

## Environment & Climate Change - Italy

### Italy welcomes new and improved regulations on waste classification

Contributed by **B&P Avvocati**

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#### Introduction

More comprehensive rules on waste classification were recently introduced into Italian environmental law.

Following the adoption of Decree-Law 91 of June 24 2014, as amended by Law 116 of August 11 2014, the Environmental Code (Decree-Law 152/2006) now gives legally binding status to a series of pre-existing rules and criteria developed by public authorities, which are intended to guide the classification process for hazardous and non-hazardous waste.

The code now explicitly entrusts the producer with the task of properly classifying waste by labelling it with the appropriate European Waste Catalogue code before it has left the production site, in accordance with EU Commission Decision 2000/532.

#### Classification

The new rules envisage three possible classifications, depending on the relevant waste code:

- Absolute hazardous entry (denoted by an asterisk next to the applicable code) – the waste must be regarded as always hazardous, regardless of its composition; however, its hazardous properties (H1 to H15) often require identification, depending on handling and transportation needs.
- Absolute non-hazardous entry (no asterisk next to the applicable code) – the waste must be regarded as always non-hazardous, regardless of its composition, although further analysis of its properties may occasionally occur, depending on handling needs.
- Mirror entry (denoted by two applicable codes, one hazardous and the other non-hazardous) – the hazardous properties of the waste must be determined through an assessment of its compounds and the hazards related thereto, as well as a comparative analysis of the concentrations identified in its compounds against the threshold values attached to the risk phrases of each component.

Although the new regulations are remarkably broad in scope, they fail to provide specific guidance on a number of cases in which previous regulations or rules will apply. A notable case is that of hazard assessments of potentially carcinogenic waste containing hydrocarbons, in which the carcinogenicity of the waste should be assessed by referring to specific markers (usually polyaromatic hydrocarbons), rather than the totality of the hydrocarbons that they contain. This rule, specifically applicable to waste containing hydrocarbons, is enshrined in previous legislation (Law 13/2009) as well as several technical guidelines of other EU member states (eg, the UK Environment Agency's *Hazardous Waste: Interpretation of the Definition*, 3rd edition, 2013, p A43).

In some cases, chemical analyses (particularly for inorganic substances) may identify only the individual anions and cations (eg, of zinc, chromium or other heavy metals), but cannot identify the specific components (eg, which oxide is present in the waste). In this case, under the new law, "the worst case substance" should be considered to be present, thereby upholding a very strict precautionary approach. Unfortunately, the new rules fail to clarify that the worst case substance should be chosen only from the substances that may reasonably exist within the waste. Such clarification is provided for in the UK Environment Agency's guidelines, for instance. According to the UK guidelines, "the term 'reasonable' indicates that compounds that cannot exist within the waste because, for example, of their physical and chemical properties can be excluded".

#### Comment

The new rules are a useful addition to the Italian legal system with regard to waste regulation, to the extent that they provide industrial operators with a uniform and more comprehensive picture of waste classification that mostly follows European standards. However, as demonstrated above, some of the

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new provisions appear to be too strict.

The new provisions are expected to come into force in early 2015. In the meantime, they will apply insofar as they do not establish more rigorous conditions than the previous law, in accordance with the common rules on chronological succession of laws (Article 2 of the Criminal Code).

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