AVOSETTA QUESTIONNAIRE

ENVIRONMENTAL LIABILITY DIRECTIVE

REPORT ON ITALY

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I. Can you give some concise information about your national environmental liability system?

- Are there special provisions on civil liability for environmental damage?

Till recently, civil liability for environmental damage has been regulated by art. 18 of the Law 349/1986. Pursuant to this article anyone who wilfully or negligently violates a statute or administrative rule concerning environmental protection, thus causing damage to the environment, is held liable.
Law 349/1986 establishes a public law system of liability for damage to the environment, which is in many aspects, similar to that provided by the Directive. It provides a legal basis upon which ecological damage can be claimed. Jurisdiction is vested in the ordinary courts and the sole entities entitled to ask for redress are the state and its territorial entities (municipalities, provinces and regions). Remedies consist in restoration in kind, whenever possible, otherwise compensation can be awarded. Yet, the main weakness of the regime was the fact that it is based on fault, i.e. violation of environmental protection laws.
In addition to that, the Italian Civil code contains two provisions in the field of civil liability which are also applicable in case of environmental damage.
Article 2043 of the Italian civil code represents the general norm of civil liability in the Italian legal order. Pursuant to that article, whoever causes a damage by fault or negligence shall provide reparation for the damage. Article 2043 can be applied in instances of environmental damage to allow individuals to claim compensation for personal injury or property damage consequential to the environmentally harmful act or omission. Being a regime of fault liability, however, it is necessary for the affected party to prove the fault or negligence of the liable party and it is not therefore the most appropriate solution in cases of damage to the environment.
Article 2050 establishes a system of strict liability which specifically addresses dangerous activities. Pursuant to article 2050 "whoever, in the course of a dangerous activity, causes harm to another person shall provide compensation for the damage, if he is unable to prove that he/she has taken all the necessary measures to avoid the damage".
Whereas liability regime provided by article 18 of the law 349/1986 – which was the liability regime in force in Italy before the transposition of the Directive - specifically concerns environmental damage per se considered, both article 2043 and article 2050 of the Italian Civil code remain applicable to tortious liability claims whenever individual rights are infringed.
The civil liability regime provided by the civil code and the liability provisions of the law 349/1986 were therefore complementary, given the fact that private claims were not covered

by Article 18 of Law 349/1986 nor are they covered by the current legislation transposing the Directive.
This seems to be confirmed also by the prevailing approach of courts which has been to refer to article 2050 in order to complement the liability regime provided by article 18 of Law 349/1986 with a regime of strict liability.
Law 349/1986 has now been abrogated by Law 152/2006, whose part VI transposes the Directive into the Italian legal order.
However, the above described situation has not changed with the adoption of the new legislation. Whereas the civil liability provisions in the civil code continue to provide the relevant legal framework for private law claims, Law 152/2006 disciplines liability for damage to the environment with a strongly public-oriented approach. Private claims continue in fact to be excluded from the application of Law 152/2006.
As far as environmental damage is concerned, Part VI of Law 152/2006 introduces a mixed liability system. On one hand, in fact it simply reproduces the Directive's approach, namely it adopts the same definition of environmental damage, confers the enforcement powers to the public competent authorities (in this case, the Ministry of the Environment, Land and Sea) and adopts the same approach as to the scope and aims of restoration measures.
On the other hand, however, the former regime of fault liability – whereby fault is identified with violation of environmental norms – introduced by law 349/1986 is basically maintained in article 311, which substantially reproduces the content of former article 18 of Law 349/1986. However, article 311 has not been clearly formulated, therefore it could be interpreted as introducing a strict liability system as well.
The transposition of the Directive through Law 152/2006 is likely to raise a number of interpretative questions. In particular, the new law does not clarify the relationship between the provisions transposing the contents of the directive and those which are, instead, a renewed version of the former liability system. Therefore, problems are likely to emerge in the identification of the notion of environmental damage and in the determination of the criteria of attribution of liability. As for the first aspect, there is no co-ordination between the notion of environmental damage provided in article 300, which reproduces almost literally that of the directive, and article 311 which, at least at a first sight, seems to refer to the broad notion of environmental damage elaborated through the court case law under former Law 349/1986.

- Are there other (administrative type of) special provisions and procedures concerning the prevention and remedying of environmental damage? Do they have a general nature or are they only applicable in one or another environmental field (e.g. soil pollution)?

Beside art. 18 Law 349/86, prior to the adoption of the new legislation, in Italy there were other two provisions relevant for environmental liability on the issue of soil pollution, which had a predominant administrative nature:

1) art. 18 of the Law 349/1986 which concerns in general environmental damage.
2) article 17 of Law n. 22/1997 which specifically concerns site contamination.

As for site contamination, the Italian legislator introduced a specific discipline in 1997. Article 17 of the Law 22/1997 provides that anyone who, for any reasons, determines the trespass of the prescribed safety limits for soil or water contamination, shall pay the costs for clean-up and restoration of the polluted area. According to this provision, if the liable operator does not act, then the public authorities shall act and ask for reimbursement of the costs sustained. With respect to the general regime provided by Law 349/1986, this legislation

establishes a strict liability regime which, however, is applicable only when certain limits are overcome or if there is a significant health risk. Whereas Law 22/1997 provides the general legal regime for site contamination, the relevant procedures for the clean-up and restoration of contaminated sites and the acceptable limits of contamination are further specified in details by the Ministerial Decree 471/1999. The latter is a technical regulation adopted pursuant to and in application of Law 22/1997.

Additionally, it is to be mentioned the liability regime provided by article 58 of the Law 152/1999 with respect to site contamination by water discharges. Liability is based on proof of fault or negligence – consisting in a violation of provision of the legislative decree in question. The liable party which caused damage to water, land or other environmental resources, shall proceed to clean-up and restoration of the contaminated areas.

These two pieces of legislation have been now abrogated as well as art. 18 by means of the Law 152/2006 whose part VI contains the transposition of the Directive. It has to be finally pointed out that Law 152/2006 contains a specific section on site contamination which is disciplined in Part IV of the same decree, including provisions on liability.

- Is your country party to the international conventions listed in the annexes IV and V of Directive 2004/35/EC?

Convention listed in Annex IV

Italy is part to the following Liability Conventions:

(a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage

(b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage

(c) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963

(d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention

(e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material

(f) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage: signed on January 1998 but not ratified yet.

Italy is not part to the following Conventions:

(a) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage

(b) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea

(c) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels

(d) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage

II. Implementation of Directive 2004/35/EC

2.1. General status of implementation:

- Has Directive 2004/35/EC already been fully implemented?

Italian environmental legislation has recently undergone a deep reform, following the approval of Law 208/2004, which contains "Delegation of the reorganization, co-ordination and integration of legislation in environmental matters to the Government ". The above mentioned Law has been implemented by Law 152/2006, commonly named "Environment Code", containing "Regulations concerning Environmental Matters". Part VI of this Decree is specifically dedicated to the implementation of Directive 2004/35/EC, under the title of "Regulations concerning Compensation for Environmental Damage".

- Have deficiencies of the Directive been identified during national discussions ?

The following remarks were pointed out during national discussions:
1) the Directive provides a narrow definition of environmental damage;
2) the Directive introduces a public-oriented liability system;
3) the Directive takes into consideration only environmental damage caused by operators'activities;
4) the Directive introduces too many exceptions;
5) the Directive doesn't apply to cases of past contamination, which are the most relevant problems of pollution to be solved both in Italy and in Europe;
6) the Directive tackles site contamination only if dangerous for human health;
7) financial security is not mandatory;
8) the Directive as a whole leaves too much discretionary power to MS on the implementation of many of its provisions, paving the way to a low harmonized European liability system for environmental damage.

2.2. General approach of implementation:

- Has your country reduced the level of environmental protection as a consequence of the Directive ?

In Italy, the new legislation which entered into force in April 2006 – i.e. the Law 152/2006, whose Part VI aims at transposing the Environmental Liability Directive – appears to have a narrower scope than the previous one with respect, essentially, to two points.

1) The first point concerns the notion of environmental damage.

Former Law 349/1986, already embodied the idea of protecting the environment per se, and independently from the impairment of other interests, such as private property or personal injury etc. In particular, the notion of environmental damage as it emerges from Article 18 of that law, is wider than the one defined in article 2 of the directive. According to article 18 of Law 349, environmental liability is determined by any alteration, degradation or destruction of all or part of the environment committed by anyone who acted in violation of the law. The progressive interpretation of that norms by the Italian jurisprudence, which elaborated a broad and comprehensive notion of environment, had further widened the applicability of that provision.

In Law 152/2006 there are two provisions which appear to be relevant for the notion of environmental damage.

On the one hand, article 311, paragraph 2, maintains the same wording of previous article 18 whereby liability is linked to any alteration, degradation, or destruction of the environment, caused by an act or omission committed in violation of the law.

On the other hand, however, article 300, reproduces the same narrow notion of environmental damage as defined in article 2, paragraph 1, of the Directive. As the two provisions should be logically interpreted as referring to the same concept of environmental damage, the risk will be that article 311 will be interpreted in light of article 300, with the result of restricting the scope of applicability of the liability regime to damage to natural resources, water and land contamination as defined in the directive.

Moreover, the scope of application of the liability regime is then further narrowed by the adoption of all the exceptions and defences, such as the state-of-the-art defence, provided by the Directive.

Finally, the Decree does not correct one of the main weaknesses of the former Italian law, that is the fact that liability is based on fault, defined in terms of violation of the law.

2) The second point concerns the question of access to justice.

Former law n. 349/86 gave the State and the territorial entities (Regions, Provinces e Municipalities) the right to bring an action for compensation in case of environmental damage. Furthermore, in case of inaction of the competent territorial entities, Law 265/1999 entitled environmental NGOs to bring a case for environmental liability when public authorities are not acting (a sort of "actio popularis").

The new law confers the right to act in case of environmental damage only to the State, in the person of the Ministry of the Environment. Furthermore, article 4 of Law 265/1999 has been abolished, thus depriving NGOs of a general right of access to justice

However, the amendments concerning access to justice are not really a direct consequence of the transposition of the directive, since they rather appear to be the result of a more general political choice tending to concentrate the powers at the central level, as demonstrated by the 2001 amendment to the Italian Constitution.

- Did your country opted for a comprehensive piece of legislation to transpose the Directive? A Separate Act or a new Chapter of a General Act?

The Environmental Liability Directive has been transposed through a specific section (Part VI), dedicated to the restoration of environmental damage, within a General Act, namely Law 152/2006 aimed at encompassing the whole Italian legislation in the field of environmental protection in a sort of Italian Environmental Code. Part VI of the Law 152/2006 is dedicated in general to environmental liability and restoration of environmental damage, and covers all the three hypothesis of damage to the environment (protected species and natural habitats,

water and soil) identified in the Directive. In addition, land contamination is disciplined also in Part IV, Title V, which is dedicated to the restoration of contaminated sites.

- Did your country opted for amending several pieces of legislation?

No, since the new Act contains all general provisions.

- Did your country opted for a combination of these 2 approaches?

No.

- Did your country opted for a mere transposition of the minimum requirements of the Directive or introduced stricter provisions?

Italy did not introduce stricter provision than those of the Directive.

2.3. Options taken during the transposition process (please focus on innovations in your country legislation with respect to the text of the Directive)

2.3.1. Definitions

- How is the definition of environmental damage implemented?

According to art. 300 of Law 152/2006, the definition of environmental damage is the following:
"Environmental damage means any measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly. In particular, consistent with Directive 2004/35/EC provisions, environmental damage means deterioration, compared to baseline conditions, to: a) protected species and natural habitats (those mentioned in Law 157/1992 implementing Directives 79/409/CEE, 85/411/CEE and 91/244/CEE, and in Law 357/1997 implementing Directive 92/43/EC, and in Law 394/1991 which provide an additional list of national protected areas); b) internal waters, through actions which significantly adversely affect the ecological, chemical and /or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC of the waters concerned, with the exception of adverse effects where Art. 4(7) of that Directive applies; c) coastal waters and waters belonging to the territorial sea, through the above mentioned actions, even though undertaken within international sea; d) land, which is any land that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction in, on or under land, of substances, preparations, organisms or micro-organisms adverse to the environment".

- Did your country included in the notion 'protected species and natural habitats' habitats or species, not listed in the Annexes of the Birds and Habitat Directives? (art. 2.3 (c))

According to Article 300(2a) of Law 152/2006, "protected species and natural habitats" include also those protected under national legislation, i.e. Law 394/1991 and subsequent implementing legislation on national protected areas.

- Is land damage protected just in case of significant risk of adverse effect on human health?

Yes, land damage is protected, according to the new Italian provision stated in art. 300(2d) of Law 152/2006, just in case of significant risk of adverse effect on human health.

- When is the conservation status of a natural habitat taken as favourable?

The definition of favourable status of a natural habitat is provided by art. 302 of Law 152/2006, which states that: "the conservation status of a natural habitat is taken as favourable when its natural range and areas it covers within that range are stable or increasing, the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and the conservation status of its typical species is favourable, as defined in art. 302(1)".

- What about the definition of "operator"? Are persons 'to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of the permit or authorization for such an activity or the person registering or notifying such an activity" included? (art. 2.6)

Art. 302(4) of Law 152/2006 provides the same definition of "operator" included in the Directive, namely: " any natural or legal, private or public person who operates or controls the occupational activity, or to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of the permit or authorization for such an activity or the person registering or notifying such an activity".

2.3.2. Scope

- Did your country opted for a double system of liability (strict and fault based) or for a more stringent regime as allowed by art 3.2?

To this respect, article 311, paragraph 2, of the Law 152/2006 seems to maintain the former provision of article 18 whereby liability is determined by an act or omission committed in violation of the law (fault liability).
Furthermore, Annex V to Law 152/2006 lists the hazardous activities indicated in Annex III of the Directive. However, contrary to what required by the Directive, there is no provision in the Italian law which explicitly links strict liability to those activities.

2.3.3. Exceptions

- Which are the exceptions to the scope of the liability regime in your country? (art 4)

In the Law 152/2006, the exceptions to the liability regime are listed in article 303 which includes all the exceptions provided by the Directive, namely:

- damage caused by armed conflicts, civil war, insurrections;
- a natural phenomenon of exceptional, inevitable and irresistible character;
- environmental damage arising from an incident in respect of which liability or compensation falls within the scope of any of the international conventions listed in Annex I to Part VI of the present decree and to which Italy is a party.
- Nuclear damage
- Activities carried out under necessity and the main purpose of which is to serve national defence, international security or to protect from natural disasters.
- Damage caused by an emission, an event or an incident that took place before the entry into force of Part VI of the present decree (29 April 2006)
- Damage caused by an emission, event or an incident occurred more than 30 years ago
- Damage caused by pollution of a diffuse character, when it has not been possible to establish a causal link between the damage and the activity of individual operators.

To the aforementioned hypothesis of exclusions, the decree further adds:

- cases of pollution and site contamination to which procedures for restoration have been effectively undertaken, except for the cases in which there still persist an environmental damage.

- What about the permit defence and the state of the art defence (art. 8.4)?

Both the permit defence and the state-of-the-art defence are contained in the Italian Law in article 308, paragraph 5, letter a) and b), respectively.

2.3.4. Preventive and remedial actions

- When are preventive (art 5) and remedial (art 6) actions taken by the operator?

According to art. 304 of Law 152/2006, implementing art. 5 (on preventive actions) of the Directive, the operator shall, within 24 hours, take the necessary preventive measures where environmental damage has not yet occurred but there is an imminent threat of such damage occurring. Before any action, the operator shall inform the local authorities, namely municipality, provincial, regional authorities, which within the following 24 hours must inform the Italian Ministry of Environment, Land and Sea. This communication shall include information on all relevant aspects of the situation (i.e. the operator, the features of the area, environmental resources likely to be affected, description of measures to be taken).
According to art. 305 of Law 152/2006, implementing art. 6 (on remedial actions) of the Directive, where the environmental damage has occurred the operator shall, without delay, inform the authorities enlisted in art. 304 and other public bodies that have relevant competences. Moreover, he has to take immediately: a) all practicable steps to control, contain, remove or otherwise manage the relevant contaminants and/or any other damage

factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services, also on the basis of specific instructions coming from the competent authorities; b) the necessary remedial measures, in accordance to art. 306 (on determination of remedial measures).

- Which is the role of the competent authority?

According to art. 304 (on preventive actions) of Law 152/2006, the competent authority, namely the Ministry of Environment, Land and Sea, may, at any time, require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat; require the operator to take the necessary preventive measures on the basis of the specific methodologies provided by the Ministry itself; give instructions to the operator to be followed on the necessary preventive measures to be taken; or may take the necessary preventive measures itself when the operator does not comply to his obligations or cannot be held liable or cannot be identified.
According to art. 305 (on remedial actions) of Law 152/2006, the Ministry of Environment, Land and Sea, may, at any time, require the operator to provide information on the environmental damage entity and on the actions undertaken; require the operator to take all practicable steps to control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services; require the operator to take the necessary remedial measures; may take the necessary remedial measures itself when the operator does not comply to his obligations or cannot be held liable or cannot be identified.

- Is there any way for environmental organisations to participate in the negotiations between the polluter and the administration on the restoration? Are these discussions public?

According to art. 306(5) of Law 152/2006 the people enlisted in art. 12 of Directive 2004/35/EC and the owners of the sites where the environmental damage has occurred are invited to present their observations to the Ministry within 10 days from the damage occurrence. The Ministry shall take these observations into consideration when deciding on the case at stake. No public discussions are encompassed by Part VI of the Decree.

- Are there provisions to develop in further details the common framework concerning the remedying of environmental damage (Annex II)?

The Italian legislator has implemented Annex II to the Directive with Annex III to the Decree without developing further details.

2.3.5. Preventive and remedial costs

- Is there a system of security over property or other appropriate guarantees (art. 8.2)? Is it a preventive system or shall such measures only be taken after environmental damage has occurred? How the system works?

Pursuant to Article 308, the Ministry of the Environment can recover from the operator the expenses it has incurred to carry out the necessary measures of prevention or restoration, through guarantees over property or through a specific kind of financial guarantee, namely a (*fideiussione a prima richiesta*) guarantee on demand. However, Italian law does not specify whether those guarantees shall be preventively adopted by the operator in order to be able to carry out the hazardous activity in question or, instead, they have simply to be provided by him after the occurrence of the damage.
Moreover, article 317, paragraph 5, specifies that the sums recovered by the State as compensation for environmental damage, including the financial guarantees, are assigned to a special "Rotation Fund" which will finance, *inter alia*, measures for decontamination of land.

- Is there a special provision to give effect to art. 8.3, *in fine* (appropriate measures to enable the operator to recover the costs incurred in cases the operator shall not be required to bear the cost of preventive or remedial actions)? Must the operator in such cases nevertheless take the remedial measures? Or are they taken by the authorities?

The current law does not include a special provision to give effect to article 8.3, nor it clarifies whether the operator shall take the measures or not in those cases in which he is not required to bear the costs of the measures.

2.3.5. Cost allocation

- Are there national provisions within the meaning of article 9?

In case of multiple party causation, costs are borne jointly by the liable parties, according to art. 2055 of the Italian Civil Code.

2.3.6. Competent authority

- Which authority or authorities were designated for the purposes of article 11?

The role of competent authority is assigned to the Ministry of Environment (article 299 of Law 152/2006) which will pursue its tasks in collaboration with the Regions and the local entities.
Article 299, paragraph 4 provides that, in the tasks of identifying, ascertaining and quantifying the damage, the Ministry of the Environment will be assisted by private or public entities of proved technical expertise.

- Which remedies are available when preventive or remedial measures are imposed? (art. 11.4)

The Law 152/2006 does not, in itself, specify all the remedies available to the operators to complain against the measures imposed by the competent authorities, but article 307 provides that the decisions imposing preventive or restoration measures must be adequately motivated and notified to the operator with the indication of the legal remedies available under Italian law.

However, article 316 of the Decree specifies the remedies available to the operator against the order (*ordinanza*) of the Ministry enacted, pursuant to article 313 and 314, when the operator violated the law, thereby causing an environmental damage, and did not take the required restoration measures. The order contains the indications of the event, the element of proof and the factual elements relevant to the quantification and the assessment of the damage (article 314).
According to article 316 the operator in question has the right to file a complaint against that order to the competent Regional Administrative Court (TAR) to the Ministry of the Environment (*ricorso in opposizione*).
In addition, the operator has the possibility to use the special complaint provided by Italian administrative law a complaint against the order before the President of the Italian Republic, within the time limit of 120 days since the order has been notified.

2.3.7. Request for action

- Which of the alternatives listed in art. 12.1. were chosen ?

According to art.309 of Law 152/2006, Regions, autonomous Provinces, local entities and natural or legal persons affected or likely to be affected by environmental damage or having a sufficient interest in environmental decision making relating to the adoption of precautionary, preventive and remedial measures are entitled to submit to the Ministry of Environment, Land and Sea any observations, supported by specific documents and information, relating to the situations of environmental damage or an imminent threat of such damage of which they are aware. Moreover they are entitled to request the Ministry of Environment, Land and Sea to take action. Environmental NGOs identified according to art. 13 of Law 349/86 have a sufficient interest to act under the provisions of the Decree.

- Is article 12 only applied in cases of remediation of environmental damage or also in cases of imminent threat of damager ? (art. 12.5)

Art 12 of the Directive applies both in cases of remediation of environmental damage and in cases of imminent threat of danger.

- What type of review procedure is available under national law? (art. 13)

According to art. 310 of Law 152/2006, the persons identified by art. 309 are entitled to take legal action against acts and decisions taken by the Ministry of Environment, Land and Sea whether in violation of the provisions of the Decree, and against the failure to act of the Ministry. Moreover, they are entitled to take legal action to recover damage caused by late action of the Ministry.

2.3.8. Financial security

- How was article 14 implemented?

Article 318 provides that a new decree shall be adopted containing appropriate measures for the definition of adequate forms of guarantees and to promote the development of new financial instruments which can support the affected operators.

2.3.9. National law

- Were additional activities included in the scope of the regime? Were additional responsible parties identified?(art. 16.1)

There are not additional activities included in the Annex 5 to Part VI of the Decree, which lists all the activities already identified by the relevant annex III to the Directive.
Nevertheless, the very broad and open formulation of article 311, "whoever …causes damage to the environment…", and the fact that nowhere in Part VI is made reference to that Annex, could possibly leave space for a broader interpretation in the sense of possibly including other activities. However, the decree is not clear on this point.

In addition to that, it must be recalled that some the additional duties are imposed, besides the responsible operator, also on the owner of the land by the provisions included in Part IV of the Decree.
Article 245 of the Law 152/2006 (Part IV) imposes on the owner of the contaminated land, who ascertains that the threshold of contamination risk has been overcome or there is an imminent threat thereof, a duty to inform the competent authorities (in this case the competent territorial authority) and to take the necessary preventive measures.

- Are there special provisions to prevent a double recovery of costs in cases of concurrent action ? (art. 16.2)

Article 313, paragraph 7, excludes, in cases of concurrent action by an entity or an individual other than the Ministry of the Environment, the adoption of additional measures entailing increased additional costs for the responsible operator. This provision is without prejudice of the right of private parties to claim compensation for personal injury or property damage suffered as a consequence of the environmental damage, pursuant to the relevant provisions of the Italian Civil Code (art. 2043).

2.3.10. Temporal application

- How was article 17 implemented?

Art 17 of the Directive was implemented by art. 303 of Law 152/2006. According to such provision, the liability system introduced by Part VI of the Decree shall not apply to: a) damage caused by an emission, an event or an incident occurred before Part VI of the Decree entered into force (29th of April 2006), which is meant to encompass the first two options foreseen by the Directive; b) damage caused by an emission, an event or an incident occurred more than thirty years ago

2.3.11. Transboundary environmental damage

- How the system works in case of environmental damage in a transboundary context ?

Pursuant to art. 318, and in conformity with the Directive provision, in case of transboundary environmental damage, the Italian Ministry of Environment, Land and Sea shall cooperate with other States affected by the damage, also exchanging information, in order to ensure that preventive action, and where necessary, remedial action is taken. When the Italian Ministry identifies an environmental damage within its borders which has not been caused within them shall report to the European Commission and any other Member state concerned. In this case, however, the Italian Ministry may make recommendations for the adoption of preventive or remedial measures.