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The Deputy Permanent Representation of
Italy to the European Union

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Dear Director-General,

With reference to Article 18 of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, please find enclosed the Report from the competent Italian authorities on experience gained in the application of the Directive.

Yours faithfully,

The Deputy Permanent Representative
[signed]
Marco Peronaci

To: Mr Karl FALKENBERG
Director-General
Directorate-General for the Environment
The European Commission
Brussels

ITALY

REPORT FROM THE ITALIAN GOVERNMENT TO THE EUROPEAN COMMISSION

**Pursuant to Article 18(1) of Directive 2004/35/EC on environmental liability with regard
to the prevention and remedying of environmental damage**

Report on the national experience gained in the application of the Directive

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Report on the national experience gained in the application of Directive 2004/35/EC - 18(1) Reports and review, and information and data under Annex VI

INTRODUCTION

Article 18(1) of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (hereinafter also the ELD) provides that Member States shall report to the Commission on the experience gained in the application of this Directive by 30 April 2013 at the latest.

To this end, the Italian Government has prepared this Report, which is the outcome of surveys and analyses carried out by the Ministry for the Protection of the Environment, Land and Sea (MEPLS), on the activities carried out between 2007 and 2012 by the competent authority to implement the environmental damage prevention and remediation legislation.

In particular, Chapter 1 traces the experience gained in the process of applying the Directive in Italy, with reference to both transposition and implementation, in order to identify methods and challenges of the application of environmental damage prevention and remediation legislation. Chapter 2 describes in greater detail the results of the application in terms of activities carried out by the Ministry. It includes, in particular, the information and data set out in Annex VI to the Directive concerning a list of instances of environmental damage. Lastly, Annex 1 contains a summary of the environmental damage prevention and remediation legislation, including prior legislation.

The distinctive features of the national framework – which are to be expected in the light of the complex process of transposing the ELD – are currently being finalised via close dialogue between the European and the Italian authorities and the adoption of amendments to help simplify the current regulatory framework.

Nevertheless, the aspects highlighted in this report should be taken into account when analysing the ELD implementation processes, the instances of damage recorded in Italy and, most importantly, any proposals for amending the Directive.

SUMMARY OF RESULTS AND CONCLUSIONS

Directive 2004/35/EC was transposed in Italy in 2006. The process of transposition was guided by a twofold objective: integrating EU legislation with the prior national rules, and coordinating environmental damage prevention and remediation rules with any other relevant provisions.

The regulatory framework that emerged from the transposition was found to be complex, and required a simplification process which is still under way. Factors helping to move the process forward are the dialogue between the EU and the Italian authorities and the intense activity carried out by MEPLS for application of the legislation (measured in particular in Chapter 2). The constraints and opportunities linked to application of the Directive (described in Chapter 1) emerged gradually, showing the need to identify a univocal interpretation of the new regulatory framework (this point is discussed, in particular, in paragraph 1.1).

Nevertheless, despite the initial interpretation difficulties and thanks to the experience gained in two decades of application of the prior legislation¹, from 2007 to 2012 the competent authority (MEPLS) issued about 2 000 requests for preliminary technical investigations, in order to assess the occurrence of imminent threats of damage or actual environmental damage falling within the scope of the new legislation. As at 2012, for about 1 000 cases, at least the preliminary assessment had been concluded, and in about 15% of cases, an actual environmental damage or an imminent threat of damage was identified.

In the instances of imminent threat of damage, the Ministry verified application of preventive measures by the operator and implemented monitoring to ascertain the non-occurrence of damage. In some cases this monitoring is still under way.

Most cases of environmental damage are also undergoing further technical assessments, even though the remediation process is in many cases already under way. More precisely, the purpose of the technical assessments is to verify the significance of environmental damage in compliance with the definitions and criteria set out in the Directive and to identify the appropriate remedial measures to restore resources and services to their baseline condition. In compliance with the Directive, in those cases where resources and services cannot be restored (either partially or completely) but can be replaced, one additional purpose of the investigations is to measure the scale of complementary measures and, if interim losses have occurred, the scale of compensatory measures.

In some cases, the start of primary remediation measures was ascertained and/or it was possible to determine the level of primary remediation achievable. In instances of partial or impossible primary remediation, the need to quantify complementary remediation measures was established. However, only in a few cases was it possible to determine the scope of such measures. For compensatory measures, on the other hand, establishing the existence of interim losses proved less difficult; more complex was however determining the scale of measures, and the possibility of identifying specific compensatory measures was very limited.

The reasons for these results vary from case to case, and are linked to a series of challenges

¹ The prior legislation on the remedying and prevention of environmental damage, which entered into force in 1986, is listed in the first paragraph of Annex 1.

encountered in application of the Directive, which have had a significant impact on the actual feasibility of the remedial actions (paragraphs 1.3-1.4).

These brief remarks are expanded in the rest of this report; however, we can already summarise the main outcome of the experience gained by the Italian Government in application of the Directive: despite the extension of the scope of the Directive made by the Italian Government (described in paragraph 1.1) and the intense activity carried out by the Ministry and the competent technical agencies to implement it (described in Chapter 2), the quantification and definition of remedial measures was found to be burdensome from the technical, institutional and also the financial viewpoint.

Our experience shows the need to make specific assessments in order to draw up proposals for amending the Directive under Article 18(2) in the light of the problems encountered, to identify appropriate measures and tools to improve application of the “polluter pays” principle.

1. THE IMPLEMENTATION PROCESS

The process of implementing Directive 2004/35/EC has been influenced by the *existing national provisions on environmental liability* for the remedying of environmental damage – which required the Italian Government to make choices for the purpose of transposing the Directive – and by the *technical requirements* established by the Directive which on implementation were found to be particularly burdensome from the technical, institutional and financial viewpoint.

Against this background, in order to provide all the elements for proper assessment of application of the Directive in Italy, it is felt appropriate to preface the analysis of the information and data required by Annex VI to the ELD with an assessment of the impact on *application* of the national choices made at the time of *transposition* (Chapter 1.1) and with an analysis of the other factors influencing implementation (paragraph 1.2-1.4). Lastly, we shall describe certain measures currently undergoing study to improve application (paragraph 1.5).

1.1 Defining the scope

The experience gained in application of the existing legislation brought to light, already at the time of preliminary assessment of the Directive by the Italian Government – i.e. before its transposition – one important observation, which was confirmed during implementation. The definitions of environmental damage laid down in the Directive are in some cases too narrow, preventing application of the “polluter pays” principle to most instances where typically, under the previous national framework, MEPLS had been able to take appropriate action for the remedying of environmental damage. Indeed, starting from 1986 the Italian Government had introduced a legal framework governing the actions designed to remedy environmental damage².

Against this background, in order to avoid reduction of the existing level of national environmental protection via transposition of the ELD³, the choice was made to integrate the two frameworks, the European and the national, by introducing additional provisions (set out in Title III, part VI of Legislative Decree No 152/2006) over and above those transposing the ELD (set out in Title II, part VI of the same Decree). This choice was also dictated by the fact that at the time of transposition, in Italy a complex process of reorganization and rationalisation of the whole body of national environmental legislation was already under way.

As a consequence of this regulatory consolidation effort, the main provisions governing environmental damage are now gathered into a single law: Legislative Decree No 152/2006, also known as the Environmental Code. The Code’s main provisions for the purposes of this report can be found in Title II, part VI (*Italian legislation transposing the ELD*), Title III, part VI (*Provisions on compensation for environmental damage*) and part IV (*Provisions on the*

² The prior legislation on the remedying and prevention of environmental damage entered into force in 1986 and is listed in the first paragraph of Annex 1.

³ In Italy, the ELD Directive was transposed in 2006. As the deadline for transposition of the ELD was 30 April 2007, the Italian Government transposed it about one year ahead of the deadline, and was one of the first Member States to complete harmonisation of its national legislation with the EU rules.

*remediation of contaminated sites*⁴). A summary of the framework integrating the EU and the national rules – including the specific provisions for the remediation of contaminated sites – is provided for the sake of completeness in Annex 1.

The national choices made when transposing the ELD have overall produced a more extensive framework than the EU one, whose implementation has required the definition of detailed guidance on the interpretation of the environmental damage prevention and remediation framework to ensure compliance with the principles of the Directive, while enabling integration of the EU rules with the national environmental protection system.

Firstly, national law covers a broader range of natural resources protected by environmental damage prevention and remediation rules. This concerns in particular “damage to protected species and natural habitats”: indeed the nature areas protected by Law No 394/1991 are also covered. Similarly, as to the “water damage” category, the provisions on the remediation of contaminated sites (in part IV of the Environmental Code) include groundwater not monitored under Directive 2000/60/EC⁵.

Secondly, the concept of occupational activity, defined in Article 302(5), is more detailed and comprehensive than that made in Article 2(7) of Directive 2004/35/EC and is completed by the definition of operator, provided by Article 302(4), as “any natural or legal, private or public person who operates or controls the occupational activity having environmental relevance, or to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity”. Furthermore, the EU liability regime is completed by further provisions which, as they address the cases of compensation for damage not attributable to operators, introduce a generic liability, not limited to operators alone, but applying to “anyone” and fault based.

Thirdly, national law defines environmental damage as “any significant and measurable, direct or indirect impairment of a natural resource or of its potential for use”. This definition makes it possible to extend application of the “polluter pays” principle to types of damage not covered by the definitions provided in Article 2(1) of the Directive and transposed into Italian law by Article 300(2) of Legislative Decree No 152/2006.

Fourthly, as already mentioned, national law has introduced provisions on compensation for environmental damage (Title III, part VI, Environmental Code) *supplementing* those transposing the ELD (Title II, part VI, Environmental Code).

Indeed, these provisions complete the scope of the fault-based and negligence-based liability regime established by the Directive, which is limited to instances of “damage to protected species and natural habitats”. They consequently extend the scope of the fault-based and negligence-based liability regime as they apply to additional resources not protected by the Directive and which do not fall within the scope of the strict liability regime, without any duplication between the provisions of the Directive and the additional national ones. In other words, the two sets of rules (European provisions and the additional national provisions) are mutually complementary.

⁴ A summary of the national legislation is annexed to this report.

⁵ For example bodies of water, including springs, used for the abstraction of water intended for human consumption, providing less than an average of 10 m³ per day, under Article 7 of Directive 2000/60/EC.

Thus, the liability regime also includes “damage to waters, both monitored and non-monitored⁶ by Directive 2000/60/EC”; “damage to land” even where it has no significant⁷ and measurable impacts on human health; “damage to the atmosphere” even where it has no measurable and significant impacts on land, water and protected species and natural habitats; and “damage to any natural resources” including those not protected by the Habitats Directive, the Birds Directive and Law No 394/1991 on protected nature areas.

Thus, in Italy, the environmental damage prevention and remediation legislation is more extensive in scope, for both liability regimes, than the EU legislation, owing to the inclusion of natural resources not protected by the Directive and to its extension to parties other than economic operators. Indeed, the legislation also applies to damage to resources warranting protection on the basis of the experience gained in applying the prior legislation. In any case, in compliance with the Directive, the current framework applies to the damage defined by the European legislation in accordance with the scope and the liability regime established therein.

In short, national law on the prevention and remedying of environmental damage allows the Ministry to apply the “polluter pays” principle to *anyone* causing significant and measurable, direct or indirect impairment of *any natural resource* or of its potential for use.

1.2 Adapting operational practices

In Italy, environmental damage prevention and remediation legislation has been implemented via specific assessments by the competent authorities which, in many cases, required technical assessments of the damage incurred.

These assessments have required the adaptation of methods to take account of the regulatory changes made in 2006 concerning both the preliminary and final assessments of liability and damage.

In particular, the *preliminary assessment* carried out by the competent authority has been adapted to the new scope, by identifying *ad hoc* criteria for selecting the cases covered by the new national environmental damage prevention and remediation legislation and identifying the operator. This adjustment was initially influenced by the above-mentioned uncertainty in interpretation, and over time, led to the formulation of the present interpretative framework.

The *preliminary technical assessment*, which in the past was mainly focused on verifying the occurrence of environmental damage, must now distinguish between imminent threat of damage and actual damage, on the basis of the new definitions.

On the basis of information on damaged resources and services provided by experts and according to the relevant operator, MEPLS can now determine which type of liability applies to each case, and identify the appropriate actions to be taken. Usually, this further step requires a second (and *final*) *technical assessment*.

⁶ These are surface water bodies excluded from monitoring under Ministerial Decree No 131/2008 (rivers with a basin of less than 10 km; lakes with an area < 0.5 km²); wetlands; bodies of water, including springs, used for the abstraction of water intended for human consumption, providing less than an average of 10 m³ per day, under Article 7 of Directive 2000/60/EC.

⁷ The concept of significance of damage in this field must be considered in the light of an assessment of the need for protection by the competent authority.

The second technical assessment too needs to take account of the distinction between imminent threats and actual damage. In the case of an imminent threat of damage, the second assessment identifies the preventive measures to be taken, or considers those proposed by the operator⁸. In cases of actual damage, the purpose of the assessment is to determine and quantify the damage precisely, also by gathering additional information requested by MEPLS from the operator, and to identify “the best” remedial measures (including any complementary and/or compensatory measures) usually also estimating the cost of their implementation. If the measures selected are to be implemented by the operator, MEPLS supervises their execution. If on the other hand, the operator fails to take action, MEPLS may decide to execute the remedial measures itself, and then recover the costs incurred from the operator⁹. Lastly, the Ministry may decide to claim compensation via administrative proceedings, by issuing an order, or via judicial proceedings, by lodging a civil liability action in criminal proceedings. In these two cases, the remedial measures identified and the associated cost estimate will be used respectively to calculate the compensation or damages claimed from the operator¹⁰.

The greatest change the final technical assessment has had to take on board is the distinction between primary, complementary and compensatory remediation measures, and the consequent requirement to apply equivalence approaches not previously known or applied in the manner now required by the Directive. In practice, moreover, where an imminent threat of damage is followed by actual damage, despite the prevention measures taken, it is necessary to interpret the distinction between the preventive measures taken (or just identified) and primary remediation measures, a distinction which is also necessary to define the time profile of the damage for the purpose of applying equivalence approaches.

As noted, where the operator fails to act, MEPLS assesses, on a case by case basis, whether to carry out remedial measures itself or to claim damages. In any case, in compliance with the Directive, the competent authority may take action in place of the operator.

For this decision too, the technical assessment must supplement the information which used to be provided to MEPLS, via the development and application of methods for supplying additional useful data to the competent authority.

During roll-out of the new framework, *the number of cases to be assessed has increased*, mainly for two reasons.

Firstly, the Ministry decided to raise the “alarm” threshold and request preliminary technical assessments of damage to avoid the risk of failing to spot instances requiring action, given that the information available in the preliminary stage is often limited.

⁸ MEPLS also asks operators to provide additional information supporting technical assessment, in order to determine whether, despite prevention measures, environmental damage did nevertheless occur. These cases are handled with the same procedure as those for which technical assessment established the occurrence of environmental damage from the outset.

⁹ Remediation costs shall include the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action, administrative, legal and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.

¹⁰ In this case, MEPLS will also need, in compliance with the ELD, an estimate of the costs to assess environmental damage, an imminent threat of such damage, alternatives for action, administrative, legal and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.

Secondly, entitled third parties may also ask MEPLS to take action, under Article 309 of Legislative Decree No 152/2006. These requests are often accompanied by insufficient details on the alleged damage, which need to be supplemented, in most cases at a high financial cost, also in view of the need to involve other public agencies having the necessary investigative skills.

It should also be noted that in Italy the competent authority may be notified of possible cases requiring action not only via the standard channels provided for by the Directive, for requesting MEPLS's intervention (i.e. a notification from the operator of an imminent threat of damage or actual damage or a request to take action pursuant to Article 309 of Legislative Decree No 152/2006), but also from information provided by the Public Prosecutor's offices via the State legal service (*Avvocature dello Stato*) which notify the Ministry of cases of criminal proceedings having "environmental relevance".

1.3 Pros and cons of the technical requirements laid down in the Directive

In the process of adapting operational practices, the technical assessments must also take account of the stringent technical requirements introduced by the Directive for measuring types of damage (to land, to water, to protected species and natural habitats) defined at EU level for applying equivalence approaches in order to establish remedial measures.

The complexity of *measuring types of damage* is linked to the amount and type of information needed to determine the threshold of the types of damage defined in the Directive. This information is not always available, unless substantial investments are made: this limits its operational feasibility. On the other hand, alternative options to collection of the missing data, such as recourse to damage-measuring models, would require specific actions to strengthen these models' scientific recognition and usability. Therefore, the currently limited use of models should not be regarded as a national policy choice. It should also be remembered that without these actions, recourse to models would very likely originate legal disputes concerning definition of the measures to be implemented, hence causing delays in the remedial measures which may be incompatible with the characteristics of the damage, which tend to vary over time¹¹.

Application of the equivalence approaches requires better knowledge of these methods, which is currently inadequate. It is also essential to hone and promote use of the multidisciplinary approach. As is known, the equivalence methods are based on the economic principle of equivalence between "the costs stemming from damage" and the "benefits of remediation", appropriately discounted by means of financial techniques.

The above-mentioned needs impacted significantly on application of the equivalence approaches, especially in the early years of transposition. Nevertheless, these appear to be more manageable factors, also thanks to the recent steps taken by the European Commission (production of training material, a brochure and an information sheet).

These methods undoubtedly have the great merit of having innovated the assessment of environmental damage remediation and consequently application of the "polluter pays" principle. This is particularly true for Italy, where under the prior legislation calculation could

¹¹ This is the case in particular for damage caused to "uncontained" resources, for example water.

be made by a variety of methods, not necessarily well accepted, especially by the Courts, with the consequence of hindering the effectiveness of the whole framework. While over two decades of implementing the national framework, the Italian Government undoubtedly made major steps forward in this respect, the introduction of the equivalence methods and remedial measures has helped to speed up progress.

Application of the equivalence methods to define the scope of complementary and/or compensatory remediation measures has, at least in theory, made it possible to apply compensation to cases where the damaged resource cannot be restored (or can only be partly restored) but can be replaced, and to interim losses. Complementary measures indeed allow “specific compensation” for the non-recovery of replaceable impaired resources and/or services. Compensatory measures, on their part, make it possible to “compensate in a specific manner” the period the damage has lasted, hence the non-availability of the resources and services in their baseline condition over the period between occurrence of the damage and achievement of the full effect of remediation¹².

While the value of equivalence approaches from a theoretical viewpoint is undisputable, their actual application is significantly limited by the requirement for specific training in their understanding and use and by the fact that they require the input of large amounts of data, which are often quite expensive to gather.

For these reasons, national law has introduced the use of other methods than the equivalence methods for a borderline case: specifically¹³, only when recovery is too costly. This includes those cases where, under the ELD, point 1.3.3. of Annex II to the Directive applies – transposed into Annex 3 to Legislative Decree No 152/2006. Letter (b) of this point provides that the competent authority is entitled to decide that no further remedial measures should be taken if the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.

1.4 The limitations to application of remedial measures

Theoretically, as seen in the previous section, the introduction of equivalence methods can help extend the “polluter pays principle” to damage which could not be or was not remedied. At operational level, application of remedial measures is, as noted, hindered by the sheer volume and cost of collecting the data needed to implement equivalence methods in order to quantify those measures, and it depends on the actions taken to spread knowledge of these methods.

In actual practice, even where the above obstacles are surmounted, there are further stumbling blocks to be faced, of an institutional and/or financial nature.

¹² For the sake of completeness, it should be noted that the equivalence approaches, at least theoretically, make it possible to measure the scope of the compensatory measures even in those cases where the duration of the damage is very long, to the point of being considered endless. Hence, these methods make it possible to quantify the scope of compensatory measures even in instances of damage entailing “permanent” losses of ecologic functions or of the capacity to provide services to other natural resources. In other words, these methods are potentially also applicable to damage to natural resources and services which cannot be restored or replaced.

¹³ In cases where no recovery was carried out or was possible, the equivalence methods are applied, in view of their recognised merits, discussed above.

The identification of specific remedial measures is hampered firstly by *institutional obstacles*. This is because identification, especially of complementary or compensatory measures in an alternative site, requires in most cases coordination between environmental actions and other types of actions which are the responsibility of local and regional authorities other than MEPLS. These measures are indeed additional and may involve other natural resources and services, different from those directly damaged. This being the case, it is mandatory to involve other authorities in the already complex process of establishing the measures. While broadening the range of participants is in itself desirable, in practice it can slow down the decision-making process and hence implementation. On the other hand however, failure to involve other agencies could well be a ground for litigation.

Where damage was (totally or partially) unremedied due to the operator's failure to take appropriate action, *financial obstacles* might arise, owing to the high costs of remedying especially serious instances of environmental damage. In these cases, application difficulties may also concern primary remediation measures. In the case of Italy, it should also be considered that as a consequence of the broad scope of the national provisions, the cases of damage to which the "polluter pays" principle applies are many, increasing significantly the caseload to be handled by the competent authority. In the event of imminent threat of damage the difficulties described may also concern preventive measures.

The national lawmakers had foreseen these implications on the basis of the experience gained with prior legislation. This is why provisions were established to enable MEPLS to seek compensation via administrative measures or judicial redress *when the actual recovery or the adoption of complementary or compensatory remediation measures are entirely or partly omitted, impossible or too expensive, or in any case implemented only partially or incorrectly*. In these cases, the party causing the damage is required to pay an equivalent amount by way of compensation to the State.

As noted, the amounts demanded by MEPLS as compensation are estimated on the basis of the measures to be taken to remedy the damage. Thus they refer to specific primary complementary or compensatory remediation measures, and are **paid into a fund** dedicated to the following environmental actions, under Article 317(5) of Legislative Decree No 152/2006:

- a) urgent actions for the delimitation, characterisation and safeguarding of polluted sites, assigning priority to those areas for which the compensation for environmental damage was paid;
- b) decontamination, remediation and environmental recovery of those areas for which the compensation for environmental damage was paid;
- c) remediation and environmental recovery actions under the national programme for the remediation and environmental recovery of polluted sites;
- d) activities of research centres in the field of greenhouse gas emission reduction and global climate change.

This additional mechanism was introduced in order to boost the financial feasibility of damage remediation measures, hence to improve the effectiveness of damage remediation.

1.5 Measures to improve application

One of the lessons learned from application of the Directive is the need to identify appropriate tools to support the implementation improvement process under way in Italy. In particular, tools designed to: optimise coordination of the different legal frameworks governing this area; support technical assessments; and facilitate the application of remedial measures.

In order to optimise coordination of the different legal frameworks, *close dialogue is under way between the EU and Italian authorities in view of the adoption of amending provisions* helping to simplify interpretation of the current regulatory framework. Furthermore, the option of setting up and maintaining a *National Register of environmental liability and damage cases* is being assessed. In view of the large number of cases to be assessed, stemming from the choices made when transposing the Directive, it is especially important to have information on the status, hence on the results, of the procedures and of the assessments carried out, so as to optimise action strategies, taking account of environmental urgencies and of the availability of financial resources in an integrated regulatory implementation framework.

In order to support technical assessments, at the present time it would seem advisable to consider the option of drawing up *Guidelines*, modelled on those being drafted at EU level, adapted to the national context and aimed at supporting measurements of the damage to natural resources and services and boosting the capacity of applying equivalence methods and identifying remedial measures. The information contained in the Register should also support the current assessment processes and methods. Developing these guidelines is yet another reason to pursue the dialogue promoted by the European Commission and exchange of information with the other Member States and between national authorities.

In order to facilitate the application of environmental damage remediation, lastly, *analyses on financial guarantee tools* should continue to be promoted, at both national and European level. In this case too, it would be necessary to continue exchanging information on the methods used by the other Member States and to distinguish which should be adopted at national versus EU level.

2 CASES FALLING UNDER THE ENVIRONMENTAL DAMAGE PREVENTION AND REMEDIATION FRAMEWORK

These early years of implementation of the new environmental damage prevention and remediation legislation – as shown in part one of this report – mainly focused on: adapting operational practices; facing the challenges posed by the demanding technical requirements introduced by the Directive; increasing the effectiveness and the efficiency of the technical analysis capacities acquired.

In this regard, the drafting of this report has offered the Italian Government an opportunity to assess the effectiveness of the measures put in place, identify any challenges and launch the second phase, focused on implementation. The information provided in this report is the fruit of specific investigations, promoted, coordinated and developed by the General Secretariat of MEPLS and carried out with the support of the Directorates-General having direct competence for cases of environmental liability and damage¹⁴. This second phase has been launched placing strong emphasis on coordination of the activities to apply environmental damage prevention and remediation legislation.

It should firstly be noted that the analysis of data collected by the surveys carried out has allowed identification of the main results of the activities performed by the Ministry in order to implement the environmental damage prevention and remediation legislation. This report also provides the data specifically required by Annex VI to the Directive covering a list of instances – a representative sample of the different types of environmental damage – for which it has been possible to gather the information required.

Processing of the data shown in this Chapter was based on the European Commission's non-binding guide for reports, under Article 18(1) of the Directive of 14 September 2012¹⁵, appropriately adapted to the national context.

2.1 *Potential instances*

Between 2007 and 2012, MEPLS was informed on an average of about 800 instances per year. These are situations potentially falling within the scope of the new environmental damage prevention and remediation legislation (*potential instances*) which the Ministry has followed up via appropriate assessments.

Table 1 lists the number of potential instances of damage, i.e. the number of notifications received by the Ministry between 2007 and 2012 and examined by the Directorates-General in charge of implementing the environmental damage prevention and remediation rules, broken down by information source.

¹⁴ According to the type of damaged resource, cases are handled by: the Directorate-General for the protection of the territory and water resources; the Directorate-General for the protection of nature and the sea; the Directorate-General for environmental assessment. Some cases are handled by more than one Directorate-General: for examples cases of damage caused by atmospheric emissions which also affect other resources. Cases are allocated between the three Directorates-General according to the assessment know-how required.

¹⁵ Ref. Ares(2012)068439 -14/09/2012.

Table 1 - Potential instances of damage notified to MEPLS and examined by the Directorates-General in charge of implementing the environmental damage prevention and remediation framework⁽¹⁾ - Absolute number and % value on the total, for the period: 2007 - 2012

	TOTAL	
	number	%
Communication from operators/Prefectures ⁽²⁾	2 979	61%
Notifications by the Public Prosecutor's offices or via the State legal service (<i>Avvocatura dello Stato</i>)	1 846	37%
Request for action from entitled third parties ⁽³⁾	93	2%
TOTAL	4 918	100%

Notes: (1) only data from two Directorates-General out of the three responsible for implementing the environmental damage prevention and remediation framework could be included. Data relating to the years 2007 and 2008 have been estimated prudentially, as the archives contain usable data only since 2009. Consequently, the data shown are to be considered underestimated; (2) it refers to Article 304 of Legislative Decree No 152/2006; (3) it refers to Article 309 of Legislative Decree No 152/2006.

Even only considering the notifications examined by two out of three of the Directorates-General tasked with implementing the national law¹⁶, it emerges that environmental damage prevention and remediation activities involve intense assessment and actions by the Ministry, implemented with the use of significant (human and financial) resources. It should also be noted that the number of notifications has been constantly growing over the period in question. More specifically, between 2009¹⁷ and 2012 the increase was about 65%; in 2012 more than one thousand notifications were issued.

The *increase in the number of potential instances* should be ranked among indicators of the progressive improvement of implementation of the new legislation in Italy. As can be easily noted, at least until 2008, part of the potential instances fell under the scope of prior legislation, as they occurred before the entry into force of the new rules. Therefore, selection activity also needed to distinguish those cases from those falling under the new framework. However, the number of said instances has been declining since 2007¹⁸.

On the other hand, the *significant number of potential instances*, almost 5 000 notifications in 6 years, is due to several factors. For one thing, it is certainly the consequence of national transposition choices, in particular, of the choice to integrate prior legislation with the principles of the Directive¹⁹: this has led to inclusion of the notifications which would have otherwise been handled under the prior framework (amounting to 37% of the total in the

¹⁶ Owing to technical difficulties and internal organisational characteristics, only data from two Directorates-General out of the three responsible for implementing the environmental damage prevention and remediation framework could be included. The data for 2007 and 2008 have been estimated prudentially, as there are no archives for those years. Therefore, the data reported should be seen as underestimated.¹⁷ The year 2009 was considered to avoid skewing the growth rate as a consequence of the natural "adjustment" that occurs whenever new legislation is rolled out.

¹⁷ The year 2009 was considered to avoid skewing the growth rate as a consequence of the natural "adjustment" that occurs whenever new legislation is rolled out.

¹⁸ And conversely the number of cases falling under the new regulatory regime has increased progressively.

¹⁹ See, in particular, paragraph 1.1.

period considered), which already previously had been numerous.

Secondly, it reflects the national “organisational” choice of centralising competence for environmental damage prevention and remediation in MEPLS²⁰. Lastly, transposition of the Directive accounts for 61% of the total number of instances, via introduction of the possibility of notification by operators (or the Prefectures under Article 304 of Legislative Decree No 152/2006). A far less important factor was the new possibility for entitled third parties to submit requests for action (under Article 309 of Legislative Decree No 152/2006). Only 2% of total notifications consisted of requests for action by entitled third parties.

Lastly, a further aspect may be noted, by assessing *distribution* of notifications *among the various sources of information* received by the competent authority. The notifications received by the Ministry are almost entirely (99%) ascribable to the “ordinary method envisaged in the Directive” (notification by an operator or the Prefectures) and to “prior national methods” (notifications by the Public Prosecutor’s offices via the State legal service).

The number of requests for action submitted by interested parties under Article 12(1) of the Directive (transposed by Article 309 of Legislative Decree No 152/2006) is very small. For these requests, steps should be taken to improve the data available already at the preliminary assessment stage. In most cases the information accompanying the requests is insufficient to support the allegations of environmental damage. Consequently, assessing these notifications is highly time- and resource-consuming.

Lastly, over the past three years, the number of requests for action under Article 309 has remained largely stable, and does not appear to be destined to increase. On the other hand, the notices submitted by the Public Prosecutors’ offices via the State legal service have increased by 96% and are hence an important source of information also for assessments under way and those to be commenced. The number of notifications submitted by operators and the Prefectures has also increased over the period in question (+61%).

2.2 Instances of liability

Between 2007 and 2012, about 40-45% of the notifications received by the Ministry, or more than 2 000 potential instances, underwent specific technical assessments to establish whether they should be classified as instances of imminent threat or of environmental damage. This is a very high percentage of the total number of notifications, and is an indication of the technical complexity of assessing environmental damage and of the need for constant interaction among the various experts engaged in the assessment process. The remaining quota (55%-60%), also very large, is directly handled by MEPLS relying on the capacity built over two decades of applying the old national legislation.

Up to 2012, almost half the notifications (or almost 1 000 cases) subjected to technical assessment had been examined, at least preliminarily. In about 15% of cases, an imminent

²⁰ Legislative Decree No 152/2006, Article 299(2): “As a rule the Ministry acts in cooperation with the Regions, the local authorities and any other public agency as appropriate” and paragraph 3 “The Ministry shall act in compliance with the applicable EU legislation on environmental damage prevention and remediation, and with the powers of the Regions, the Autonomous Provinces of Trento and Bolzano and the local authorities, applying the Constitutional principles of subsidiarity and sincere cooperation.”

threat of damage or actual environmental damage was identified, generating almost 150 *instances of liability*. Most of these were imminent threats of damage, whereas cases of actual environmental damage were far fewer.

In accordance with the European Commission's reporting guidelines²¹, the detailed data under Annex VI to the Directive are not provided for instances of imminent threat of damage.

However, it should be noted that, in most cases of imminent threat of damage, the Ministry checks removal of the source of damage by the operator or local or regional authorities and its natural attenuation. In all these cases, MEPLS, acting in compliance with the Directive and national law, attempts to gather useful information to monitor the developments of the case and check that no environmental damage occurs. All these situations represent procedures considered to have been completed: in these cases, monitoring activity has the purpose of enhancing protection. At all events, should the monitoring reveal occurrence of damage, the procedure is re-opened.

The following section provides the data and information referred to in Annex VI for a list of cases of environmental damage.

2.3 *Instances of environmental damage*

At the present time, we can supply the information and data specifically required by Annex VI to the Directive for a list of cases. They are a representative sample of the different types of environmental damage. The remaining instances of damage, whose precise number cannot be estimated, are currently undergoing further technical verifications pending completion of which it is not possible to supply the information requested by Annex VI.

The list includes a total of seventeen (17) cases which, pursuant to the above-mentioned European Commission reporting guidelines²², can be considered "confirmed cases": indeed, these are not imminent threats of damage, but cases where the Ministry, by means of an at least preliminary technical assessment, has identified an instance of environmental damage requiring remediation pursuant to the national legislation on environmental damage prevention and remediation (column A). In particular, five instances involved damage to only one natural resource (one case of damage to land; two cases of damage to water; two cases of damage to the atmosphere); in twelve cases the same activity damaged several natural resources (five cases of damage to land and water; six cases of damage to protected natural resources and services; one case of damage to the atmosphere, land and water).

Table 2 lists each of these cases of environmental damage, complete with available information and explanatory notes on the data. This information is displayed according to the format recommended by the European Commission's non-binding guide²³. The headings of the columns are numbered on the basis of the categories listed in Annex VI to the Directive.

²¹ Ref. Ares(2012)1068439 - 14.09.2012

²² Ref. Ares(2012)1068439 - 14.09.2012

²³ Ref. Ares(2012)1068439 - 14.09.2012

Table 2 List of instances of environmental damage covered by the Italian environmental damage prevention and remediation legislation in force from 2006

		1				5	2		3		4
ID	Province (Region)	Type of environmental damage	Date damage occurred (start)	Date damage discovered	Remed. process start date	Date of closure of proceedings	Activity that caused the damage		Resort to judicial review proceedings by liable parties or qualified entities		Outcome of the remed. process
									parties	outcome	
		A	B	C	D	E	F		G	H	I
1	Milan (Lombardy)	Damage to land	2007	2008	2008	pending	Activities included in Annex III	Waste management operations and discharges into water	None	No legal actions	n.a.
2	Naples (Campania)	Damage to land and damage to water	2007	2012	2012	pending	Activities included in Annex III	Waste management operations and discharges into water	None	No legal actions	n.a.
3	L'Aquila (Abruzzo)	Damage to protected natural resources and services	2007	2009	not started	pending	Activities not included in Annex III	Infrastructure construction	None	No legal actions	n.a.
4	Ragusa (Sicily)	Damage to protected natural resources and services	2007	2009	not started	pending	Activity not included in Annex III	Offshore drilling activities	None	No legal actions	n.a.
5	Bari (Puglia)	Damage to protected natural resources and services (*)	2008	2011	2008	pending	Activities included in Annex III	Mining activities	None	No legal actions	n.a.

Table 2 – List of instances of environmental damage covered by the national environmental damage prevention and remediation legislation in force from 2006

		1				5	2		3		4
ID	Province (Region)	Type of environmental damage	Date damage occurred (start)	Date damage discovered	Remed. process start date	Date of closure of proceedings	Activity that caused the damage		Resort to judicial review proceedings by liable parties or qualified entities		Outcome of remed. process
									parties	outcome	
		A	B	C	D	E	F		G	H	I
6	Naples (Campania)	Damage to land and damage to water (*)	2008	2009	2009	pending	Activities included in Annex III	Waste management operations and discharges into water	None	No legal actions	n.a.
7	Naples (Campania)	Damage to land and damage to water	2008	2012	2012	pending	Activities included in Annex III	Waste management operations and discharges into water	None	No legal actions	n.a.
8	Arezzo (Tuscany)	Damage to atmosphere, damage to land and damage to water (*)	2008	2007	started	pending	Activities included in Annex III	Waste management operations and operation of installations subject to permit	None	No legal actions	n.a.
9	Barletta - Andria - Trani (Puglia)	Damage to protected natural resources and services	2008	2011	not started	pending	Activities included in Annex III	mining activities	None	No legal actions	n.a.
10	Treviso (Veneto)	Damage to atmosphere	2008	2009	not started	pending	Activities included in Annex III	operation of installations subject to permit	None	No legal actions	n.a.
11	Naples (Campania)	Damage to land and damage to water	2009	2009	2009	pending	Activities included in Annex III	Waste management operations and discharges into water	None	No legal actions	n.a.
12	Rovigo (Veneto)	Damage to atmosphere (*)	2009	2011	not started	pending	Activities included in Annex III	operation of installations subject to permit	None	No legal actions	n.a.

Table 2 – List of instances of environmental damage covered by the national environmental damage prevention and remediation legislation in force from 2006

Table 2 – List of instances of environmental damage covered by the national environmental damage prevention and remediation legislation in force from 2006											
		1				5	2		3		4
ID	Province (Region)	Type of environmental damage	Date damage occurred (start)	Date damage discovered	Remediation process start date	Date of closure of proceedings	Activity that caused the damage		Resort to judicial review proceedings either by liable parties or qualified entities		Outcome of the remediation process
									parties	outcome	
		A	B	C	D	E	F		G	H	I
13	Monza (Lombardy)	Damage to water	2010	2010	2010	pending	Activities included in Annex III	operation of installations subject to permit	None	No legal actions	n.a.
14	Cosenza (Calabria)	Damage to land and damage to water(*)	2011	2008	2008	pending	Activities included in Annex III	Waste management operations and discharges into water	None	No legal actions	n.a.
15	Caltanissetta (Sicily)	Damage to water	2011	2011	2011	pending	Activities included in Annex III	Waste management operations and discharges into water	None	No legal actions	n.a.
16	Cosenza (Calabria)	Damage to protected natural resources and services	2011	2011	not started	pending	Activities not included in Annex III	Fishery operations	None	No legal actions	n.a.
17	Grosseto (Tuscany)	Damage to protected natural resources and services	2012	2012	started	pending	Activities not included in Annex III	sea carriage of passengers for tourism	None	No legal actions	n.a.

Notes:

- The numbers (1, 2, 3, 4 and 5) at the top of the columns reflect the numbering of required information and data in Annex VI to Directive 2004/35/EC.
- B: year of occurrence of the event, incident or emission which caused the damage. Cases of damage with (*) are those where the activity which caused the damage started before 2007, but ended between 2007 and 2012. For these cases, the year in which the activity which caused the damage ended is shown. In the other cases, the year of commencement is provided.
- C: year in which the competent authority became aware of the damage, i.e. the notification date.
- D: year of commencement of remedial actions, i.e. damage containment or limitation pursuant to Article 6.1(a) of Directive 2004/35/EC; identification of the remedial measures and start of remedial actions. Where the word “started” appears, the specific year in which actions started could not be determined, but their start has been confirmed.
- I: n.a.= data not available (the reasons for non-availability are provided in the text).

For the cases shown in Table 2 the Ministry was notified of the potential damage in the period between 2007 and 2012 (column C).

The table also includes certain instances of damage, marked with an asterisk (*), caused by activities which started prior to the entry into force of the new legislation (hence before April 2006) but ended after 2007. For these cases, the date of occurrence of the damage has been identified as the year in which the activity ended instead of the year of its start, which is instead indicated in the other cases of damage not marked with an asterisk (column B). As a consequence, in the cases with asterisk it may happen that the date of discovery of the damage appears to be earlier than its date of occurrence (this happens in case 8 and case 14).

Furthermore, these are open cases as, even though in most cases the remediation process has already been launched (column D), it is still under way, also in view of the need to perform additional surveys. In other words, the damage incurred requires further appropriate technical assessments in order to identify, launch or complete the best primary remediation measures. In cases where the damaged resources/services cannot be restored to their baseline level, the further technical assessments have the aim of quantifying and possibly defining complementary or compensatory remediation measures²⁴.

More specifically, remediation actions started in 13 cases out of 17 (column D). More precisely, in some cases the start of remediation was checked by the Ministry, while in others it was launched concurrently with discovery of the damage via the above-mentioned information sources. As a rule, remediation consisted of measures to contain, control, remove or otherwise manage the 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 services²⁵.

Analysis of the data in the tables shows that the year of start of occurrence of the damage (column B) coincides with that of discovery of the damage starting from 2009 (column C). This datum clearly reflects the ongoing improvement in implementation of the legislation, achieved by all the measures adopted at national level.

Most cases of damage were caused by the activities included in Annex III to the Directive, mainly as a consequence of waste management operations (point 2 of the Annex) or discharges into water (points 3, 4 or 5). The three cases caused by activities not included in Annex III concern respectively infrastructure construction, offshore drilling and the sea carriage of passengers. They all fall under the heading of “damage to protected natural resources and services”. The case of passenger carriage by sea refers to the infamous sinking of the Costa Concordia cruise ship (column F). The listed cases do not include the ILVA case, even though the Ministry has launched a large-scale, complex investigation also to select the most appropriate methods under the environmental damage prevention and remediation framework.

In no case has there yet been any resort to judicial review proceedings by either liable parties or qualified entities (columns G and H).

²⁴ These assessments are influenced by the obstacles mentioned in paragraphs 1.3 and 1.4.

²⁵ Under Article 6(1)(a) of Directive 2004/35/EC.

In general, in some cases it was possible to determine the degree of primary remediation that could be achieved, and where this was only partial, the need to quantify complementary remediation measures was established. However, only in a few cases was it possible to determine the scope of such measures. A similar situation occurred with regard to compensatory measures: while establishing the occurrence of interim losses is relatively straightforward, determining the scale of compensatory measures is far more complex. The identification of specific compensatory measures was made especially complex by the obstacles described in sections 1.3. and 1.4 of this report.

To sum up, the detailed data provided in this chapter show that Italy has made considerable efforts to ensure full implementation of both the national law on environmental damage prevention and remediation and the principles of the Directive. Analysis of individual cases shows that overall limitations to implementation are mainly due to the specific characteristics and challenges of the Directive described in the previous chapter.

Annex 1 - The national legislation on environmental damage prevention and remediation

1. The national legislation prior to the transposition of Directive 2004/35/EC

Prior to the approval and transposition of Directive 2004/35/EC, in Italy compensation for environmental damage was governed by Article 18 of Law No 349 of 8 July 1986, concerning *Establishment of the Ministry of the Environment and rules on environmental damage*.

This Article, (repealed, except for paragraph 5, at the time of transposing the Directive and transposed with some amendments into Article 311 of Legislative Decree No 152/06), read as follows:

- “1 Any wilful or negligent breach of provisions of law or of measures adopted under the law resulting in damage to the environment, by altering, damaging or destroying all or part of it, makes the person responsible for it liable for compensating the State for such damage.
 2. Jurisdiction over the matters referred to in paragraph 1 above lies with the ordinary Courts, without prejudice to the jurisdiction of the Court of Auditors, laid down in Article 22 of Presidential Decree No 3 of 10 January 1957.
 3. Legal actions seeking compensation for environmental damage, including criminal actions are lodged by the State and by the local authorities in whose area of jurisdiction the damaged resources/services are located.
 4. The associations referred to in Article 13 and simple citizens, in order to request action from the entitled parties, may report any cases of damage to environmental resources that they become aware of.
 5. The associations referred to in Article 13 of this Law can join environmental damage actions and may submit applications to the administrative courts seeking the annulment of unlawful acts.
 6. Where precise quantification of the damage is not possible, the courts shall determine its value at its discretion, taking account of the seriousness of the individual’s fault, of the cost for recovery and of the profit gained by the author of the damage/infringer as a consequence of the conduct which cause environmental damage.
 7. In the cases of joint liability for the same damage, liability shall be apportioned having regard to the role played by each party.
 8. The Court, when delivering a verdict of guilt will also, where possible, order recovery of the affected areas at the liable party’s expense.
 9. Collection of any sums receivable by the State under Court judgments is governed by the rules set out in the Consolidated Law on the collection of State revenue (Royal Decree No 639 of 14 April 1910).
- 9-bis.* Any sums received by the State as compensation for damage pursuant to paragraph 1, including the enforcement of security given to the State as guarantee for such compensation shall be entered as revenue in the State budget and shall be allocated, by Decree of the Ministry of the Treasury, Budget and Economic Planning to a revolving fund to be set up under an *ad hoc* line item of the budget of the Ministry of the Environment, in order to fund, also by means of advance payments:
- a) urgent actions for the delimitation, characterisation and safeguarding of polluted sites, assigning priority to those areas in respect of which compensation for environmental damage

was paid;

- b) decontamination, remediation and environmental recovery of those areas in respect of which compensation for environmental damage was paid;
- c) remediation and environmental recovery actions under the national programme for the remediation and environmental recovery of the polluted sites referred to in Article 1(3) of Law No 426 of 9 December 1998.

9-ter. A Decree of the Minister of the Environment, issued together with the Minister of the Treasury, Budget and Economic Planning, shall establish rules governing the functioning of and access to the revolving fund, including the procedures to recover the sums granted by way of advances”.

2. National transposing legislation

Currently, the Italian legislation transposing Directive 2004/35/EC is contained within Legislative Decree No 152/2006, and specifically Title II, Part VI, of the Decree.

Articles from 304 to 310 of Title II lay down the liability regime for environmental damage, in close compliance with the provisions of Directive 2004/35/EC.

On this point, Legislative Decree No 152/2006 reproduces faithfully the text of the Directive, with reference firstly to its definitions, including those of “environmental damage”, “operator” and “occupational activity”.

The Directive’s provisions on preventive action and on environmental recovery measures are also reproduced.

As to the former, Article 304 of Legislative Decree No 152/2006 provides that, where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator concerned shall, within 24 hours and at his expense, take the necessary preventive and safeguarding measures. If the operator fails to comply with said prevention obligations, or the operator cannot be identified or is not required to bear the costs under part VI of this Decree, the Minister of the Environment may itself take the *measures needed to prevent the damage*, approving the statement of expense, and will be entitled to recover said costs from the parties that caused or contributed to causing such costs, provided such parties are identified within five years after payment.

As concerns *recovery measures*, Article 305 provides that where environmental damage has occurred the operator shall, without delay, inform the competent authorities of all relevant aspects of the situation. The operator shall also take without delay:

- all practicable steps to immediately control, contain, remove or otherwise manage any 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 given by the competent authorities on the necessary preventive measures to be taken;
- the necessary recovery measures provided for by Article 306, i.e. the measures pursuant to Annex 3 to Part VI of the Decree, which match those laid down in Annex II to Directive 2004/35/EC.

These provisions are completed by the rules on the remediation of contaminated sites laid down in Part IV of Legislative Decree No 152 of 3 April 2006.

3. Further provisions contained in Legislative Decree No 152/2006

As pointed out above, the environmental damage prevention and remediation framework, is not limited to Part IV and, especially, Title II of Part VI of Legislative Decree No 152/2006.

Indeed, there is a separate set of rules concerning “Compensation for environmental damage” contained in Title III, Part VI of the Environmental Code, which establishes a form of protection from environmental damage well-established in national law, as it reproduces the compensation action previously governed by Article 18 of Law No 349/1986.

Specifically, Title III, Part VI of Legislative Decree No 152/06 governs, for a limited number of cases and subject to applicability of Title II, compensation for damage not attributable to operators. Article 311(2) of Legislative Decree No 152/06, in its current form, provides that *“Any person who, by committing an unlawful act or by failing to act or to exhibit due conduct, thereby infringing the law, regulations or administrative measures, as a result of negligence, incompetence, recklessness or breach of technical rules, damages the environment by altering, spoiling or destroying it in whole or in part shall be required to restore it to its previous condition or, failing this, to take the complementary and compensatory remediation measures referred to in Directive 2004/35/EC of the European Parliament and of the Council, of 21 April 2004, in the manner required by Annex II to the Directive, within the appropriate time limit set out in Article 314(2) of this Decree”*.

It should be added that the notion of environmental damage contained in Article 311 reflects the provision of Article 300(1) which defines environmental damage as *“any significant and measurable, direct or indirect impairment of a natural resource or of its potential for use”* thereby broadening the scope of the protection afforded by the Directive, which only concerns the types of damage listed in Article 2(1), transposed into Italian law by Article 300(2) of Legislative Decree No 152/06.

Thus, while the duty to carry out the prevention and recovery activities referred to in Title II of Part VI, is placed on the operator, in accordance with the criteria and methods established by the Directive, on the other hand Article 311 lays down fault-based liability applying to “anyone”.

Compensation may be sought by either administrative or judicial process.

In the former case, the Minister of the Environment – after ascertaining the lack of appropriate environmental recovery measures pursuant to Title II of the Code – serves on the parties found to be responsible for the damage an immediately enforceable order to restore the environmental resource/service to its baseline condition by way of compensation within a specified time limit. If the party liable for the environmental damage fails to remedy all or part of it by the specified time limit or if environmental recovery is found to be wholly or partly impossible or too expensive, the Minister for the Environment shall then issue a subsequent order demanding payment, within 60 days of notification of an amount equal to the economic value of the wholly or partly unrestored damage, by way of financial compensation.

The Minister of the Environment may also seek judicial redress, by bringing a civil action in criminal proceedings, claiming compensation for environmental damage in the form either of restoration of the environment to its previous condition or payment of an equivalent amount, against the author of the damage who, by committing an unlawful act or by failing to act or to exhibit due conduct, thereby infringing the law, regulations or administrative measures, as a result of negligence, incompetence, recklessness or breach of technical rules, caused damage to the environment. In this case too, when actual recovery or the adoption of complementary or compensatory remedial measures were entirely or partly omitted, impossible or too expensive, or where implemented only in part or not in the required manner, the party that caused the damage is required to pay an equivalent amount by way of compensation to the State.

The sums received by the State as compensation for environmental damage are dedicated to the following purposes, pursuant to Article 317(5) of Legislative Decree No 152/2006:

- a) urgent actions for the delimitation, characterisation and safeguarding of polluted sites, assigning priority to those areas for which the compensation for environmental damage was paid;
- b) decontamination, remediation and environmental recovery of those areas for which the compensation for environmental damage was paid;
- c) remediation and environmental recovery actions under the national programme for the remediation and environmental recovery of polluted sites;
- d) activities of research centres in the field of greenhouse gas emission reduction and global climate change.

Ultimately, the action provided for by Title III, Part VI of Legislative Decree No 152/2006 establishes a form of protection from environmental damage that is well-established in national law, as it reproduces the compensation action previously governed by Article 18 of Law No 349/1986.

This action provides that in all cases the sums so received shall be dedicated to environmental uses, giving top priority to prevention and remediation measures in the specific areas the compensation action refers to (Article 317(5) of Legislative Decree No 152/2006).

Furthermore, this compensation method is widely applicable, as it may concern any type of environmental damage and all the possible infringements committed by any person/entity causing damage.

4. Provisions on the remediation of contaminated sites

The provisions of Part VI of Legislative Decree No 152/2006 are completed by those of Part IV of the same Decree, which covers remediation of contaminated sites.

Article 240 of Legislative Decree No 152/2006 provides the following definitions:

- a) *site*: the area or portion of territory, geographically defined and determined, seen in its different environmental compartments (soil, subsoil and groundwater) and including the

current buildings and infrastructure.

b) *contamination threshold concentrations (concentrazioni soglia di contaminazione - CSC)*: the environmental compartment contamination levels above which site characterisation and site-specific risk analyses are required, as identified in Annex 5 to Part IV of the Decree. If the potentially contaminated site is located in an area affected by human or natural phenomena resulting in one or more contaminant concentration exceeding the CSC value, these background concentrations shall be considered to be the existing baseline value for all parameters which have been exceeded;

c) *risk threshold concentrations (CSR)*: the environmental compartment contamination levels, to be determined on a case-by-case basis by applying a site-specific risk analysis procedure in line with the principles described in Annex 1 to Part IV of the Decree and on the basis of the results of the characterisation plan, above which safeguarding and cleaning-up actions must be taken. The concentration levels so defined are the acceptable levels for the site;

d) *potentially contaminated site*: a site where one or more concentration values of the contaminants found in the environmental compartments are higher than contamination threshold concentrations (CSC), pending performance of site-specific characterisation and health and environmental risk analyses to determine whether or not the site is actually contaminated having regard to risk threshold concentrations (CSR);

e) *contaminated site*: a site where risk threshold concentration values (CSR), determined by applying the risk analysis procedure referred to in Annex 1 to Part IV of the Decree on the basis of the results of the characterisation plan, are found to have been exceeded;

f) *non-contaminated site*: a site where the contamination found in the environmental compartments is below contamination threshold concentration values (CSC) or, though higher than those values, is nevertheless lower than the risk threshold concentration values (CSR) as determined by site-specific health and environmental risk analyses.

i) *preventive measures*: measures taken in response to an event, act or omission that has created an imminent threat of damage to health or the environment (imminent threat meaning a sufficient likelihood that such damage will occur in the near future) with a view to preventing or minimising that threat;

l) *remedial measures*: any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services;

m) *emergency safeguarding measures*: any immediate or first response actions, to be taken under emergency conditions in the event of any sudden contamination incidents, designed to contain the spread of primary contaminants, prevent their contact with other environmental compartments at the site and remove them pending further decontamination measures or operational or permanent safeguarding actions;

n) *operational safeguarding actions*: the set of overall actions carried out at a site in operation to ensure an appropriate level of personal and environmental safety, pending further

permanent safeguarding or clean-up actions to be carried out at the end of operations. They include interim contamination containment actions to be implemented up to performance of permanent clean-up or safeguarding, in order to prevent the spread of the contamination within the same environmental compartment or between different compartments. In these cases appropriate monitoring and control plans must be prepared, to verify the effectiveness of the solutions adopted;

o) *permanent safeguarding*: the set of actions to isolate permanently the sources of contamination from the surrounding environmental compartments and to ensure a permanent high level of personal and environmental safety. In these cases monitoring and control plans and limitations on the uses allowed by zoning plans must be established;

p) *clean-up/remediation*: the set of actions taken to remove sources of pollution and contaminants or to reduce their concentrations in soil, subsoil and groundwater to or below risk threshold concentration levels (CSR);

q) *recovery and environmental recovery*: the environmental and landscape restoration actions, including those accompanying permanent clean-up or safeguarding actions, to restore a site to the effective permanent use provided for by zoning/land use plans;

The above definitions and the Annexes quoted show clearly that for the environmental compartments considered, the notion of environmental damage is fully subsumed by that of contaminated site. It should also be noted that the definitions of preventive measures and remedial measures adopted in Part IV of Legislative Decree No 152/06 coincide with those contained in Article 2 of the Directive and, lastly, again for the environmental compartments considered, that the concept of recovery in Article 2 of the Directive coincides perfectly with that of remediation laid down in national law.

Remediation procedures implement the requirements and liability laid down in Directive 2004/35/EC.

In this regard, Article 242 of Legislative Decree No 152/2006 outlines a procedure comprising the following phases:

- *occurrence of a potential contamination event*: on occurrence of a potential contamination event, the party liable for the pollution (or a non-liable interested party, under Article 245) shall within 24 hours take the necessary preventive measures, notifying the authorities immediately, in the manner set out in Article 304 of the Legislative Decree, for cases of environmental damage;

- *preliminary investigation showing that the contamination threshold concentrations (CSC) were not exceeded*: the party liable for the pollution, after taking the necessary preventive measures, shall conduct a preliminary survey in the contaminated area on the parameters for assessing pollution and, if he finds that contamination threshold concentration levels (CSC) have not been exceeded, shall clean up the contaminated area, duly informing the competent Municipality and Province within 48 hours of notifying the event. This report closes the notification procedure, without prejudice to the checks and controls which shall be carried out by the competent authority within the following 15 days;

- *values above contamination threshold concentrations (CSC)*, characterisation plan and site-specific risk analysis: if the preliminary survey shows that contamination threshold concentrations have been exceeded, even in respect of one parameter alone, the party liable for the pollution shall immediately so inform the competent Municipality and Province, describing the preventive measures and emergency safeguarding measures adopted. Within the following 30 days, a characterisation plan prepared pursuant to Annex 2 to Part IV of the Decree must be submitted to the competent authorities, which shall approve it within the subsequent 30 days.

Within six months of approval of the characterisation plan, the party having environmental liability must submit the results of specific risk analyses to determine risk threshold concentrations (CSR), whose criteria, pending the issue of the implementing Ministerial Decree, are those contained in Annex 1 to Part IV of the Legislative Decree. If the outcome of the risk analysis procedure shows that the contaminant concentrations found at the site are lower than the risk threshold concentrations, the Interdepartmental Conference shall approve the risk analysis document and thereby declare the proceeding successfully closed, but it may nevertheless require implementation of an on-site monitoring programme;

- *values exceeding risk threshold concentrations (CSR)* and remediation actions: if the outcomes of the risk analysis procedure show that the contaminant concentrations found at the site are higher than the risk threshold concentration values (CSR), the party liable for the damage shall submit to the Region the operational plan for remediation or operational or permanent safeguarding actions, and, where necessary the additional remedial and environmental recovery measures, in order to minimise and bring back to acceptable levels the risk associated with the site's contamination status. The criteria for selecting and executing remediation, environmental recovery and operational or permanent safeguarding, and for identifying the best action techniques at sustainable costs under Community legislation are listed in Annex 3 to Part IV of the Decree.

The content of these provisions clearly shows that if the liable party carries out the remediation actions – i.e. eliminates pollution sources and contaminants or reduces their concentrations to or below risk threshold concentration values (CSR) – this remedies the environmental damage with reference to the aspects and resources addressed by the remediation. Nevertheless, on completion of the remediation process, the authorities may still require further complementary or compensatory remediation actions.

Under Article 303, if the rules on remediation do not apply or where at the end of this procedure environmental damage is found to persist (as to aspects or resources not addressed by the remediation actions) the provisions of Part VI of Legislative Decree No 152/2006, concerning protection from environmental damage shall apply, i.e. Title II with reference to operators and Title III with reference to other parties.