

**EU Forum for Judges for the Environment 2017**  
**Climate Change and Adjudication Questionnaire**  
**Merton College, Oxford, 22 and 23 September 2017**

**Report on Italy**

**Climate Change in Legislation**

**1. How (if at all) has climate change and issues related to it been incorporated into legislation in your jurisdiction?**

- Do they feature in the constitution; legislation; delegated acts?

Yes, Italian legislation since 1988 pays specific attention to climate change and issues relating to it.

The last relevant law has been declared on November 2016 (l. n. 204/2016) to give legal force in Italy to the Paris Agreement 2015.

A general overview is also provided by <http://www.lse.ac.uk> that I want to quote here:

“Soon after Kyoto ratification, the Inter-Ministerial Committee on Economic Planning (CIPE) established guidelines for national policies and measures to reduce GHG emissions. These provisions were later confirmed by several pieces of legislation. Industry organisations, environmental NGOs and other groups concluded the Voluntary Climate Pact with the government (1999), under which they agreed to curb CO<sub>2</sub> emissions. A fund for the reduction of atmospheric emissions and the promotion of energy efficiency and sustainable energy sources was established in 2000, financed from 3% of the receipts accruing from the carbon tax until 2002, when the carbon tax law ended.

In 2002, the Environment Ministry released the government’s strategy to cut GHG emissions. The plan relies on the Kyoto Protocol’s three flexible mechanisms of emissions trading and joint projects with other countries to deliver over half of the required emissions cuts. Several plans, including a

reforestation plan, are the basis of this strategy. For the most part, they have yet to be implemented. The Inter-Ministerial Technical Committee for GHG emissions (CTE) was also established in 2002. In 2007 the CIPE adopted a further deliberation providing guidance to update the national strategy (Climate Change Action Plan). The latest CIPE deliberation was adopted in 2013 in order to enable Italy to contribute to achieving the Kyoto Protocol target and commitments set by the EU.

### **Energy Supply**

The key energy policy document is the National Energy Strategy, adopted in 2013. It has a double time horizon (2020 and 2050) and aims to improve the competitiveness of the energy system and environmental sustainability. It aims to achieve four main targets by 2020: reducing energy costs by aligning prices with EU levels (national savings on electricity and gas estimated at approximately EUR9bn (USD11.3bn) per year); exceeding the European targets set out in the 2020 European Climate-Energy package (reducing GHG emissions by 21% compared with 2005, reducing primary energy consumption by 24% compared with the business as usual scenario, and achieving a 19-20% share of renewable energy in gross final consumption); improving security of supply, reducing dependency on energy imports by about EUR14bn (USD17.6bn) per year; boosting growth and employment by mobilising investments of EUR170bn – EUR180bn (USD213bn – USD225.9bn) by 2020, both in traditional sectors and in the green economy. A National Renewable Energy Action Plan was elaborated in 2009 in line with EU targets.

Since 2007, a feed-in tariff (FiT) has been offered to solar PV plants. The FiT is paid on the basis of the amount of energy produced and dispatched, and it is granted for a 20-year period. Rules governing the FiT are set out in the Conto Energia legislation, which is updated periodically by the legislature.

Since 2002, energy plants fuelled by other types of RES (wind, biomass, etc.) qualify for an incentive regime based on green certificates (GCs), which are issued by the GSE, traded between operators on a dedicated market, and

surrendered to GSE at a fixed price. The GC scheme aims to increase the share of renewable energy in energy supply and reduce energy dependence. From 2016 the GC regime will be replaced by a dedicated FiT, calculated on the basis of the average price for the sale of electricity during the relevant year. To keep supporting plants already benefiting from incentives while ensuring long-term sustainability of the support system, further changes were introduced early in 2014 by the 'Destinazione Italia Decree', including lower guaranteed minimum prices and higher taxation for industrial renewable producers.

### **Energy demand**

Energy demand policy was updated by the National Energy Strategy (NES, 2013), which lays down the key targets for energy demand management and aims to exceed targets in the 2020 European Climate-Energy package). The targets include: reducing primary energy consumption by 24% by 2020 compared with the business as usual scenario and reducing primary consumption by 17-26% by 2050 compared to 2010, by decoupling economic growth from energy consumption. Efforts in building and transport are identified as critical.

In accordance with EU rules, Italy has been elaborating National Energy Efficiency Action Plans since 2007. The latest version of the Plan was published in July 2014. The proposed measures in the residential, services, industry and transport sectors aim to achieve a primary energy saving target of 20.05% by 2020. Minimum energy efficiency standards have been introduced, principally following the requirements of the Ecodesign and the Energy Performance of Buildings Directives. Tax deductions for upgrading buildings were introduced by the Budget Law 2007 and have helped to generate savings in excess of 0.86 Mtoe/year, corresponding to more than 2 million tonnes/year of avoided CO<sub>2</sub> emissions. A White Certificate energy efficiency obligation scheme was established in 2005 and has been expanded, most recently in 2014 to include telecommunications, water distribution, and transport. 'Thermal account', has been operational since 2013. This is the

first nationwide direct incentive scheme for renewable thermal energy generation and the first direct scheme encouraging public authorities to implement energy efficiency actions in buildings and technical installations.

The Reorganisation of Energy Sector Regulation (2004) devolved power to regions to promote energy efficiency and renewable energy sources while maintaining the national scale of such promotion. The Budget Laws of 2007, 2008 and 2010 provide for fiscal incentives and financial measures to improve energy efficiency and abate emissions. These include the opportunity for municipalities to reduce real estate tax to buildings equipped with renewable energy installations (2008) and creation of a special fund to support the implementation of energy efficiency targets (2010).

### **Carbon pricing**

Italy implemented the EU ETS in 2006. It has committed, with 12 other EU members, to return 50% of ETS revenues allocated to climate and energy efficiency programmes. Thus, the Budget Law 2007 established the “Revolving fund for Kyoto”. It provides EUR200m (USD251m) annually to finance measures to promote GHG emission reductions through loans for energy efficiency (incl. buildings), distributed generation and small scale renewable generation.

### **Transportation**

A number of national and regional incentives promote cleaner transportation and vehicles. In 2000, an Environment Ministry decree created incentives to encourage car-sharing. In 2004, the Ministry of Environment set up a programme that will reimburse city governments up to 65% of the cost of adding environmentally friendly vehicles to each city’s fleet.

Policies on biofuels build on various regional incentives as well as the Biomass Fuels National Plan (2000, PROBIO), which aims to promote the deployment of biomass to replace fossil fuels through incentive systems. In 2005, a national indicative target was established of 2.5% of substitution of traditional fuels with biofuels by the end of 2010, increased to 5.75% in 2007.

Today, Italy is Europe's fourth-biggest producer of biodiesel, with a capacity of approximately 2.2mt per year. It is set to mandate the use of advanced biofuels in cars and trucks. A Decree issued in October 2014 introduced an obligation for fuel suppliers to have at least 0.6% advanced biofuels (derived from substances such as algae, waste, or agricultural residues) in petrol and diesel from 1 January 2018, 0.8% from 1 January 2020 and 1% from 1 January 2022.

#### **REDD+ and LULUCF**

Italy participates in REDD+ by funding international projects directly or through the GEF, in countries such as Bolivia, Ecuador, China, Albania and Indonesia. The projects focus mainly on creating protected areas, managing forests to reduce wildfires or promoting sustainable agriculture.

#### **Adaptation**

The Ministry for the Environment, Land and Sea's National Strategy for Adaptation to Climate Change is being finalised. The focus is on the integration of adaptation into different sectoral policies (so far the National plan for water use, 2005; National Strategic Plan for Rural Development 2007-2013; White Paper of the Ministry for Agriculture on "Challenges and opportunities of the rural development in adapting and mitigating climate change", 2011). Regional governments are responsible for the implementation of local adaptation action plans."

- Which levels of government have been involved in these legislative processes?

**The Parliament and some Ministries, mostly the Ministry for the Environment, Land and Sea**

- What have been the catalysts for these legislative developments (i.e. EU law, international law, political agitation etc.)?

Mostly EU Laws and international agreements

**2. How do the structures of government affect legislation related to climate change?**

- Is one or several institutions assigned to act on climate change within your legal system? To what extent do these overlap and diverge?

Ministry for the Environment, Land and Sea, mainly.

There are some organizations, such as the National Authority for the management of directive 2003/87/CE and for the support on the management of Kyoto protocol, that work within the ministry

- Is the separation of legislative, executive and judicial powers in initiating and implementing climate policy clear in your jurisdiction?

The separation of legislative, executive and judicial powers is a general rule in Italy

- Is climate change legislation affected by the legal powers of different levels of government in your jurisdiction?

The climate change legislation only depends on political choice

**Climate Change Litigation**

**3. Can climate change laws in your jurisdiction serve as basis for judicial action?**

- Is this basis, or the lack of such basis, seen as legally novel or not?

Not so far

- What role does European Union law play in this regard?

It's a substantial role, because almost all the most important laws on the subject of environment are based on EU law

#### 4. Has climate change, and related issues, given rise to court cases in your jurisdictions?

- If so, what type of cases (i.e. are they related to specific pieces of legislation or to something else)?

Cases are only related to other laws that pertain to different subjects, like air pollution, sustainable mobility, alternative energy sources etc.

- How frequently do climate change claims come to court by comparison with other environmental law cases in your court?

Never. It could be found only cases related to different subjects. In <http://www.lse.ac.uk/GranthamInstitute/climate-change-laws-of-the-world/> Italy does not have any litigation listed

- What types of legal issues are raised in these cases (i.e. matters of private law, constitutional law, administrative law, international law etc.)?

It is impossible to do a comprehensive research to map the cases, but it is reasonably expected administrative law.

- Does the type of legal issue affect, if at all, which court hears the case?

Perhaps administrative court, but, as I said before, no specific case could be found

- Do rights-based claims feature in these cases?

Yes, sometimes

- How central is the issue of climate change when it is raised in these cases?

As I said before, it plays a role only indirectly, through other laws

### **Climate Change Adjudication**

#### **5. How easily resolvable are the legal questions raised in these different cases?**

- Do these cases involve the application of conventional legal concepts?

As I wrote above we have only related cases and sometimes they involve the application of conventional legal concepts

- If so, how straightforward is the application of these concepts to climate change?

There are no specific cases.

- Do these cases involve the application of new legal doctrines? If so, from where have these doctrines been derived?

NA

- How do concepts of causation affect climate change actions in your jurisdiction?

NA

- Has your court issued any preliminary ruling concerning climate change laws, or to relates issues to the EU court? If not, why not?

There were no cases

## **6. How straightforward is the resolution of factual issues in cases on climate change?**

There are no specific cases

- Is there disagreement among the parties over the factual issues? If so, what types of disagreements are there?
- Do the factual issues require reference to specialist evidence? If so, how is that evidence submitted to the court?
- How do the rules evidence affect climate change actions in your jurisdictions?
- How do the factual issues affect the resolution of legal questions in these cases?

## **Climate Change and Access to Justice**

### **7. Who are the parties bringing climate change actions?**

- What role do individuals play in bringing actions relating to climate change?

There are no specific cases

- What role do NGOs play in bringing climate actions?

Despite the absence of known cases, NGOs play a relevant role informing people, publicizing documents and holding events to publicly denounce the situation

- What role does industry play in bringing actions relating to climate change laws?

Despite the absence of known cases, the industry occasionally demonstrate in practice a real interest on environmental issues

- Does industry make claims under different or the same set of laws as NGOs?

Industries normally have a different point of view but there are no specific cases

## **8. How do legal rules in relation to the bringing of an action affect the ability to bring these cases?**

- How do domestic rules on standing affect climate change litigation?

Domestic rules play a major role but indirectly only.

You can find, for example, a judgment from tax court relating to a tax called “carbon tax” which is linked to the environmental damage caused by coal combustion or judgment from administrative court relating to “emission trading” rules

- How do costs rules affect climate change actions?

Costs are an obstruction in every action

- Are there any other impediments to parties bringing climate change claims?

The absence of specific rules

## Climate Change and Remedies

### 9. What is the range of remedies available to national courts in climate change cases?

**There are no specific cases**

- What is the breadth of the court's discretion in choosing a suitable remedy?
- What is the availability and level of financial penalties?
- What types of injunctive relief are available?

### 10. What types of issues are raised about remedies in climate change cases?

**There are no specific cases**

- How straightforward is the application of remedies in these cases?
- Does the relationship between private law and public law affect remedies in climate change-related claims?