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technical performance
in the light of the National Recovery
and Resilience Plan**

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Summary

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Abstract

The paper focuses on the essential levels of environmental technical performance, which – as they fall within the Essential Levels of Performance whose determination belongs to the exclusive legislation of the State pursuant to art. 117(2), letter m, of the Italian Constitution – must be guaranteed uniformly throughout the national territory. After having reconstructed the legislation and constitutional jurisprudence on the matter, we will ask ourselves what their function is and which subjects must proceed with their implementation. The impact of the essential levels of environmental technical performance will be analysed also in the light of the National Recovery and Resilience Plan.

Keywords

LEP; LEPTA; PNRR; environment; sustainability.

1. The essential levels of environmental technical performance (so-called LEPTA) and the National Network System for the Protection of the Environment.

Before analysing in detail the essential levels of environmental technical performance, it seems useful to examine Law no. 132 of 2016 (“Establishment of the National Network System for Environmental Protection and discipline of the Higher Institute for Environmental Protection and Research”), which established them and placed them at the centre of the network for the new environmental protection system established under the same law.

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In particular, article 1 of Law no. 132 of 2016 provides for the establishment of the National Network System for Environmental Protection «in order to ensure homogeneity and effectiveness in the exercise of the cognitive action and public control of the quality of the environment in support of environmental sustainability policies and of health prevention for the protection of public health»¹. The National System «includes the Higher Institute for Environmental Protection and Research (c.d. “ISPRA”) and the regional agencies and the autonomous provinces of Trento and Bolzano for the environmental protection [...]»².

The National System, as a structure made up of ISPRA, the Regional Agencies for Environmental Protection (so-called ARPA) and the Provincial Agencies for Environmental Protection (so-called APPA), «is the network that implements the essential levels of environmental technical performance (LEPTA), in compliance with [...] law [no. 132 of 2016] and with applicable regional laws and regulations issued by the autonomous provinces» (art. 2, co. 1, Law no. 132 of 2016).

The complete regulation of the essential levels of environmental technical performance is contained in art. 9 of Law no. 132 of 2016. Specifically, it is established that «the LEPTAs constitute the minimum homogeneous level throughout the national territory for the activities [...] that the National System is required to guarantee, also for the purpose of pursuing the collective prevention objectives envisaged by the essential levels of healthcare» (art. 9, paragraph 1).

It is also established (art. 9, paragraph 2) that the LEPTAs «[...] constitute the functional, operational, programmatic, structural, quantitative, and qualitative parameters of the agencies’ services. The related organisational, managerial, and financial aspects, referring to standard costs by type of service, are defined through the adoption of a National Catalogue of Services». The essential levels of environmental technical performance and the national catalogue of services are established by decree of the President of the Council of Ministers, «to be adopted within one year from the date of entry into force [...] [of law no. 132 of 2016], on the proposal of the Minister of the Environment and the Protection of the Territory and the Sea [...] in agreement with the Minister of Health, subject to agreement at the Permanent Conference for relations between the State, the regions and the independent provinces of Trento

¹ All translations of the Italian legal texts (legal provisions, judgments, doctrine) are the work of the Author.

² The Higher Institute for Environmental Protection and Research (ISPRA) was established by Law no. 133 of 2008 which converted, with amendments, Decree-Law no. 112 of 2008. Pursuant to art. 28, paragraph 2, of the aforementioned decree-law “ISPRA carries out the functions, with the inherent instrumental financial and personnel resources, of the Agency for the protection of the Environment and for the technical services referred to in art. 38 of Legislative Decree no. 300 of 30 July 1999, and subsequent amendments, of the National Institute for Wildlife pursuant to Law no. 157 of 11 February 1992, and subsequent amendments, and of the Central Institute for Scientific and Technological Research applied to the sea, referred to in article 1-bis of Decree-Law no. 496 of 4 December 1993, converted into Law no. 61 of 21st January 1994, which, starting from the date of installation of the commissioners referred to in paragraph 5 of this article, are suppressed”.

and Bolzano». Furthermore, «in planning its activities, the National System adopts the achievement of the LEPTA as a priority objective».

Law no. 132 of 2016, establishing an environmental protection network system in which multiple subjects are involved (from ISPRA to ARPA), concluded a legislative process aimed at strengthening environmental protection and in harmony with constitutional principles (articles 9 and 32 of the Constitution), a path already inaugurated with Decree-Law no. 496 of 1993. In particular, article 1 of Law no. 61 of 1994, which converted Decree-Law no. 496 of 1993, defined the technical-scientific activities connected with the exercise of public functions for the protection of the environment, removing them from the Local Health Units following the referendum which ordered the repeal of the regulations which entrusted them with environmental monitoring. In fact, art. 1(3) of the decree-law in question provides that «[the] National Agency for the Environmental Protection [ANPA]³ [...] and the regional and provincial agencies pursuant to art. 3, each within the scope of the powers established by this decree, are required to provide for the consultation of the business associations of the category and trade union organizations in the matters referred to in paragraph 1 [of art. 01]».

As highlighted by the Constitutional Court in sentence no. 212 of 2017, «although progressively reformed and refined [...] this structure represented the prototype of the system now rationalized by Law no. 132 of 2016, in line with a network administration model that hinges on four fundamental nodes. The first of these is represented by the Minister of the Environment, who is responsible for establishing environmental policies (through, in particular, the proposal for the adoption of the LEPTA – Essential levels of environmental technical performance – formally transposed with Prime Ministerial Decree, which indicate, pursuant to Article 9(2) of Law No. 132 of 2016, “the functional, operational, programmatic, structural, quantitative and qualitative parameters of the performance of agencies”). The second is the Higher Institute for Environmental Protection and Research (ISPRA), which inherited the structure and functions of ANPA and carries out technical guidance and coordination functions, aimed at making the activities of the national system homogeneous for environmental protection (Article 6, Law No. 132 of 2016). The third is made up of the regional councils, which are responsible for defining the regional programmatic guidelines on environmental matters and

³ ANPA was replaced by the Agency for the Protection of the Environment and for Technical Services (APAT), endowed with technical-scientific and financial autonomy (art. 38 of Legislative Decree no. 300 of 30 July 1999, containing the “Reform of the organization of the Government, in accordance with article 11 of Law no. 59 of 15 March 1997”).

The functions of APAT have been assigned by art. 28 of the decree-law no. 112 of 25 June 2008 (“Urgent provisions for economic development, simplification, competitiveness, stabilization of public finance and tax equalization”), converted, with amendments, into law no. 133 of 6 August 2008, to the Higher Institute for Environmental Protection and Research (ISPRA), which was assigned the tasks already performed by the National Institute for Wildlife (INFS) and by the Central Institute for Scientific Research and Applied Technology sea (ICRAM).

supervising the regional and provincial agencies. Lastly, the fourth is represented by the regional and provincial agencies for the protection of the environment (ARPA and APPA), already provided for by the aforementioned law decree no. 496 of 1993, governed by individual regional and provincial laws»⁴.

2. The National catalogue of services of the National System for the Environmental Protection and the identification of LEPTA.

Essential for the purposes of determining the essential levels of environmental technical performance is therefore the preparation of the National Catalogue of Services, which, established by the Decree of the President of the Council of Ministers (Article 9, paragraph 3, of Law No. 132 of 2016), analytically indicates the essential levels of environmental technical performance. To date, the Decree of the President of the Council of Ministers regarding the reception of the essential levels of environmental technical performance has not been adopted.

In any case, the National System for Environmental Protection has started the preliminary work for the drafting of the Catalogue of Services of the National System for Environmental Protection⁵. It is a preliminary document which was prepared in December 2017 by the Higher Institute for Environmental Protection and by the Regional Agencies for Environmental Protection (in particular the LEPTA Working Group).

The objective of the preliminary work functional to the determination of the LEPTA was to “develop the issues of the qualitative and quantitative levels of the services envisaged for the Agency System, and the path necessary to establish the ‘standard costs’ for these services, as a contribution of the System Agency for the drafting of the relative regulatory acts aimed at the homogeneous provision of environmental protection services on the national territory and its financing”⁶.

As emerges from the aforementioned document, within the scope of the services indicated by Law no. 132 of 2016, 31 facilities were identified for the nine services relating to environmental monitoring identified by Law no. 132 of 2016; 26 facilities for the seven services to monitor sources of environmental pressure and impacts on environmental matrices and aspects identified by law no. 132 of 2016; 11 facilities for the 4 services related to developing environmental knowledge and disseminating data; 16 facilities for the 8 services related to administrative functions and quantification of damages; 5 facilities for the two services of

⁴ C. cost. no. 212 of 2017, no. 4.1. of the *Legal Consideration*.

⁵ The National catalogue of services of the National System for the Environmental Protection was drawn up by the LEPTA Working Group (so-called GDL60) in December 2017 as part of the work of the 2014 (2017) Three-Year Program of the SNPA. The aforementioned catalogue can be found on the website <https://www.snambiente.it/wp-content/uploads/2020/03/Catalogo-servizi-23.01.2018.pdf>

⁶ *Ibidem*, p. 4.

technical support for the analysis of environmental factors to the detriment of public health; 4 facilities for environmental education and training; 6 facilities for the two services regarding participation in civil, environmental and health protection systems; and 2 facilities for benchmarking and self-assessment tools for the National System for Environmental Protection.

3. The essential levels of performance between LIVEAS, LEA and LEPTA.

As is known, pursuant to art. 117, paragraph 2, letter m), of the Italian Constitution, the determination of the essential levels of services is left to the exclusive legislative competence of the State.

The essential levels of performance, understood as benefits and services that the state must guarantee uniformly throughout the national territory, allow full respect for the social and civil rights of citizens. Having reserved the definition of the essential levels of benefits to the State (including the essential levels of social assistance benefits – so called “LIVEAS” – and the essential levels of assistance – so called LEA) finds its constitutional foundation in articles 2, 3, 23, 30, 31, 32, 34, 38 Cost.⁷.

As regards the essential levels of environmental technical performance, it is believed that their constitutional matrix is to be found, as well as in the aforementioned constitutional provisions, also in arts. 9 and 41 of the Constitution, as amended following Constitutional Law no. 1 of 2022⁸.

⁷ M. MAZZIOTTI, *Assistenza (diritto costituzionale)*, in *Enc. Dir.*, vol. III, Milano, 1958, p. 751 f. The Author highlights that «social security and assistance [once distinct] would tend to merge into a single system of social protection or security. The provisions of the Italian Constitution concerning social security and assistance are also included in this evolution. The fundamental provision concerning the latter is art. 38, paragraph I [...]. The assistance also concerns art. 32, which recognizes the “right to health” and guarantees free care to the poor; art. 24, which assures the poor the means to act and defend themselves before any jurisdiction; the rules on the protection of the family, motherhood, childhood and youth (articles 30, 31), on school assistance (article 34), on the education and professional training of people with disabilities (article 38, paragraph 3). Assistance is therefore considered by the Constitution in multiple forms: economic, health, medical-pedagogical and educational-moral».

For an overview of the welfare legislation that develops between state and regional competences, and which finds its foundation in art. 38 of the Constitution, see P. TORRETTA, *La legge n. 328/2000 e i livelli essenziali di assistenza sociale: dall'avvento del sistema integrato dei servizi sociali alla sua difficile attuazione*, in *Federalismi.it*, n. 23, 2021, pp. 195 ff.

⁸ See, by way of example, T. E. FROSINI, *La Costituzione in senso ambientale. Una critica*, in *Federalismi.it*, June 23, 2021, 1 ff.; M. CECCHETTI, *La revisione degli articoli 9 e 41 della Costituzione e il valore costituzionale dell'ambiente: tra rischi scongiurati, qualche virtù (anche innovativa) e molte lacune*, in *Forum di Quaderni Costituzionali*, 3, 2021, 285 ff.; R. BIFULCO, *Prmissime riflessioni intorno alla l. cost. 1/2022 in materia di tutela dell'ambiente*, in *Federalismi.it*, 6 aprile 2022, 1 ff.; E. DI SALVATORE, *Brevi riflessioni sulla revisione degli articoli 9 e 41 della Costituzione*, in *Costituzionalismo.it*, 1, 2022, pp. 1 ff.; A. LAMBERTI, *Ambiente, sostenibilità e principi costituzionali: questioni aperte e prospettive alla luce della legge cost. 1/2022*, in *Nomos*, 3, 2022, 1 ss.; G. CHIOLA, *La Costituzione ambientale in Italia: un tentativo di costituzionalizzare il diritto della natura oppure un problematico rafforzamento dei riconoscimenti esistenti?*, in *Nomos*, 2, 2022, 1 ss.; R. MONTALDO, *La tutela costituzionale dell'ambiente nella modifica degli artt. 9 e 41 Cost.: un riforma opportuna e necessaria?*, in *Federalismi.it*, 13, 2022, 187 ss.

Even before the enactment of Constitutional Law no. 3 of 2001, amending Title V of the Constitution (and therefore art. 117 of the Constitution), the essential levels of assistance in the health sector referred to in Legislative Decree no. 502 of 1992 were first established with the Decree of the President of the Council of Ministers of 29 November 2001 and later by the Decree of the President of the Council of Ministers of 2017. The latter provides as essential levels of assistance the collective prevention and public health, district assistance and hospital assistance.

As regards the essential levels of social assistance, Law no. 328 of 2000⁹ extended “the concept of essential and uniform level”, previously configured and implemented only with reference to the LEA, “to other areas of social legislation” and helped to define the regulatory framework within which to regulate social services. Art. 1(2) of the law in question, in giving a definition of the essential levels of services, refers to the activities indicated by art. 128 of Legislative Decree no. 112 of 1998 and, that is, “[...] all the activities relating to the preparation and provision of services, free of charge and for a fee, or economic services intended to remove and overcome situations of need and difficulty that the human person encounters in the course of his life, excluding only those insured by the social security and health systems, as well as those insured in the administration of justice”.

A summary recognition of the LEAs and LEPs was carried out, albeit in brief, to highlight the object of the services envisaged by them, and to understand whether there is a distinction with respect to the services covered by the essential levels of environmental technical assistance.

Well, adhering to the thesis according to which the essential levels of services coincide with the “essential content of the right”, it is noted that the LIVEAS and LEA services that the State must guarantee uniformly throughout the national territory consist of services which materialize payments of an economy that the State itself, in the principle of autonomy and subsidiarity, allocates to local authorities, to ensure that the citizens directly obtain, through that service, the quality of life to which they are entitled.

As far as the essential levels of environmental technical performance are concerned, however, it appears evident that the essential nucleus of the right to the environment is guaranteed through the checks carried out by the Regional Environmental Protection Agencies, which makes these types of performance different from the essential levels of social assistance and essential levels of healthcare. Indeed, the essential levels of technical-environmental

⁹ Law no. 328 of 8 November 2000, “Framework law for the creation of an integrated system of social interventions and services”, on which see R. FINOCCHI GHERSI, *La legge quadro sui servizi sociali e la riforma del titolo V*, in A. ALBANESE, C. MARZUOLI (a cura di), *Servizi di assistenza e sussidiarietà*, Bologna, 2003, pp. 23 ff.

performance find their foundation in articles 9 and 41 of the Constitution, as already interpreted by constitutional jurisprudence and now renewed by Constitutional Law no. 1 of 2022.

Therefore, no performance that concerns the environment will fall within the LEPTA, but only those contained in the National Catalogue of Services based on which the Decree of the President of the Council of Ministers implementing the LEPTA must be issued.

For example, if the legislator decides to include among the essential performance levels the presence of a green area equal – hypothetically – to one hectare of greenery for every 10,000 inhabitants, this performance will not fall under the environmental technical performance, but among the essential levels of performance understood in the strict sense.

To confirm what has been said – i.e. the peculiar nature of the essential levels of environmental technical performance, which take the form of control activities – let us consider some of the macro-areas subject to intervention within the National Catalogue of services drawn up by the National System of environmental protection in 2018: environmental monitoring; controls on the source of pressure and impacts on environmental matrices and aspects; knowledge development, communication and information; technical-administrative functions, damage assessment and judicial functions; technical-scientific support for environmental authorisations, planning, evaluation and regulatory tools; measurements and checks on infrastructural works¹⁰.

4. Concluding remarks. The Essential Levels of Environmental Technical Performance and the National Recovery and Resilience Plan.

In the light of the considerations made and after highlighting the peculiarities of the essential levels of environmental technical performance, it seems useful to verify whether and how the National Recovery and Resilience Plan can have an impact in determining the essential levels of environmental technical performance.

Mission 2 of the National Recovery and Resilience Plan is called “Green Revolution and Ecological Transition”¹¹.

In the context of the implementation of Mission 2, for the Complementary Fund to the National Recovery and Resilience Plan, pursuant to Decree-Law no. 59 of 2021, have been allocated more than 30 billion euros.

Among the investments adopted by the Complementary Fund to the PNRR, 500 million euros were allocated for “Health, environment, biodiversity and climate”.

¹⁰ National Catalogue of Services, cit., p. 13.

¹¹ Mission 2 encompasses four components: sustainable agriculture and the circular economy (M2C1); renewable energy, hydrogen, grid and sustainable mobility (M2C2); energy efficiency and redevelopment of buildings (M2C3); protection of the territory and water resources (M2C4).

Well, one of the purposes of the investment is the strengthening of the structures and services of the National Health Prevention System from environmental and climatic risks and the strengthening of the National Environmental Protection System at national, regional and local level, improving the infrastructures, human and technological and applied research¹².

In conclusion, it is desirable that the State legislator (pursuant to article 117(2m) of the Constitution) intervene in the implementation of the essential levels of environmental technical performance, transposing, pursuant to Law no. 132 of 2016, with the Decree of the President of the Council of Ministers the indications in the 2018 preliminary document drawn up by the National System for Environmental Protection.

In fact, Law no. 132 of 2016, which outlines a reticular structure of environmental protection (such that environmental protection develops radially to ensure the protection of the right to the environment throughout the national territory) is in continuity with the constitutional provision, in which already before the constitutional reform of the articles 9 and 41 of the Constitution (Constitutional Law no. 1 of 2022) the protection of the landscape (and therefore of the environment), understood in a dynamic sense, was considered a “primary value”¹³.

All this should also take place in the light of the National Recovery and Resilience Plan, which - as mentioned - with the Complementary Fund has provided for the allocation of 500 million euros to strengthen the National Environmental Protection System, to ensure, *inter alia*, the beginning of the process of defining the essential levels of environmental technical performance, i.e. the essential nucleus of the right to the environment.

¹² *Ibidem*.

¹³ C. cost., no. 151 of 1986; C. cost. no. 94 of 1985.