out can be appealed before the administrative judge by natural and legal persons who have a legitimate interest, or whose rights might be infringed upon by the decision, within 60 days from the date of its publication according to the general rules of administrative judicial proceedings.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

The scoping procedure is the process of identifying the content and extent of the environmental information to be submitted to the competent authority under the EIA. Members of the public with a legitimate interest or likely to be affected by the decision, including public interest groups such as NGOs, are entitled to participate in the scoping procedure.
The party proposing the activity shall send to the competent authority the environmental impact study which is published on the website of the competent authority. The public concerned can provide written comments within 60 days from the day the documentation was published. The competent authority can also decide to organise consultations through public hearings which aim at further discussing with the public technical opinions and observations. The public hearing concludes with the preparation of a report which has to be taken into consideration for the final decision (Art. 24 *bis* EC).
The final EIA scoping decisions (determining the object of the environmental impact study) can only be reviewed together with the final decision on the EIA procedure (Art. 21 and 27 EC).

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

Usually, the public can challenge the environmental decision during the consultation phase which takes place after the first step of the environmental authorisation procedure (i.e. the screening phase). The EIA scoping decisions can only be reviewed together with the final decision on the EIA procedure (Art. 21 and Art. 27 EPC).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

Natural and legal persons who have a legitimate interest (including foreign NGOs), or whose rights may infringed by the decision, can always challenge the final authorisation according to the general rules on administrative procedure. This is appealable before the body hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interests. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971).

Administrative decisions, acts or omissions can be appealed directly before the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and Art. 21 of Law 1034/1971, as subsequently amended).

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

Administrative tribunals review not only the procedural legality of the administrative decisions but also their substantive legality. Under the first category, tribunals check whether the proper authority has taken the decision following the prescribed procedural steps. Under the second, tribunals check whether environmental laws were complied with. Administrative tribunals also look beyond the administrative decision and may involve a technical expert tasked with verifying the material and the project data, who will produce a report on which the final decision will be based (Art. 67 of Law 156/2010). Under both the procedural and the substantive legality check, the administrative tribunals can annul the decision of the PA and award damages (Art. 30 CAP). The tribunal may also order inspections, request tests or delegate a technical expert as a consultant to evaluate the material and the data concerning the environmental impact study (Art. 67 of Law 156/2010).

6) At what stage are decisions, acts or omissions challengeable?

Decisions, acts or omissions are challengeable after the adoption of the screening decision or the final decision authorising or rejecting the authorisation (Art. 21 and Art. 27 EPC).

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Administrative remedies do not have to be exhausted before taking a case to Court (Art. 20 of Law 1034/1971).

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase of the EIA procedure. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

In the Italian system, administrative jurisdiction is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 CAP) in line with Art. 111 of the Constitution and the case law of the ECHR[36] and the CJEU. The parties to the trial, according to Art. 2 and Art. 111 of the Constitution, must be also put in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

10) How is the notion of "timely" implemented by the national legislation?

Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[37]

While sanctions are not applied for administrative tribunals delivering delayed decisions, Law 89/2001 provides that anyone who has suffered material or moral damage from the breach of the right to a reasonable duration of the trial (as foreseen by Art. 6, para 1 of the ECHR) is entitled to go before the Appeal Court in order to claim damages. The reasonable duration of the trial must be assessed by the Appeal Court taking into account the complexity of the case and the behaviour of the parties and of the judge, as well as the conduct of any other authority that is called to contribute to the definition of the proceeding (Art. 2.2 of Law 89/2001).

11) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

The injunctive relief in EIA procedures is available according to the general rules set forth in section 1.7.2 and it can be applied to the final EIA decision. Furthermore, the PA that adopted the latter can decide to temporarily suspend the effects of the EIA decision for serious reasons. The suspension can be extended just once or reduced in case of subsequent needs (Art. 21quater, 2 of Law 241/1990).

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

The integrated pollution prevention and control (IPPC) procedure was introduced in the EC through the adoption of Legislative Decree 128/2010 as modified by Legislative Decree 46/2014, Legislative Decree 127/2016 and Law 167/2017.[38] The IPPC is the procedure through which the competent authority adopts the AIA decision (*Autorizzazione Integrata Ambientale*) authorising the construction or the functioning of certain plants that are likely to produce environmental pollution.

According to the general rules on public participation in decision-making processes, natural and legal persons likely to be affected by the AIA decision, as well as anybody having a private or public interest, including associations representing common interests, can participate in the IPPC procedure when such interests are likely to be affected.

IPPC legislation is complemented by sectoral provisions on public participation. Accordingly, during AIA procedures, the public concerned can submit observations within 30 days from publication of the request of the permit on the competent authority's website.

There are no special rules related to access to justice for IPPC/IED procedures. The AIA decision can therefore be appealed according to the general rules of administrative judicial proceedings.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

According to the general rule of administrative procedure, any natural or legal person whose rights or legitimate interest might be infringed by the administrative decision can appeal the decision granting or rejecting the permit before the body that is hierarchically superior to the one that issued the decision. Administrative decisions can also be appealed directly before the TAR.

Natural and legal persons, including foreign NGOs, which have a legitimate interest, or whose rights are infringed by the decision, can challenge the final decision according to the general rules of administrative procedure.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

There is no *per se* screening in the IPPC procedure. However, when IPPC projects fall within the scope of the EIA, the EIA screening procedure is required. In this case the AIA can be released only after the competent authority has decided not to subject the projects to EIA. In these circumstances, the rules set forth in section 1.8.1 apply.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

There is no *per se* scooping in the IPPC procedure.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

When IPPC projects fall within the scope of the EIA, natural and legal persons can challenge the EIA screening decision. Natural and legal persons can also challenge the final decision authorising or rejecting the permit. These decisions are challengeable before the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision. Decisions on environmental projects are also challengeable before the body hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State.

6) Can the public challenge the final authorisation?

Natural and legal persons, including foreign NGOs, which have a legitimate interest, or whose rights are infringed by the decision, can always challenge the final authorisation according to the general rules on administrative procedure.

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

Administrative tribunals review not only the procedural legality of the administrative decisions but also their substantive legality. Under the first category, tribunals check whether the proper authority has taken the decision following the prescribed procedural steps. Under the second, tribunals check whether environmental laws were complied with. Administrative tribunals also look beyond the administrative decision and may involve a technical expert tasked with verifying the material and the project data, who will produce a report on which the final decision will be based (Art. 67 of Law 156/2010). Under both the procedural and the substantive legality check, administrative tribunals can annul the decision of the PA and award damages (Art. 30 CAP). The administrative tribunal may also order inspections, request tests or delegate a technical expert as a consultant to evaluate the material and the data concerning the environmental impact study (Art. 67 of Law 156/2010).

8) At what stage are these challengeable?

The public concerned can challenge the final administrative decision or the EIA screening decision when applicable (see in this respect 1.8.2.(5)).

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Administrative remedies do not have to be exhausted before taking a case to tribunal (Art. 20 of Law 1034/1971).

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase of the IPPC procedure. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

In the Italian legal system, administrative jurisdiction is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 CAP), in line with Art. 111 of the Constitution and the case law of the ECHR[39] and the CJEU. Parties, according to Art. 2 and Art. 111 of the Constitution, must be in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

12) How is the notion of "timely" implemented by the national legislation?

Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[40]

While sanctions are not applied for tribunals delivering delayed decisions, Law 89/2001 provides that anyone who has suffered material or moral damage from the breach of the right to a reasonable duration of the trial (as foreseen by Art. 6, para 1 of the ECHR) is entitled to go before the Appeal Court in order to claim damages. The reasonable duration of the trial must be assessed by the Appeal Court taking into account the complexity of the case and the behaviour of the parties and of the judge, as well as the conduct of any other authority that is called to contribute to the definition of the proceeding (Art. 2.2 of Law 89/2001).

13) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

The injunctive relief in IPPC procedures is available according to the general rules set forth in section 1.7.2. It refers to the final AIA decision. Furthermore, the PA that adopted the AIA decision can decide to suspend it temporarily for serious reasons. The suspension can be extended just once or reduced in case of subsequent needs (Art. 21quater, 2 of Law 241/1990).

14) Is information on access to justice provided to the public in a structured and accessible manner?

According to Art. 3 and Art. 8 of Law 241/1990 every decision of the PA notified to its addressee must indicate the competent authority - together with the deadlines – before which it is possible to obtain judicial review.

1.8.3. Environmental liability[41]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

In Italy, the Environmental Liability Directive 2004/35/EC has been transposed in Title III, part VI of the EC. Under Art. 309 of the EC, while citizens and recognised NGOs are not entitled to go to court autonomously in order to enforce environmental liability, they can submit to the METTM information, observations and documents concerning alleged environmental damage and request the METTM to act to remedy it. Recognised NGOs can also intervene in the environmental liability proceedings that the METTM may decide to start (Art.18 para 5 of Law 349/1986).

As regards standing to challenge the decision taken on environmental remediation, Art. 310 EC provides that any natural or legal persons who have a legitimate interest in participating in the proceeding related to the environmental remediation, or whose rights could be infringed by the environmental damage, can resort to both judicial and non-judicial remedies in order to:

appeal the decisions that are in contrast with the environmental liability legislations;

appeal the inactivity of the METTM in adopting precautionary, preventive or mitigating measures necessary to mitigate the environmental harm or in starting an environmental liability action against the party responsible for the damage;

ask for compensation for the injury caused by the delay on the part of the METTM in adopting such measures.

Recognised environmental NGOs are considered by law to have a legitimate interest in participating in the environmental damage proceedings (Art. 309.2 EC). Furthermore, it is common judicial practice that environmental associations non-recognised by the METTM under Art. 13 of Law 349/1986, may also be entitled to take legal action if they: a) pursue effective and non-occasional actions in favour of environmental protection; and b) represent the local community impacted by the challenged decision.[42]

2) In what deadline does one need to introduce appeals?

According to the general rules on administrative procedure (Art. 29 CAP), natural and legal persons can appeal the TAR within 60 days from notification or publication of the contested decision. Judicial remedy can be preceded by an opposition appeal (see section 1.3.4.) filed with the METTM. Claimants can also resort to extraordinary appeal to the President of the Republic.

Opposition to the METTM must be filed within 30 days. Against the silence of or rejection from the METTM. it is always possible to appeal the TAR within 60 days from notification of the decision rejecting the opposition, or 31 days after presentation of the opposition if no decision has been rendered (Art. 310 EC). The extraordinary appeal to the President of the Republic must be filed within 120 days from notification or publication of the contested decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

As regards the observations accompanying the request for action of the METTM under Art. 309, the EC does not provide for any formalities or specific requirements. Art. 309 only requires that observations are combined with documents and information concerning any case of environmental damage.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

The EC does not provide for specific requirements in this respect.

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

The EC does not provide a time limit for the competent authority to notify in writing, by post or by certified e-mail, the decision regarding the observations to the interested subjects. However, Art. 309 EC provides that the METTM shall act without delay. Against the silence of the METTM, claimants can appeal the TAR (Art. 310 EC).

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

No extension of the entitlement to request action by competent authority is foreseen in the EC in cases of imminent threat.

7) Which are the competent authorities designated by the MS?

The METTM, on behalf of the State, is entitled to take legal action in environmental liability matters. The ministerial action usually takes place in collaboration with the Regions, the local authorities and any other public authority that is entitled to participate (Art. 299, paras 1-2 of the EC as amended by Legislative Decree 128/2010).

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

Administrative review procedures do not need to be exhausted prior to recourse to judicial proceedings.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

If a project has an adverse impact on the environment in a transboundary context, the affected State and its population must be involved in the EIA or SEA procedure according to the rules set forth by the ESPOO Convention (implemented in Italy by Law 640/1994). For cross-border projects the METTM (Directorate for Environmental Protection) is responsible for issuing the notification to the affected State and providing the relevant documentation to its population. In Italy, there are no specific rules on access to justice for cross-border procedures. Therefore, national rules on access to justice apply. To this extent, the public concerned can challenge the environmental decision according to the rules set forth in sections 1.8.1 (EIA screening decision and EIA final decision) and 2.2 (SEA screening decision and SEA final decision).

2) Notion of public concerned?

In a transboundary context, the population living in the areas likely to be affected by the cross-border project represents the “public concerned”. Therefore, it includes citizens of the State of origin as well as those of the affected State who are to receive an equal treatment of information and participation (Art. 2, para 6 of the Espoo Convention).

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

If Italy breaches the participatory rights of the NGOs of an affected neighbouring State, it must grant those subjects the same rights conferred upon the citizens of the State of origin on the principle of non-discrimination (see e.g. Espoo Convention Art. 2 para 6).

A foreign NGO, although not officially recognised, could go before the Italian administrative judge in order to challenge the legitimacy of a proposed plan, programme, project or activity decision adopted by the Italian PA claiming that it has been excluded from the consultation phase. Legal standing, in fact, can be conferred by the Italian judge even on a case-by-case basis, irrespective of official recognition by the METTM.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

If Italy violates the participatory rights citizens of an affected neighbouring State, it must grant those subjects the same rights conferred upon the citizens of the State of origin on the principle of non-discrimination (see e.g. Espoo Convention Art. 2 para 6).

A foreign citizen could go before the Italian administrative judge in order to challenge the legitimacy of a proposed plan, programme, project or activity decision adopted by the Italian PA claiming that it has been excluded from the consultation phase.

5) At what stage is the information provided to the public concerned (including the above parties)?

The public concerned is informed about the procedure from the consultation phase.

6) What are the timeframes for public involvement including access to justice?

When a proposed plan, programme, project or activity is likely to cause a significant adverse transboundary impact, the METTM notifies and sends all relevant documentation to any State Party which may be affected. The affected State can notify its interest to intervene in the procedure within 60 days. If such an interest is expressed, the affected States forward to the competent authority the opinions and observations of the authorities and the public within 90 days from their declaration of interest (Art. 32 EC). In Italy, there are no specific rules on access to justice for cross-border procedures. Therefore, the national rules on access to justice set forth in section 1.3.2 justice apply. The public concerned can therefore appeal the environmental decision before the competent *TAR* within 60 days from notification of the decision or from the date of its publication.

7) How is information on access to justice provided to the parties?

The METTM has an obligation to send to the State participating in the procedure the final administrative decision. The decision, according to Art.3 and Art. 8 of Law 241/1990, indicates the competent authority – together with the deadlines – before which it is possible to obtain judicial review.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

As a general rule, judicial proceedings only must be held in Italian (Art. 122 of the Italian Code of Civil Procedure). Nonetheless, the law provides for some exceptions with regard to Regions and autonomous Provinces. For example, in Trentino-Alto Adige, German has equal status with Italian with reference to specific acts of the proceeding. In Valle d’Aosta, French has equal status with Italian, and in Friuli-Venezia Giulia, specific rights are granted to the Slovenian-speaking minority. Outside these exceptions, when a non-Italian speaker has to be heard or when the judge needs to examine documents not written in Italian, an interpreter can be appointed. In criminal proceedings the defendant is granted free assistance from an interpreter (Art. 111 of the Constitution and Art. 143 of the Code of Criminal Procedure). In administrative and civil proceedings, the judge decides which party has to pay the interpreter’s fee (Art. 53 of the rules implementing the civil procedure code). The Italian legal system applies the ‘losing party pays’ principle, so the loser must pay the costs of the interpreter. Nevertheless, the judge can limit the losing party’s liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary.

9) Any other relevant rules?

If a transboundary project causes damages to the population of a neighbouring State (be it Italy or one of its neighbouring States), individuals could go either before the court of their own State (where the harmful event has occurred) or before the courts of the neighbouring State where the harmful activity is located

in order to be awarded damages (Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

---

[1] See R. Caranta, 'Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy', 4.
[2] 'Una tutela così concepita é aderente al precetto dell'art. 9 Cost., il quale, secondo una scelta operata al più alto livello dell'ordinamento, assume il detto valore come primario (*mutatis mutandis* Constitutional Court, Judgment no 94 of 1985 and no 359 of 1985), cioé come insuscettivo di essere subordinato a qualsiasi altro' Constitutional Court, Judgment no 151 of 1986, para 4.
[3] 'Sennonché, quando si guarda all'ambiente come ad una "materia" di riparto della competenza legislativa tra Stato e Regioni, è necessario tener presente che si tratta di un bene della vita, materiale e complesso, la cui disciplina comprende anche la tutela e la salvaguardia delle qualità e degli equilibri delle sue singole componenti' and 'Ed è da notare, a questo proposito, che la disciplina unitaria e complessiva del bene ambiente, inerisce ad un interesse pubblico di valore costituzionale primario, e deve garantire, (come prescrive il diritto comunitario) un elevato livello di tutela, come tale inderogabile da altre discipline di settore' Constitutional Court, Judgment no 378 of 2007 para 4.
[4] A list of Regional Agencies for Environmental Protection is available here.
[5] See e.g. Art 2043 Civil Code: 'Compensation for unlawful acts' provides that 'Any intentional or negligent fact that causes unjust damage to others shall oblige the person who committed the fact to compensate for the damage'. Such claim for damage was recently successfully applied in the environmental context in the judgment of the Tribunal of Rome (Tribunale di Roma, Civ. Law Section, judgment no 17258 of 20 September 2018).
[6] Law 241/1990, "Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi".
[7] Amended by Decree Law 91/2014 (transformed into Law 116/2014) and by Ministerial Decree 30/03/2015 (concerning projects subject to Regional/local procedure).
[8] Cass. Civ. S.U., October 6, 1979, no 5172.
[9] Court Cass. Sezione Unite 500/1999.
[10] See G.M. Vagliasindi and U. Salanitro,'*Development of an assessment framework on environmental governance in the EU Member States*', Italy, 14.
[11] See in this respect the 2018 EU Justice Scoreboard; see also CEPEJ Indicators on Efficiency.
[12] Case 314/85 Foto-Frost, EU:C:1987:452.
[13] National Association of Italian Ombudsmen.
[14] Caranta, R. (2013), *Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy'*, 11.
[15] T.A.R. Sicilia, Palermo, Sez. II, 7 agosto 2008, no 1097; Cons. Stato, Sez. III, 15 febbraio 2012, no 784.
[16] Cons. Stato, Sez. V, 22 marzo 2012, no 1640; see also Caranta, R. (2013), *Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy'*, 13.
[17] Consiglio di Stato, sez. IV, 1, Art. 192 c.p.p.1/03/2013, no 1464; Consiglio di Stato, sez. III, 04/05/2016, no 1757.
[18] See e.g. Albo dei Consulenti Tecnici d'Ufficio.
[19] Further information on the table is available here.
[20] See website of the national bar association.
[21] Art. 9 (4) 24 marzo 2012, no 27. Conversione in legge, con modificazioni, del d.l. 24 gennaio 2012, no 1, recante disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività.
[22] This principle is established in the Code of conduct and interpreted in light of Legislative Decree no 233/2006, known as the "Bersani Decree", and Legislative Decree no 1/2012, known as the "Liberalizzazioni Decree.
[23] For more information see also Pro Bono Institute, "Pro Bono Practices and Opportunity in Italy".
[24] See for instance Associazione Giuristi Ambientali.
[25] By way of example, the NGO Legambiente and the Association for the Defence of Environment and the Rights of Consumers (CODACONS). See Legambiente centres for legal action; and Codacons - Coordination of Associations for environmental and consumer's and user's rights.
[26] Furthermore, in May 2017 "Pro Bono Italia" was established. Pro Bono Italia is a non-profit association of lawyers, law firms and forensic associations created for the promotion and spread of the culture of pro bono in Italy. Pro Bono Italia has been created in connection with "Italian Pro Bono Roundtable", which is a network of lawyers, law firms and companies sharing the purpose of interacting and cooperating on a pro bono basis with Italian NGOs and civil society. Pro bono Italia provides a list of NGOs and law firms which provide pro bono assistance. These NGOs or law firms can be contacted directly by citizens at https://probonoitalia.org/en and https://www.pilnet.org/.
[27] By way of example http://www.tribunale.torino.giustizia.it/it/Content/Ctu/27207?ordineProfessionale=&nominativo=&professione=128026&lemma=. Furthermore, the Italian Environmental Experts Associations provides some info on environmental experts.
[28] See in this respect the 2018 EU Justice Scoreboard; se also CEPEJ Indicators on Efficiency.
[29] Further info on court fees is available here.
[30] Under Articles 28 and 29 of Decree of the President of the Republic no 214/1973, a commission for legal aid is set up at each TAR. The Commission is composed of two regional administrative magistrates, with the senior of them assuming the functions of president.
[31] Please note in this respect a recent complaint brought in 2015 by WWF before the Compliance Committee of the Aarhus Convention (case ACCC/C /2015/130).
[32] MATTM, Fourth Update of the National Report of Italy on the Implementation of the Aarhus Convention (2017), 7.
[33] Cort. Cassaz. judgment 21522/2013; see also by way of example Esenzione dal contributo unificato per i ricorsi proposti dalle associazioni di protezione ambientale.
[34] Legambiente (2013) Strumenti per la Tutela degli interessi diffusi.
[35] Legislative Decree 104/2017 has amended the obligation to publish the screening decision in the official law journals (Gazzetta Ufficiale or Bollettino Ufficiale Regionale).
[36] Please note, in this respect, that Italy has been found on several occasion to be in breach to Art 6.1 ECHR. See e.g. *Cocchiarella v. Italy*, application no 64886/01, judgment of 29/03/2006.
[37] See in this respect the 2018 EU Justice Scoreboard; se also CEPEJ Indicators on Efficiency.
[38] These legislative changes derive from the transposition of EU law directives that have, in their turn, changed over time.
[39] Please note, in this respect, that Italy has been found on several occasion to be in breach to Art 6.1 ECHR. See e.g. *Cocchiarella v. Italy*, application no 64886/01, judgment of 29/03/2006.
[40] See in this respect the 2018 EU Justice Scoreboard; se also CEPEJ Indicators on Efficiency.

[41] See also Case C-529/15.
[42] See inter alia, Council of State judgments no 24 of 19 October 1979; and no 1185 of 29 February 2012.
Last update: 27/07/2021

Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

According to the case law of the CJEU,[2] access to justice must be granted also to challenge certain decisions related to specific activities and projects that do not fall within the scope of the EIA or IED Directives. For example, access to justice should be granted to challenge decisions adopted in violation of the Habitats Directive (Directive 92/43/CEE), the Water Framework Directive (Directive 2000/60/EC), or the Seveso III Directive (Directive 2012/18/EU.
According to the general rules set forth in section 1.4.2, in order to have standing, natural and legal persons need to prove that their rights or legitimate interests may be infringed by the decision, act, or omission. Recognised environmental NGOs are considered to have a legitimate interest. These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest, or directly before the TAR within 60 days.
As discussed in section 1.4.2, tribunals, on a case-by-case basis, can also grant standing to associations or ad hoc groups. As far as individuals are concerned, it has been noted that the case law of administrative tribunals on standing seems to rely on the vague and flexible concept of '*vicinitas*'. To this extent, reports indicate that access to justice overall is effective enough to comply with the case law of the CJEU.[3] For example, in the case of a permit decision concerning an industrial activity not covered by the IED, participants have the right of access to related documents and may submit documents and briefs which must be considered when deciding on the application (Art. 10 of Law 241/1990).[4] The decision may be challenged before the hierarchically superior administrative body or administrative tribunals within 30 or 60 days from the moment the interested parties may be expected to have known that the permit had been granted. It must be noted, however, that given its inherent flexibility, the *vicinitas* concept allows for a case-by-case approach to standing for individuals, which at times may be considered somewhat restrictive by tribunals.[5]

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The administrative appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Administrative remedies do not have to be exhausted before taking a case to Tribunal (Art. 20 of Law 1034/1971).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

5) Are there some grounds/arguments precluded from the judicial review phase?

There are no grounds/arguments precluded from the judicial phase.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

In the Italian system, administrative jurisdiction is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 CAP.), in conformity with Art. 111 of the Constitution and the case law of the ECtHR[6] and CJEU. Parties, according to Art. 2 and Art. 111 of the Constitution, must be in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

7) How is the notion of "timely" implemented by the national legislation?

Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[7]

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

The injunctive relief is available according to the general rules set forth in section 1.7.2.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

In Italy, there is no statutory clause requiring the courts to avoid prohibitive costs. Nevertheless, Art. 1 and Art. 7 CAP refer to the principle of due process, which is interpreted the avoidance of prohibitive costs. Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3.
The Italian legal system applies the loser pays principle (Art. 91 of the Code of Civil Procedure). If it loses, the applicant will therefore bear the costs. Nevertheless, the judge can limit the losing party's liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary. The judge can also rule that each party has to bear their own costs: when one party won on one controversial point whereas the other party succeeded on another, or for "other exceptional reasons set forth in the judgment" (Art. 92 of the Code of Civil Procedure).

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[8]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The SEA (*Valutazione Azione Strategica - VAS*) is a procedure through which the PA approves strategic plans and programmes in order to preserve the environment. This procedure includes: determining the need for an environmental impact assessment (screening); preparing an "environmental report";

consulting the applicant, the PA and the interested public; examining the “environmental report” and the results of the consultations; deciding on the release of the *VAS* authorisation; informing the public of the decision and monitoring the environmental effects of the authorised activity (Title II of the EC). This procedure applies, for example, to plans/programmes which are prepared for: agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use and plans and programmes listed in Annex II, II-bis, III e IV (Art. 6(2)EC).
According to the general rules on legal standing set forth in section 1.4.2, individuals and NGOs who have a legitimate interest, or whose rights may be infringed, can resort to both judicial and non-judicial remedies to challenge the decision, act or omission. The SEA screening decision can be challenged according to the general rules of administrative procedure. The SEA environmental report can only be reviewed together with the final decision on the SEA procedure. These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). Applicants can appeal directly to the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended).
As discussed in section 1.4.2, recognised NGOs are considered to have a legitimate interest in environmental decisions. Administrative tribunals, on a case-by-case basis, can also grant standing to associations or ad hoc groups. As far as individuals are concerned, it has been noted that the case law of the administrative tribunals on standing seems to rely on the vague and flexible concepts, such as that of ‘*vicinitas*’. Access to justice to challenge SEA decisions is therefore flexible enough to comply with the case law of the CJEU.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The administrative appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Administrative remedies do not have to be exhausted before taking a case to Tribunal (Art. 20 of Law 1034/1971).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
The SEA procedure for public consultation is similar to the EIA procedure: the notice is published in the GU or BUR and the public has 60 days to comment. Comments from the public are taken into consideration for the final decision, which must be accompanied by a motivated opinion. To be an Italian citizen is not a prerequisite for participating in the consultation in accordance with the principle of non-discrimination.
In order to have standing before the administrative tribunals, it is however not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
The injunctive relief is available according to the general rules set forth in 1.7.2.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[9]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
Art. 7 of the Aarhus Convention requires public participation concerning plans, programmes and policies relating to the environment to the extent appropriate. In Italy, public participation to decision-making on plans and programmes is guaranteed mainly through the application of the SEA procedure. An important recent practice followed by public authorities is indeed to apply the SEA procedure, including public participation requirements, even in situations where discretion is still available.[10] Furthermore, in Italy public participation in plans and programmes has been developed with particular relevance at the local level even in situations where the SEA procedure is not applied. By way of example:
Local Agenda 21: the participatory Agenda 21 process follows two main steps: a) the creation of a dedicated 'local forum for Agenda 21' which provides for the involvement of local territorial stakeholders interested in pursuing a specific 'Agenda 21 local project'; b) the drawing up of an Agenda 21 Action Plan: a strategic document targeting all parties involved (Local Authorities, enterprises, organisations, associations, schools, media).
Law 394/1991 on natural protected areas (parks established at the national, regional or local level) provides for public participation in the plan to establish and manage parks.
Legislative Decree 267/2000 (on local administration) states that municipalities and provinces are obliged to promote public participation and access to information through their statutes.
Public participation is also envisaged in local decision-making on draft plans, e.g. on waste-water management, water protection plans (*Piani di tutela delle acque*) prevention of noise or air pollution, town planning, structural interventions, land-use, river-basin management and local/regional development. [11]
In addition, it should be noted that Art. 7 of the Aarhus Convention can also encompass plans that, like the ones listed here, do not pass through a SEA procedure, but unlike these, are not (at least in principle) related to the environment. By way of example, the Italian Ministry of University and Research has recently opened a call for public consultation regarding the National Research Programme 2021-2027 (NRP). With the NRP 2021-2027, the Ministry of University and Research intended to set in motion a participatory strategic planning process to contribute to the sustainable development of society and respond to emergency requests. [12]
As regards access to justice, the public with a legitimate interest in an administrative decision (individuals and associations) can not only participate in the decision-making but also challenge before administrative tribunals any unlawful decision adopted by a public authority (Law 1034/1971 and Law 241/1990). Only political acts cannot be challenged before the administrative judge. The public can also resort to administrative review (Decree of the President of the Republic no 1199/1971). Indeed, a decision can be considered to be unlawful when it is inconsistent with legal provisions regulating the way the discretionary power of the administration should be exercised, including those on public participation.[13] These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest. This procedure

has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). Applicants can appeal directly to the TAR within 60 days from notification of the decision to the affected party or from the date of the publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended).
It is difficult to establish with certainty with the resources allocated for this work whether or not access to justice is in this instance effective. Nevertheless, the requirements to be granted standing set forth in section 1.4.2. could be considered flexible enough as to comply with the case law of the CJEU. It must be noted, however, that given its inherent flexibility, the *vicinitas* concept allows for a case-by-case approach which at times may be considered somewhat restrictive by administrative tribunals.[14]

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The administrative appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Administrative remedies do not have to be exhausted before taking a case to Tribunals (Art. 20 of Law 1034/1971).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP)

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
The injunctive relief is available according to the general rules set forth in section 1.7.2.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[15]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
Each person or group of persons, whose right or legitimate interest has been breached by a public authority's decision act or omission concerning plans and programmes required to be prepared under EU environmental legislation has legal standing to resort to both judicial and non-judicial remedies according with the general rules of administrative procedure. These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). Applicants can appeal directly to the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended).
As to whether or not access to justice is effective, the requirements to be granted standing set forth in section 1.4.2. should be flexible enough to comply with the case law of the CJEU. For example, if the competent authority for air quality legislation has failed to establish an air quality plan for a municipality in breach of EU air quality norms, a citizen or environmental NGO could submit a complaint to the Municipality (or to the local ombudsman where there is one). [16] If this is not effective, the concerned citizen or NGO can go before the TAR.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?
The form in which the plan or programme is adopted can make a difference in terms of legal standing. If a certain plan or programme is issued in the form of a measure of a general nature, private individuals cannot access to justice except for the parts in which the measure is immediately harmful to their legitimate interests or rights. In this case, the generality of the prescriptions might make proof of standing more difficult.
If a certain plan or programme is issued in the form of a regulatory act, the recipients of these acts are easily recognisable, and the act can directly affect his /her subjective legal situation. For them, proof of standing can be easier.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The administrative appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Administrative remedies do not have to be exhausted before taking a case to Tribunal (Art. 20 of Law 1034/1971).

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

6) Are there some grounds/arguments precluded from the judicial review phase?
There are no grounds/arguments precluded from the judicial review phase.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
In the Italian system, administrative jurisdiction is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 C.A.P), in conformity with Art. 111 of the Constitution and the case law of the ECHR[17] and the CJEU. Parties, according to Art. 2 and Art. 111 of the Constitution, must be in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

8) How is the notion of "timely" implemented by the national legislation?
Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[18]

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
The injunctive relief is available according to the general rules set forth in 1.7.2.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Costs on access to justice in these areas can be estimated according to the rules set forth in 1.7.3.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[19]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

EU legislation is mainly transposed in Italy through:

Primary law (‘*legge di rango ordinario*’,): e.g. Parliamentary law, Regional Law, D.lg, D.Lgs);

Secondary law: e.g. regional executive regulations.

It is important here to distinguish two different situations according to the kind of act used to transpose EU laws:

Primary law: natural and legal persons who have a legitimate interest, or whose rights might be infringed by an administrative decision taken on the basis of a primary law conflicting with EU Treaties, Regulations or *self-executive laws* law, can challenge the act and require the judge to disapply the administrative act in the specific case.

Primary laws conflicting with EU Treaties, Regulations or *self-executive laws* can also *per se* be challenged in courts of law. Natural and legal persons can require the judge to disapply the conflicting national law, to interpret the conflicting national law in conformity with EU law, or to refer the case to the Constitutional Court (the TAR, for instance, cannot disapply the conflicting Parliamentary law but can refer the case to the Constitutional Court). Applicants can also request the judge or the Constitutional Court to refer the case to the CJEU.

Secondary law: natural or legal persons who have a legitimate interest, or whose rights might be infringed from the measures, can challenge the secondary law according to the general principles of administrative procedure and request the judge to disapply the conflicting norm or to refer the case to the CJEU. The administrative act adopted on the basis of the conflicting secondary law will be totally or partially annulled by the judge.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The administrative tribunals may verify both the procedural and the substantive legality of the decision. The Constitutional Court may verify the constitutional legitimacy of the legislative or regulatory act used to implement or transpose the EU law.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Administrative remedies do not have to be exhausted before taking a case to Tribunals.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Before the administrative judge, injunctive relief is available according to the general rules set forth in section 1.7.2. Before the Constitutional Court, the request for injunctive relief is precluded.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3. Natural and legal persons do not have standing before the Constitutional Court, so they do not incur any costs.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[20]?

A preliminary reference under Art. 267 TFEU is possible according to the rules set forth in 1.3.5

---

[1] This category of case reflects recent case-law of the CJEU such as Protect C-664/15, the Slovak brown bear case C-240/09, as described under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[2] See e.g. Protect C-664/15, the Slovak brown bear case C-240/09; 15, Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín (Slovak Bears II) C-243 /15 and C-127/02, Waddenzee, paras 66 - 70.

[3] Institute for European Environmental Policy, ‘Development of an assessment framework on environmental governance in the EU Member States. Environmental Governance Assessment Italy’ (February 2019), 49 [accessed 09/04/20]; see also Caranta, R. (2013), *Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy*, 12; and Milieu Report, Study on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters Final report. September 2019 .

[4] Caranta, R. (2013), *Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy*, 12.

[5] Caranta, R. (2013), *Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy*, 12.

[6] Please note, in this respect, that Italy has been found on several occasion to be in breach to Art 6.1 ECHR. See e.g. *Cocchiarella v. Italy*, application no 64886/01, judgment of 29/03/2006.

[7] See in this respect the 2018 EU Justice Scoreboard; see also CEPEJ Indicators on Efficiency.

[8] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[9] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[10] 4th Update National Implementation Reports, 28.

[11] 4th Update National Implementation Reports, 28.

[12] For further information visit "Programma Nazionale per la Ricerca 2021-2027".

[13] Ibid.

[14] Caranta, R. (2013), *Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy*, 12.

[15] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[16] see Caranta, R. (2013), Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy, 19.

[17] Please note, in this respect, that Italy has been found on several occasion to be in breach to Art 6.1 ECHR. See e.g. *Cocchiarella v. Italy*, application no 64886/01, judgment of 29/03/2006.

[18] See in this respect the 2018 EU Justice Scoreboard; see also CEPEJ Indicators on Efficiency.

[19] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

[20] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

Last update: 27/07/2021

Other relevant rules on appeals, remedies and access to justice in environmental matters

In the Italian system there are no sanctions against the PA delivering delayed decisions. However, the applicant can appeal the silence of the PA before the administrative tribunal (TAR) (Art. 31 and 117 CAP) and seek compensation for the damage caused by the delay (Art. 30 and 112 CAP).

Furthermore, in cases when the PA has failed to comply with a judgment, applicants can resort to the so-called *giudizio di ottemperanza* (Arts 112-115 CAP). Following these proceedings, the judge can order the administration to comply within a specific time, as well as declare null and void any acts adopted in violation of the judgment. The tribunal can also replace the inert administration or appoint an ad acta commissioner.

Last update: 27/07/2021

The national language version of this page is maintained by the respective Member State. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. The European Commission accepts no responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.