

Alert | Environmental, Social & Governance (ESG)



February 2022

Modification of Italian Constitution: Environment Elevated to Protected Primary Value

On Feb. 8, 2022, the Italian Chamber of Deputies approved a constitutional law (A.C. 3156) that modifies the Italian Constitution and elevates the environment to a constitutionally protected primary value.

Before this latest amendment, the Italian Constitution did not explicitly recognize environmental protection as a fundamental principle. The text of Article 9 previously in force limited itself to providing for “*the promotion of the development of culture and scientific and technical research*” and “*the protection of the landscape and the historical and artistic heritage of the Nation*”.

The Constitutional Court, in the absence of an explicit reference to the environment, has traditionally recognized the importance of environmental protection by broadly interpreting Article 9, together with Article 32 of the Constitution (the latter recognizes the protection of health as a fundamental right of the individual and in the community interest).

Within this interpretative evolution, in 2001 the reform of Title V of the Italian Constitution – concerning the division of legislative authority between the State and the Regions – modified Article 117. In this context, the State was vested with exclusive authority over protection of the environment and the ecosystem, while the Regions were vested with concurrent legislative power over “*enhancement of cultural and environmental properties*”.

Thus, the time was ripe to finalize the constitutional prioritization of the protection of the environment and the ecosystem. To this end, the Italian Parliament introduced amendments to Articles 9 and 41.

The “*protection of the environment, biodiversity and ecosystems, even in the interest of future generations*”, is included in a new paragraph of Article 9 and, therefore, among the fundamental principles of the Italian Republic, enshrined in the first 12 articles of the Constitution.

The principle of “*protection of animals*” has also been introduced (for the first time in the Italian Constitution), through the provision of a reserve of State law that will define the ways and forms of the protection. This amendment, which is in response to an increasingly strong public sensitivity, officially recognizes the dignity of animals.

Under new Article 41, private economic initiatives shall not be carried out “*in such a way as to damage health and the environment*”, adding these two limits to those already in force – “*security, freedom and human dignity*”. The second amendment concerns the third paragraph of Article 41, reserving to the law the possibility of directing and coordinating economic activity, both public and private, for purposes that are not only social but – now – also environmental.

These additions to the Italian Constitution represent a further step in the “green revolution” and present challenges for stakeholders in the implementation of sustainable business models.

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