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**Working Paper**

## Juridical framework of voluntary agreements in Italy and policy relevance at the local level

Nota di Lavoro, No. 19. 2000

**Provided in Cooperation with:**

Fondazione Eni Enrico Mattei (FEEM)

*Suggested Citation:* Milizia, Paola; Tamborra, Marialuisa (2000) : Juridical framework of voluntary agreements in Italy and policy relevance at the local level, Nota di Lavoro, No. 19. 2000, Fondazione Eni Enrico Mattei (FEEM), Milano

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**CAVA Workshop on:**

**"The Integration of Voluntary Approaches into Existing Legal Systems"**

**Brussels, EU Representation of Hesse, 24-25<sup>th</sup> February 2000**

**Juridical framework of voluntary agreements in Italy and policy  
relevance at the local level.**

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## **Introduction**

At Italian level the public administration system is decentralising its functions applying the principles of "subsidiarity", flexibility and administrative simplification. This decentralisation activity is also resulting in a series of voluntary agreements, signed both at the national and at the local level.

The purpose of this research is to analyse the existing Italian regulation regarding the so-called "administration by agreements" and the possibility to adapt the existing legal system to voluntary agreements in the environmental field in the light of the European guidelines on this issue.

The first part of the paper presents a comparison of the relevant laws, and the second part is aimed at highlighting the results of an empirical study of some selected voluntary agreements signed by the Italian local administration with the private sector.

## **1. Voluntary agreements in the European Community legislation**

The concept of voluntary agreements (hereinafter VAs) was explicitly introduced at European level with the Fifth Environmental Action Programme in an attempt to encourage the use of economic and voluntary instruments to complement traditional "command & control" legislation. The legitimisation and formalisation of these agreements is still on-going within European institutions. This process is based largely on four fundamental documents:

- the Communication of the European Commission of 27 November 1996 (COM(96) 561 final);
- the Recommendation of the European Commission of 21 December 1996 (O.J.E.C. No. L. 333/59);
- the Opinion of the Economic and Social Committee of 19-20 May 1997;
- the Resolution of the European Council of 19-20 October 1997.

The Communication defines voluntary agreements as "agreements between industry and public authorities on the achievement of environmental objectives". This definition is employed for the purposes of this paper. The Communication also introduces the

term “environmental agreements”, these being more appropriate<sup>1</sup> and having a stronger relation to environmental policy. In addition to a general definition of VAs, the Communication describes the different types of agreements to be introduced in the European context (i.e. those implementing certain provisions of Community Directives and those negotiated at Community level). Furthermore, a checklist covering the main contents of VAs is given in point 5 of the Communication. These elements are as follows:

1. Parties of the agreement (associations and/or individual firms)
2. Subject
3. Definition of terms
4. Quantified objectives
5. Staged approach
6. Specification of obligations
7. Monitoring of results
8. Periodic reporting
9. Access to information
10. Arrangements for collection/evaluation/verification of results
11. Sanctions
12. Accession of third parties
13. Duration
14. Revision
15. Termination
16. Legal nature of the agreement
17. Jurisdiction

The Recommendation basically confirms the content of the Communication, but in particular stresses the importance for VAs to use the binding form of a contract.

The Opinion of the Economic and Social Committee reaffirms the principle of “shared responsibility” between the parties of an agreement and draws attention to the need for benefits and incentives to all parties of the VA, in order to discourage “free riders”.

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<sup>1</sup> The Commission employs a series of terms, such as “Voluntary agreement”, “Negotiated agreement” and “Environmental agreement”. In Italy the term “Voluntary agreement” has prevailed despite its ambiguity since this implies the willingness of parties.

Moreover, this document stresses the importance of defining a legal framework for environmental voluntary agreements.

Finally, the Resolution of the Council acknowledges that most Member States are adopting VAs in the environmental field as internal policy tools and highlights the conditions for ensuring transparency and credibility vis-à-vis citizens, as well as effectiveness. These conditions include specifying quantified and staged objectives, monitoring of results and publishing the agreement together with any results achieved.

Based on the above it can be concluded that although at Community level there is no univocal and binding legislation in relation to VAs, there is a strong interest in promoting these instruments in environmental policy. Therefore, we would hope for the Commission to issue a binding framework of VAs, in order to enhance their credibility and transparency.

## **2. Evolution of the Institutional and Legal Framework in Italy<sup>2</sup>**

No specific framework exists in Italy concerning internal VAs. However, there is a general trend in environmental policy towards shared responsibility, decentralisation and flexibility.

Clear evidence of this trend can be highlighted in terms of the recent evolution of environmental policy and regulation, which has developed in Italy in three distinct phases, as illustrated by Lewanski (1997), from the Seventies to the early Nineties. The first phase began with law 615 of 13/7 1966, the «Anti-smog» law in which steps were taken to limit emissions, mainly in response to apparent harm to human health.

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<sup>2</sup> This section has been partially taken from the work prepared for the NEAPOL project case studies (Wallace-Jones, J. and Vicini, G. (1999), Draft case studies) to be published in the near future.

The second phase known as “completing the tools” occurred between 1976-85. This phase is said to have begun with the *Legge Merli* for wastewater control in 1976 and to have finished prior to the establishment of the Ministry of Environment. Following this, a series of environmental statutes were introduced during the early eighties concerning air and water pollution, industrial and urban waste and nuclear energy. Environmental monitoring and protection became the responsibility of local health units (USLs), whose interpretation of the environment was biased in terms of a prevailing accent on health and sanitation issues. This phase was characterised by growing environmental awareness, not least because of the Seveso disaster in 1976. At the same time the growing number of non governmental environmental associations resulted in an increase in tension between industry and the public. The available policy instruments during this phase were mainly of the "command & control" type, and the proposed solutions for pollution control were almost exclusively end-of-pipe (Pesaro, 1999).

The third phase began with the establishment of the Ministry of Environment in 1986. This Ministry emanated a variety of regulations regarding waste disposal, the establishment of national parks, the handling and disposal of dangerous substances and controls regarding noise pollution (Lewanski 1997). Politicians, and thus central government, were placed under pressure due to the growing increase in domestic concern over environmental issues and, more importantly, the need to implement European Directives. National environmental policy therefore became known as the «politics of emergency» resulting in a framework that was generally fragmented and incomplete.

A new phase can be said to have started in the mid-Nineties when the institutional capacity was upgraded through a strengthening of the Ministry itself in terms of power and financial resources, but also thanks to the creation of new technical agencies - such as ANPA, the Italian National Environment Agency. Following the creation of ANPA in 1994, each region in Italy was required to set up its own branch (ARPA), replacing the local health units (USL) in dealing with environmental issues. This process is still on-going, thereby causing confusion in the attribution of environmental competencies. Moreover, in current phase the Italian legislation is subject to an increased flexibility in the form of reduced regulatory burdens and simplified administrative procedures for industry, allowing improved co-operation between public administration and

companies. This process has been enhanced by the so-called «Bassanini» reform, initiated in 1997, which so far includes three regulations : law 59/1997, Law 127/97, legislative decree 112/1998. These aim to promote a re-organisation of the public system at both national and local levels. In fact, according to article 1 of law 59/1997, the Government will issue decrees to transfer functions and administrative tasks to the Regions and the local public authorities according to principles and criteria contained by the law itself. One aspect of the Bassanini reform is that it integrates the principle of shared responsibility among public administration, industry and citizens, promoted by the European Fifth Action Programme. In fact, a stronger co-operation amongst parties calls implicitly for a broader use of voluntary regulations. The use of voluntary approaches is seen in many areas, such as the Ronchi Decree for waste management, of which Article 4 encourages the use of agreements between public and private spheres in order to increase the re-use and recycling of waste. In order to achieve this, companies will benefit from reduced administrative burdens as well as economic instruments. This is illustrated, for example, in a recent negotiated agreement signed by the Region Emilia Romagna, in which companies producing specific types of waste in small quantities will benefit from simplified procedures.

However, as a consequence of the traditional «command & control» policy, environmental «administrative burdens» on companies still remain significant, since standard procedures and competencies are often unclear and overlapping. Hence, companies usually identify the simplification of administrative burdens as a major advantage arising from the application of voluntary instruments. In fact in Italy, administrative «bureaucracy» on companies represents by far a much greater threat than the actual controls on pollution carried out by the public administration. In fact, administrative costs and sanctions linked to minor administrative procedural failures (mistakes in compiling forms and in identifying the competent authority etc.) appear to be a major economic burden in the firms' accounts.



### **3. Voluntary agreements in the Italian legislation.**

#### **3.1 The origins of the “administration by agreements”**

In Italy the debate on VAs does not originate in the environmental field, but in the broader context of the restructuring of the administrative and bureaucratic system.

Therefore, from the point of view of a reform of the public administration, VAs represent a new form of co-operation between public and private subjects to supplement the traditional strict “command & control” approach.

The Italian legislator has recently introduced the concept of “administration by agreements” with Law n. 142/90 on the administrative system (Ordinamento delle autonomie locali). In fact, article 27 of Law 142/90 introduces the possibility to stipulate programme agreements (“accordi di programma”) between different levels of the public administration, such as municipalities, provinces, regions and so on.

The most important law in the Italian legal system in relation to administrative agreements is Law 241/90 on the administrative process (“Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi”). Article 11 provides that, within an administrative process, private subjects are entitled to negotiate an agreement with the public authority. In particular, this agreement can either better specify the discretionary content of the final measure, i.e. the official administrative act (supplementary agreement), or it can substitute the final measure itself (substitutive agreement). In this case, the act is replaced by the agreement.

Both types of negotiated agreements must contain the following fundamental features:

- to pursue a public interest;
- to be written;
- to be subjected to the Civil Code rules;
- to allow the public administration for resolving the agreement in case prevailing public interests occur;
- to provide an indemnity to the private party in case of breach of the agreement by the public authority;
- all disputes are under the administrative jurisdiction.

This first process of deregulation and simplification of the national administrative system is followed and implemented also by the recent laws of reform of the public administration: Law n. 59/97, Law n. 127/97 and Legislative Decree n. 112/98, known as “Bassanini reform” (after the Minister who promoted them).

In particular, the Legislative Decree n. 112/98 promotes the conclusion of substitutive agreements, according to article 11 Law 241/90, in case of “administrative process for the authorisation of production plants” (known as “sportello unico per le attività produttive”).

For our purposes it is important to stress that substitutive negotiated agreements regulated by article 11 Law 241/90 could represent an important legal tool for the development of environmental voluntary agreements in Italy.

### **3.2 Further development of the “administration by agreements”: Financial Law No. 662/96**

The Financial Law No. 662/96, article 2 provides new forms of co-operation between public and private subjects<sup>3</sup>. The forms of negotiation are the following:

- a) negotiated planning (programmazione negoziata): it is an agreed regulation between public and private subjects;
- b) institutional intent of planning (intesa istituzionale di programma): it is an agreement only between public administrations (central or local) on the implementation of long-term planning;
- c) framework planning agreement (accordo di programma quadro): it is an agreement between local authorities and private parties to implement the institutional intent of planning, it has to be promoted by a central or a local (regional or provincial) authority;
- d) territorial pact (patto territoriale): it is an agreement between local authorities and other public or private subjects to implement the promotion of local development projects; both public and private subjects can take the initiative;

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<sup>3</sup> The content of the financial law no. 662/96 is completed by the resolution of the inter-ministerial Committee of economic planning (CIPE, Comitato Interministeriale per la Programmazione Economica) of March 1997.

- e) programme contract (contratto di programma): it is a contract among the competent central public authority, companies, SMEs consortia, and representative bodies to implement projects identified by the negotiated planning;
- f) area contract (contratto d'area): it is a contract between public administrations (central or local) and representatives of workers and employers, to promote development projects in less developed areas.

Environmental VAs can only be applied to the following forms: negotiated planning, framework planning agreements, territorial pacts and programme contracts, as these involve the participation of at least one private party and one public party .

In recent studies on VAs (Croci et al., 1998, Baga et al.,1998) it has been made apparent that “territorial pacts” are considered the most suitable form for environmental agreements, as described by the Communication of 1996, because they present similar characteristics, such as the right of initiative both by public and private subjects; the binding character of the obligations, the specification of the procedures for monitoring and verification of results. Indeed, in the Italian context territorial pacts could be suitable legal tools for stipulating VAs also thanks to the CIPE Committee resolution, which states that territorial pacts should enhance local development in accordance with the principle of sustainable development.

However, territorial pacts present some limitations. The first one is its linkage with the territorial context, which limits the scope of applicability to the national level. The second one is that all territorial pacts must be verified and approved by the Minister of the Treasury to come into force and this would jeopardise the parties' independence.

### **3.3 Recent sectoral legislation: waste and water**

In the Italian legal system the term “voluntary agreement” as such (article No. 35) appears for the first time in the Legislative Decree No. 22/97<sup>4</sup> on waste disposal (known as Ronchi Decree from the name of the Minister who promoted it). The decree promotes the co-operation between public and economic private subjects for waste recycling.

Article No. 4 establishes that public competent authorities have to promote and stipulate agreements and programme contracts with economic private parties to support waste

recycling. More specifically, article No. 25 establishes that the Minister of the Environment can stipulate agreements and programme contracts with public bodies, large enterprises or sectoral associations.

Finally, article No. 35 gives the specific definition of “voluntary agreement” as “an official agreement signed between the public competent authorities and the interested economic sectors, open to all stakeholders, which regard the resources, the instruments and the actions aimed at attaining the objectives of waste recycling and re-use”.

Because the Ronchi Decree is applicable only to waste disposal, only VAs related to this issue are expected to follow the guidelines of the above mentioned articles.

Following the Ronchi decree, the recent Legislative decree No. 152 of 11th May 1999 on water protection (the so-called "Testo Unico delle Acque"<sup>5</sup>) introduces the use of voluntary instruments in the water sector. In fact, article 28 foresees that competent authorities promote and stipulate agreements and programme contracts with private subjects for the improvement of water pollution and the reduction in water use. According to article 28, the realisation of these objectives can also be enhanced by the simplification of administrative burdens and economic incentives.

## **4. The empirical analysis of Local Voluntary Agreements**

### **4.1 Relevant Results of the Italian Survey Carried out by FEEM**

In 1998-99 FEEM carried out a survey based on questionnaires aimed at gathering information both from public authorities and industrial associations (and a restricted sample of companies) on the perception and the actual use of voluntary agreements in Italy. This survey revealed that a small number of Provinces, Regions and ARPA (Regional branches of the National Environmental Agency) have already negotiated or signed voluntary agreements. In fact, only 11 public authorities out of a total of 90 administrations responded that they had already negotiated or signed an agreement with a private party. This indicates that the use of voluntary instruments by public authorities is not considered yet as an essential part of their policy tools. Furthermore, it

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<sup>4</sup> The Ronchi Decree implements the European Directives: 91/156/EEC on wastes, 91/689/EEC on dangerous wastes, 94/62/EEC on packaging and waste packaging.

was revealed that only those administrations which already have experience in negotiating with companies are keen to use these instruments. Of particular interest is the Region Emilia Romagna, in which the application of the EMAS Regulation and the use of voluntary agreements are strongly encouraged.

Approximately thirty agreements signed between 1977-1998 were received in response to the survey. Fifteen of these were selected and analysed in greater detail. Those selected were considered to be the most significant and recent examples of VAs at local and regional level signed between 1991 and 1998.

#### **4.2 The Analysis of Local Voluntary Agreements**

The VAs selected for deeper analysis regard: waste recycling, air emissions, waste water, soil contamination, and the implementation of environmental Management Systems.

As Table 1 illustrates, ten VAs deal with waste recycling. In particular, three of them deal with paper recycling, while two of them (signed by the Province of Ravenna) set environmental protection objectives not only for waste, but also for air and water. One of these concerns waste monitoring. The rest of the VAs regard electronic equipment, pneumatic and biological wastes recycling. Three of them regard air emissions and only one agreement addresses the question of soil decontamination. Finally, three agreements deal with the implementation of Environmental Management System (EMS), but only one of them includes actions and measures by each party, whereas the others set general principles for the dissemination of EMS, as well as the encouragement in using Best Available Technologies (BAT) and eco-products.

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5 The Legislative decree 152/99 implements the European Directives: 91/271EEC on urban waste water treatment and Directive No. 91/676/EEC on water protection against Nitrates emission of agriculture.

Sectors	Number of agreements <sup>6</sup>
Waste	10 (3 on paper waste, 1 on electronic equipment, 1 on biological waste, 1 on pneumatics, the rest on industrial waste)
Air	3
Water	2
Soil	1
Environmental Management Systems	3 (one of them is more general and also refers to BAT)

*Table 1: Sectors addressed by the Italian local agreements*

*Source: Survey of the Use and Perception of Negotiated Agreements as Environmental Policy Instruments in Italy*

Table 2 shows that signatories of the public sector are representatives of Municipalities, Provinces and Regions or in some recent agreements also ARPA (the regional branches of the National Environmental Agency). In some agreements the Chamber of Commerce and Local Health Units (now replaced by ARPA) are also present as signatories. In the private sector, signatories can be either industrial associations or individual companies. One interesting finding is that individual companies tend to negotiate with Provinces and Municipalities rather than with Regions or ARPA and conversely industrial associations tend to negotiate with Regions.

No. Of reference of the agreement	Public signatories				Private signatories		Others
	Region	Province	Municipality	ARPA	Industrial Association	Individual company	Others
1	X	X		X	X		X
2	X	X	X		X		
3	X				X		
4		X			X		
5		X				X	
6		X				X	
7		X				X	
8	X				X		X
9		X			X		
10		X			X		X
11		X	X			X	
12			X			X	
13		X	X			X	
14			X			X	
15		X	X			X	X

*Table 2: Signatories of the Italian local agreements*

*Source: Survey of the Use and Perception of Negotiated Agreements as Environmental Policy Instruments in Italy*

<sup>6</sup> The total number is more than 15 because two of the VAs analysed address more than one environmental sector.

There is no single formal name used for the agreements. However, two broad categories can be identified within this array of terminology: the Protocol of intent (or intent) and the agreements ("accordo volontario", "accordo ambientale", "accordo quadro", "accordo" and "convenzione"). In our sample the most widely used term is Protocol of intent (9 out of them). It is worthwhile noting that only two of the VAs obtained from the survey are relevant in terms of regulation. The first one is the voluntary agreement signed in 1998 for the monitoring of the waste thermo-valorisation system of the Province of Bologna with the local waste treatment company, implementing article No. 5 of the Ronchi decree, the other is the VA signed by the Municipality of Faenza with some local companies on air emissions, implementing a substitutive agreement according to article 11 of Law 241/90. The wide use of the term "Protocol of intent" illustrates that the Italian administrations tend to sign "obligations" of political rather than juridical character.

The duration of the agreement is specified in only eight of the selected VAs. Duration is in the range of 3 month – 3 years, but is typically of 1-2 years. In some cases the fixed deadline is subordinated to the attainment of the objectives, therefore the duration can be automatically extended.

As indicated in the Communication of the Commission, obligations in the text of the agreement are expected to be specified for both parties. This was verified in the course of our analysis, and it was found that most agreements include obligations for both parties, although in two cases obligations are only specified for the private party. In these two agreements the authoritative role of the public administration is predominant, as is the case for the "command & control" approach. Moreover, in some cases where obligations are specified, there remains some ambiguity as to the specific content of this. In fact, only seven cases include specified objectives, in terms of targets to be achieved for enhancing environmental protection.

Not all agreements include economic incentives for supporting their implementation. Incentives offered to the private sector include: financial support, reductions in eco-taxes and in insurance premia. In addition, non-economic incentives may also be offered, such as the simplification of administrative procedures over companies.

### **4.3 Elements of Environmental Agreements According to the Check-list of the Communication of the Commission**

The analysis of the agreements was based on the elements of the check-list provided by the Commission. In general, Italian agreements at the local level do not appear to be based upon a defined structure. This is due largely to the fact that seven of the VAs analysed were signed prior to the Commission Communication. The others do not seem to take the check-list into consideration, with the exception of one case, i.e. the VA signed in 1998 by the Region Liguria, the Province of Savona, ARPA Liguria, the Regional Industrial Association and INAIL (Italian insurance for workers).

The following elements of the check-list were considered in over half of the VAs studied: parties, subject, specification of obligations, periodic reporting, monitoring, access to information, revision, duration.

In particular, monitoring and periodic reporting appear to be closely linked. Monitoring activities are usually the responsibility of the public party (ARPA, Provinces etc.) or of an "ad hoc" committee, constituted by representatives of all signatories. In some cases, the procedures for the collection and the verification of results are also outlined in the agreement.

In many cases (9) the free access to information is explicitly required. This is rarely provided through the publication of the agreement in official sources. Only in one case the agreement and periodic reporting are published by the Provincial waste observatory (Province of Bologna). In the majority of cases, free access to information is required as part of the agreement, however there may be no indication of how this should be achieved. Finally a large number (8) of agreements specify the period of their duration and the possibility of revision either within the duration of the agreement or after the expiry date.

As for the other elements of the Commission's check-list, the possibility of accession of third parties to the agreement is explicitly regulated in five cases, while sanctions for the



defaulting party are foreseen only in one agreement. This is the case of the agreement signed in 1998 on waste selection between the Province of Bergamo and some companies working in composting and waste recycling, enabling the Province to expel any signatories not respecting the provisions of the agreement.

Concerning the legal nature only two agreements have an explicit reference to specific regulations: the VA of the Province of Bologna on waste according to article 5 of the Ronchi Decree and the VA of the Municipality of Faenza with some local companies on air emissions according to article 11 of Law 241/90. In the latter case, jurisdiction is expected to be under the administrative judge, as required by law.

## **Conclusions**

The analysis shows that in Italy there is no univocal juridical definition of voluntary agreements. In fact, the definition of “voluntary agreement” provided in the Ronchi Decree is specifically related to the waste sector and other types of agreements are not specifically designed for environmental policy. Among these types, two forms of agreements need to be considered: the territorial pact and the substitutive negotiated agreement under article 11 of Law 241/90 (strengthened by the legislative decree 112/98 introducing the “sportello unico”), if we consider the broader interpretation of the article by the case law. Both are relatively quite new. In fact, in our sample there is only one VA based on the Ronchi decree, signed in 1998 by the Province of Bologna and one case, applying article 11 of Law 241/90, signed in 1997 by the Province of Ravenna.

Although no “ad hoc” legal framework for regulating VAs exist, from a political and economic point of view voluntary agreements are considered to be suitable instruments for managing the environment. For this reason, nowadays, a large number of the existing environmental agreements have the form of “protocol of intent”, which is a common policy instrument, instead of the other forms of agreements which present a binding juridical structure. The “protocol of intent” aims to enounce mutual needs and political strategies, instead of promoting an effective mandatory agreement. In fact, the responsibility of the signatories of a “protocol of intent” seems to be rather pre-contractual and the only actual duty for the parties is to behave “in good faith”.

However, it is now recognised by public authorities which have a tradition in negotiating with private actors (specially regional and local authorities of the Region Emilia Romagna and Liguria), as well as by large companies that the instrument of voluntary agreement needs a more formal structure in order to ensure transparency and greater effectiveness and to become a policy instrument complementing the "command and control" regulation. This is also reflected in the law project proposed in 1999 at the Italian Chamber of Deputies<sup>7</sup>, which strongly encourages the use of territorial pacts (Law 662/96) and substitutive agreements according to article 11 of Law 241/90 for environmental purposes. These instruments are likely to be particularly promising for the achievement of the targets of the Kyoto Protocol.

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<sup>7</sup>The proposal has been presented by a Member of Parliament of the "Greens" (Mr De Benedetti) as Chamber Act No. 6122 (A.C. N. 6122).

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