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"ENVIRONMENT AND LAND TRANSPORTATION LAW"

Italian Report

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A. Transportation Law
II. National Legislation

1. General Questions on national Transport Policies and Laws.

Describe the key national legislation to promote a sustainable transport policy.

a. To what extent, environmental issues are taken into account in national transport policy? Does national transport policy set specific goals in order to reduce especially negative impacts from road traffic, e.g. emission goals, road traffic relocation on rail etc.?
b. What are important constitutional law provisions?
c. What are the most important legislative acts in the field of road and rail transportation?

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Overview on transport legislation in Italy

Transport legislation in Italy is quite fragmented. This is mainly due to the multilevel nature of the Italian transport system, which is organized along different planning levels. These, in turn, reflect the territorial and administrative organisation of the Italian Republic as enshrined in art. 114 of the Constitution.

Over the years, this system has undergone some changes, which have modified the distribution of competences among the State on the one side and the Regions and other local authorities on the other side. In particular, the 2001 reform of Title V, Part II of the Constitution, which, generally speaking, promoted a marked legislative and administrative decentralization from the State to the Regions and other local authorities, played a very relevant role in this sense.

Pursuant to the Italian Constitution, as modified by the 2001 reform, art. 117 provides a list of State's exclusive legislative competences as well as a list of State's and Regions' shared competences; then the norm confers to the Regions «*the legislative power with respect to any matter not expressly reserved to the State legislation*». In such a context, among the State's exclusive legislative competences falls, for instance, "*protection of the environment, the ecosystem and cultural heritage*", whilst among the shared competences are included, for instance, "*land-use planning*" and "*large transport and navigation networks*". For all the subjects not explicitly listed, such as public works, a residual competence of Regions is foreseen.

As to the administrative functions, these are generally attributed to the Municipalities by art. 118 of the Constitution, unless they are explicitly conferred to another authority, such as the Province, the Region or the State.

The gradual devolution of legislative and administrative powers in the field of transport policy and law from the State to the Regions and the other local authorities has been accompanied by a proliferation of instruments on transport planning. The most relevant planning tools adopted at the different levels in Italy can be summarized as follows:

- national level: the General Transport Plan, the National Plan for Road Safety, the so-called "Target Law", the guidelines of the General Mobility Plan;
- regional level: Regional Transport Plan;
- provincial level: the Traffic Plan for Extra-urban Mobility;
- municipal level: the Urban Mobility Plan, the Urban Traffic Plan and the Urban Parking Program.

At the national level, the first General Transport Plan was adopted in 1986, pursuant to the provisions of Law 245/1984, which entrusted to the government the approval of such a planning tool «*in order to ensure a coherent planning in transport policy, as well as to coordinate and harmonise the exercise of the competences and the implementation of administrative actions at the State, regional and autonomous Provinces of Trento and Bolzano level*» (art. 1). The first plan was substituted in 2001 by the General Plan for Transport and Logistics. This laid down the guidelines for the construction of a system of sustainable mobility that can meet the demand for transport of people and goods with greater efficiency, while improving safety of transfers and reducing their environmental impact.

At the regional level, mobility is structured around the Regional Transport Plan, established by Law 151/1981. This "*lays down the fundamental principles that the ordinary statute Regions should follow in the exercise of legislative and planning powers in the field of local public transport*" (art. 1). In such a framework, the Regions define the guidelines for the planning of local transport, which must promote the establishment of "*a transport network which favours the integration among the various connection modes, encouraging in particular those characterised by a lower environmental impact*".

At the lower level, provinces participate to transport planning by adopting the Traffic Plan for Non-Urban Mobility, established by Decree 285 of April 30 1992 "New Highway Code", while municipalities are in charge with adopting the following planning instruments: the Urban Mobility Plan, the Urban Traffic Plan and the Program of Urban Parking.

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The legislation on sustainable transport and mobility

Currently, the Italian transport system is characterised by the predominance of road traffic, associated with a great use of private vehicles. This system entails relevant economic, social and environmental negative externalities.

The Italian legislation on transport and mobility is shaped according to the principle of sustainable development. As a consequence, it aims at supporting the implementation of integrated actions and projects for the various components of mobility and transport, such as a change in the demand for transport, the improvement of public transport, the use of incentives for the promotion of fuels with a lower environmental impact, the development of intermodal transport and the promotion of awareness-raising initiatives. Among the latter, the "Ecological Sundays car-free", promoted by the Ministry for the Environment since 2000, is an example of the "car-free days" promoted at European level, which, on the one hand, represents a temporary emergency measure to reduce traffic and pollution and, on the other one, aims at raising awareness and inform the public on sustainable mobility. During the "Ecological Sundays car-free", the use of cars is forbidden, also in order to experience alternative and sustainable forms of mobility (i.e. bicycle riding, public transport).

The rationalisation of traffic towards sustainable transport and mobility was introduced by the Decree of March 27, 1998, "Sustainable Mobility in Urban Areas". The Decree introduces mobility management policies for the elaboration and development of strategies for sustainable mobility of people and transport of goods. In such a context, the Corporate Mobility Manager and the Area Mobility Manager were also introduced. The presence of the Corporate Mobility Manager is mandatory in high traffic flows areas for those companies with more than 300 employees per local unit – or a total number of 800 employees in different locations or groups of smaller companies, schools or hospitals. The Corporate Mobility Manager is in charge of identifying the best mobility strategies and actions at a company level and of preparing a Corporate House-Work Commuting Plan.

The Area Mobility Manager is, instead, appointed by a local authority with the task of introducing and promoting a mobility management system, in order to improve mobility throughout the targeted area, as well as to detect all the companies which are required by law to submit the Corporate House-Work Commuting Plan. The Area Mobility Manager fulfills, for his/her area of competence, sustainable mobility tasks, including assisting companies in the preparation of the Corporate Plans, encouraging the integration between them and the policies of the municipal administration, promoting intermodal transport and interchange between local traditional transport services and the adoption of innovative transport systems.

The shift towards a more sustainable urban mobility is also promoted through other means. In this sense, several cities make use of periodic partial or total ban to private vehicles, based on the number of car plate or on the type of vehicle (Euro0, Euro1, Euro2). The former is the so-called "circolazione a targhe alterne", according to which on days with an even date, only cars whose number plate ends in an even number or a zero may be on the road and on days with an odd date, only cars with odd registration numbers may be used.

A new tool to promote sustainable urban mobility is the adoption of urban congestion charges. The best known example in Italy is the Milan congestion charge. In particular, in the last few years, the congestion charge experience in the city of Milan has taken the form of two different instruments: the Ecopass and the Area C pass.

The first one, experienced between 2008 and 2011, is an example of a "pollution charge". In fact, it was based on a system of charges and differentiated restrictions for different types of vehicles, calibrated on the primary purpose to reduce pollution. Such a scheme was based on five degrees of application depending on the type of the engine of the vehicle. The cost to drive in the centre, corresponding to a designated area of about 8 km^2, varied between two and ten euro. Certain categories of vehicles with lower pollution levels (petrol cars Euro 3 and 4 vehicles diesel Euro 4 and 5 with FAP electric vehicles, hybrid, LPG or CNG bikes and motorcycles) were totally exempted from the charge.

However, in 2012 the Ecopass was substituted by the new Area C pass, which is a genuine "congestion charge", much more similar to those experienced in London and Stockholm. In fact, it aims at reducing traffic in the central area called "Cerchia dei Bastioni", improving the efficiency of public transport networks and promoting its development, safeguarding the right to individual mobility within the common interest, finding resources for sustainable mobility (pedestrian, cycling and traffic at moderate speed), improving the quality of urban life by reducing the number of accidents as well as noise and air pollution. This new pass foresees the payment of a uniform tariff that is independent on the level of pollution of the vehicle.

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2. Instruments to manage and reduce road traffic

Is there a national debate on the sense and nonsense of traffic tolls and other instruments to manage and reduce road traffic, and if so, has this led to changes or corrections of the regulatory framework?

a. Tolls and user charges

In Italy, a comprehensive system for calculating road tolls on the basis of the emissions of vehicles has not been introduced yet. Recently, however, the Italian Ministry for the Environment, published a document with "a 5-point strategy for sustainable development in Italy", which includes the objective of "decarbonisation" of the Italian economy. Among the measures planned to achieve this objective, it is foreseen the introduction of a traffic toll on highways and urban roads, for cars, buses and trucks, which may vary on the basis of their CO_2/km emissions.

So far, the road tolls which are charged for the use of motorways in Italy depend on the size and power of the vehicles, irrespective of their emissions level. There is normally no charge for the use of infrastructures other than motorways, such as tunnels or bridges, although a national debate is on-going on this issue. This means that, generally speaking, a road toll system shaped according to the different level of emissions of vehicles does not exist in Italy.

However, it should be mentioned that the current general tax on cars' ownership, the so-called "bollo auto", partially takes into account the type of the different vehicles (Euro 0 to 5) by imposing a higher taxation rate to vehicles belonging to Euro 0 – 2 categories. This is an application of a more sustainability oriented approach.

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3. Instruments to promote rail traffic and combined traffic?
   a. Is there any specific legislation promoting rail traffic and combined traffic, such as regulation, price control, subsidies etc.?
   b. How are infrastructure costs for rail traffic financed?

The development of combined transport system is foreseen by Law 245/1984 and the related 1986 General Transport Plan and 2001 General Plan for Transport and Logistics. To this effect, the competences are shared between the central State and the Regions.

Among the incentives introduced by the State for the promotion of combined transport, two of them deserve a particular attention, the so called "Ecobonus" and "Ferrobonus". Both these measures have been adopted on the basis of financial allocations provided by Law 265/2002, art. 3, para. 2-ter. This provision authorises investments for the innovation of the road transport of goods, for the development of logistics chains and for the strengthening of combined transport.

The "Ecobonus" constitutes an incentive for trucks, aiming at promoting a gradual shift of heavy vehicles goods shipping from road to sea. Such a measure was introduced by D.P.R. 205/2006 with the aim of allocating funds to promote innovation in road transport of goods, in the development of logistic chains and in the strengthening of sea shipping transport. Under this scheme, the beneficiaries were required to maintain for the three years following the expiration of the incentives, the same number of trips made, or the same quantity of goods carried, in the period in which they benefited from the incentives. The incentives given under such a measure were authorised by the European Commission for the period between January 2007 and December 2009. However, the renewal of the eco-bonus system for the years 2010 and 2011 caused a harsh reaction by the European Commission which, by Decision C(2012)5020 of 25 July 2012, initiated a

proceeding against Italy pursuant to art. 108, para. 2 TFEU, arguing that the renewal of such incentives could amount to a state aid incompatible with the internal market rules.

The "Ferrobonus" is, instead, an incentive aimed at supporting combined road-rail transport. The incentive was provided for by Law 25/2010 and implemented by Decree 592/2010 and its following modifications, with the aim of encouraging a shift towards a greater use of rail transport for goods. The incentive has the objective of reducing the cost of combined transport which uses electrified rail transport for at least part of the journey. It consists of a partial payment of the operating costs to logistic companies or to final users of transport services. The partial payment corresponds to a part of the external costs avoided compared to road transport. The measure has a duration of one year and, for existing users, is coupled with an obligation to maintain the volume of traffic at a level comparable to the period between 1July 2009 and 30 June 2010. The European Commission examined the Ferrobonus and held it compatible with EU law with Decision C (2011) 9794 of 16 December 2011.

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B. Land-use planning and environmental impact assessment

1. Are there different levels of the planning of transportation infrastructure? If so, which ones and how do they differ from each other?
2. If there is road construction planning on a higher level, are the different transportation modes (roads, railways, air transportation, waterways etc) weighed against each other with a view to select the least environmentally burdensome?
3. Concerning the approval of individual road construction projects: Is there a test of need for more roads? If so, is it taken into consideration that new roads may trigger further individual transportation?
4. To what extent have alternatives to be taken into account?
   a. What is the legal basis of alternatives testing: SEA and EIA? Natura 2000?
   b. Do these alternatives include "other" projects (e.g. rail construction, instead of road construction)?
   c. Does/should the "zero-option" need to be taken into account?

What is provided for on national basis in addition to EU requirements?

The planning of transport infrastructures in Italy is fragmented and is shared between the State and the Regions. Moreover, the relevant competences touch upon several matters. In fact, infrastructure planning falls partly in the field of transport and partly in the field of land-use planning (art. 117 Constitution, para. 3), and involves also environmental and landscape protection.

Transport infrastructures are therefore usually planned at the State or at the regional level. The 2001 General Plan for Transport and Logistics introduces some guidelines for the creation of infrastructures for a more efficient and sustainable use of transport, as well as provisions concerning the liberalization and privatization of markets in the aviation, maritime, rail and motorway sectors for the improvement of the efficiency and quality of services. To this effect, it is foreseen the creation of a *National Integrated Transport System* under the competence and the responsibility of the State. The infrastructures not included in the National Transport System, fall within the competence of Regions and are planned in the framework of the Regional Transport Plans.

According to the so-called Environmental Consolidated Act, namely Legislative Decree 152/2006, which implements, inter alia, the EU legislation on SEA and EIA, plans, programs as well as projects relating to transport infrastructure construction should be subjected beforehand,

respectively, to SEA and EIA. In general terms, art. 4 of Legislative Decree 152/2006 foresees that the environmental assessment of plans, programs and projects, aims at ensuring that the anthropogenic activities meet the conditions for a sustainable development and are consistent with the ecosystem resilience, the biodiversity protection and an equitable sharing of economic resources.

In such a context, the environmental assessment of plans and programmes (SEA) that may have a significant impact on the environment aims at ensuring a high level of protection of the environment and contributing to the integration of environmental considerations into the preparation, adoption and approval of such plans and programs, ensuring that they are consistent and contribute to meet the requirements for sustainable development. In particular, the SEA is applied to plans and programs concerning the assessment and management of air and environmental quality, agriculture, forestry, fisheries, energy, industry, transport, waste and water management, telecommunications, tourism, town and country planning or land use and that, at the same time, define the framework for the approval, authorisation, location or the execution of works or actions for projects subject to the EIA. When such plans and programmes concern small local areas, SEA is mandatory only when the competent authority considers that they may have a significant environmental impact, taking into account also the different levels of environmental sensitivity of the area involved.

Generally speaking, the Ministry for the Environment is competent for conducting the SEA with respect to national plans and programmes, while the competent regional authorities are in charge with performing the SEA with respect to regional plans and programmes.

As to the transport sector in particular, the 2001 General Plan for Transport and Logistics, provides for the obligation to conduct a SEA whose results should not be modified in the following decision making phases and procedures. More generally, the 2001 General Plan for Transport and Logistics stresses that SEA should promote the overcoming of the practice according to which the impact assessment represents a procedure often used for defending rather than justifying the administrative choices.

As far as the EIA is concerned, the assessment of projects aims at protecting human health, contributing to the improvement of quality of life through environment protection, providing the protection of species and ecosystems. To this effect, it shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project on the following factors: 1) human beings, fauna and flora; 2) soil, water, air, climate; 3) material assets and the cultural heritage; 4) the interaction between the factors referred above.

As to the distribution of competences between the State and the Regions, art. 7 of Legislative Decree 152/2006 establishes that the projects listed in Annex II are subject to a national EIA, while the projects listed in Annex III are subject to a regional EIA and those contained in Annex IV are subject to a regional screening procedure.

With regard to the transport sector, the EIA is therefore conducted at national level for long-distance railways, motorways and other major non-urban roads, while projects concerning smaller railways and secondary non-urban roads are subject to a regional screening procedure.

By way of partial derogation to the ordinary legislation on the planning and construction of infrastructures of national interest, the design, project approval and realisation of major strategic national infrastructures are regulated by Law 443/2001 (the so-called Target Law) as implemented by Legislative Decree 190/2002. To this effect, art. 1 of Law 443/2001 establishes that the Government, within its sphere of competences, may identify public and private infrastructures of relevant national interest, which need to be realised for the modernisation and development of the country. Such infrastructures are listed in a national programme, which also contains the financial arrangements for the financing of the concerned infrastructures.

The Target Law promotes the construction of strategic national infrastructures by creating a "fast track" for the approval of such projects which, inter alia, accelerates the standard approval procedures and simplifies the environmental assessment procedures. For the aforementioned infrastructures, the ordinary EIA procedure can be partially derogated, provided that the compliance with the relevant EU legislation is ensured.

To this effect, in particular, art. 19 of Legislative Decree 190/2002 regulates the design, project approval and implementation of the strategic national infrastructures and foresees an extraordinary EIA procedure, under which it is prescribed that the environmental impact assessment shall identify the direct and indirect effects of a project and its main alternatives, including the alternative zero, on human beings, fauna, flora, soil, surface water and groundwater, on air, climate, landscape and the interaction among them, as well as on the material assets and the cultural, social and environmental heritage and assesses also the conditions for the realisation and operation of the planned projects.

Furthermore, the EIA procedure can be completely skipped, according to art. 17 of Legislative Decree 190/2002, when an intervention is needed for public defence in case of an imminent peril or when it is related to a natural disaster following a declaration of national emergency.

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