# Environmental conditions in EIA regulations: proposals for updating Ministerial Decree n. 308/2015

CReIAMO PA

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## Preface

Thanks to the inter-institutional cooperation between the Ministry of the Environment and Energy Security and the Regions and Autonomous Provinces within the scope of the CReIAMO PA project of which the Ministry is a beneficiary, and within the scope of LQS1 Line of intervention dedicated to Environmental Assessments, it was possible to undertake numerous activities as well as finalising several guidance documents on technical and legal aspects that required joint reflection on how to implement them.
Through the analysis of the prescriptive frameworks in the EIA screening and EIA decisions issued by the competent state and regional authorities, the purpose of this document is to contribute to highlighting the critical issues encountered in the wording of environmental conditions and to formulate proposals for updating Ministerial Decree n. 308/2015 laying down the 'Methodological guidelines for the preparation of prescriptive frameworks in environmental assessment decisions of state competence'.

This document was prepared by the Specialised Technical Unit of the LQS1 Line of intervention on the basis of the analysis of national and regional legislation and technical documentation together with the contributions submitted by the Regions and Autonomous Provinces and by this Directorate.

The availability of tools to support the activities of the competent EIA authorities represents an important opportunity to ensure a homogeneous application of the EIA regulation throughout the national country: this objective is pursued by the CReIAMO PA Project through the publication of this document, which represents a valuable guiding tool for improving the effectiveness and efficiency of the proceedings.

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## Acronyms and Definitions

| | |
|---|---|
| IEA | Integrated Environmental Authorisation (Industrial Emission Directive) |
| Competent authority | The public administration responsible for the implementation of EIA screening decision, for drawing up the reasoned opinion in the assessment of plans and programmes, and for adopting the final EIA decisions for projects. |
| E.C. | Environmental Conditions |
| EIA Directive | Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the environmental impacts of specific public and private projects |
| DVA | General Directorate for Environmental Assessments - Ministry of the Environment and Energy Security |
| LQS1 Line | Environmental Assessments Line of intervention - Actions to improve the effectiveness of SEA and EIA processes related to programmes, plans and projects |
| MASE | Ministry of the Environment and Energy Security |
| MIBACT | Ministry of Cultural Heritage, Affairs and Tourism (to date Ministry of Culture) |
| MiC | Ministry of Culture |
| PAUR | Single Regional Authorisation Provision (Art. 27-bis Legislative Decree 152/2006) |
| PAUAR | Single Regional Accelerated Authorisation Procedure for sectors of strategic importance (Article 27-ter of Legislative Decree 152/2006) |
| PUA | Single Environmental Provision (Art. 27 Legislative Decree 152/2006) |
| CReIAMO PA Project | **Skills** and **Networks** for **Environmental Integration** and for the **Improvement** of **PA** (Public Administration) **Organisations** – NOP (National Operational Programme) Governance and Institutional Capacity 2014-2020 |
| UTS | Specialised Technical Unit of the CReIAMO PA Project – Line of intervention LQS1 |
| VA | EIA Screening |
| EIA | Environmental Impact Assessment |

## We would like to thank the following for their contributions


- Ministry of the Environment and Energy Security: Directorate General for Environmental Assessments - Division V EIA and SEA Assessment Procedures
- Abruzzo Region: Land and Environment Department - DPC002 Environmental Assessment Service
- Campania Region: General Directorate 501700 - Integrated Water and Waste Cycle, Environmental Assessments and Authorisations - Technical Administrative Staff 501792 - Environmental Assessments
- Emilia-Romagna Region: Directorate General for Land and Environment - Environmental Protection and Circular Economy Division - Environmental Impact Assessment and Authorisation Division
- Liguria Region: Environment and Civil Protection Department - Environmental Impact Assessment and Sustainable Development Division
- Marche Region: Infrastructure, Territory and Civil Protection Department
- Toscana Region: Environment and Energy Directorate - Environmental Impact Assessment Strategic Environmental Assessment Sector - Environment and Water Resources Directorate - Environmental Assessments and Authorisations Division
- Umbria Region: Regional Directorate for Territorial Government, Environment and Civil Protection - Environmental Sustainability Service, Environmental Assessments and Authorisations -. Environmental Impact Assessment Section
- Autonomous Province of Trento: Provincial Environmental Protection Agency - Environmental Quality Sector

## Summary

# 1. INTRODUCTION

## 1.1. Purpose of the document

The purpose of this document is to highlight the problematic issues inherent in the formulation of the environmental conditions in the EIA screening and EIA decisions issued by the competent state and regional authorities (so-called prescriptive frameworks) and to formulate proposals for updating the Decree No. 308 of 24.12.2015 of the Ministry of the Environment and Protection of Land and Sea establishing "Methodological guidelines for the preparation of prescriptive frameworks in the environmental assessment decisions of state competence" (hereinafter MD 308/2015)[1].

More than five years after the enactment of Legislative Decree 104/2017, which made relevant changes to the EIA regulation, as well as further measures issued for the simplification and streamlining of the procedures, it seems appropriate to delve into this fundamental aspect of environmental assessment decisions, and which purpose is in the *ex post* monitoring of the project through the provisions of Article 28 of Legislative Decree 152/2006, as well as through the rules on sanctions under Article 29 of the same decree.

MD 308/2015 represented and still represents a fundamental guideline document which, although aimed at EIA procedures under state jurisdiction, in many cases has also been taken as a reference for procedures under regional jurisdiction and has thus contributed to the standardisation, both formal and substantive, of environmental conditions.

The correct wording of the environmental conditions, in addition to being an integral part of the decisions, is necessary and indispensable to enable proposers to correctly implement them and, consequently, the competent authorities to verify compliance as per Article 28 of Legislative Decree 152/2006, which was completely reformed by Legislative Decree 104/2017 and subject to a detailed legal analysis within the document prepared by LQS1 Intervention Division of the CReIAMO PA Project[2].

The analysis of a sufficiently representative sample of environmental assessment decisions, in view of the heterogeneity found, made it possible to identify common patterns of critical issues that represent the elements underlying the proposals to update Ministerial Decree 308/2015, together with the regulatory changes that have taken place, for the purposes of achieving desirable future legislative initiatives.

It should be pointed out, however, that certain patterns require deeper reflection, even *de iure condendo*, and, therefore, the aim of this paper is not to resolve the recurring problems encountered but rather to identify them with a view to reflecting on the practices adopted by the competent authorities.

## 1.2. Methodology and structure of the document

The following steps were used in the methodology:

- exploration of sample EIA screening and EIA decisions issued by the competent state and regional authorities from 2018 to 2022; the decisions were obtained, from the MASE environmental assessments and authorisations portal[3]as well as from the regional portals, respectively for a total of 81 EIA screening and 85 EIA decisions, giving a total of 166 decisions analysed;
- analysis of the prescriptive frameworks associated with the decisions according to a scheme based on the criteria of Ministerial Decree 308/2015 to verify, on the one hand, both their formal and substantive coherence, and, on the other hand, the peculiarities of the individual decisions, as well as conducting a qualitative-quantitative processing of the various parameters to enable an

[1] https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-01-21&atto.codiceRedazionale=16A00357&elenco30giorni=false

[2] Guidelines for the application of Articles 28 and 29 of Legislative Decree 152/2006: the Monitoring and Sanctioning System - A Rational Reading (https://creiamopa.mite.gov.it/index.php/documenti/category/27-lqs1-strumenti-valutazioni-ambientali)

[3] https://va.mite.gov.it/it-IT

objective and representative presentation of the analysis on the sample analysed; the outline and the results of the analyses conducted can be found in **Chapter 3** of the document;

- a reasoned summary of the main critical issues that emerged, which formed the basis for the proposals to update MD 308/2015 in line with the current regulatory provisions, reported in **Chapter 3** of the document;
- proposals for updating MD 308/2015, both from a formal and a substantive point of view, shown in **Chapter 4** of the document.

In addition to the elements above, **Chapter 2** of the document provides a brief review of European, national and regional regulations and guidelines, where available, relating to the objectives of environmental conditions in environmental assessment decisions.

The contents of the document were the subject of a preliminary discussion with several Regions (Abruzzo, Tuscany, Marche, Emilia-Romagna, Liguria, Umbria) and with the General Directorate for Environmental Assessments - the MASE Division V 'EIA and SEA Assessment Procedures', during the Technical Round Table of 15 February 2023.

At the most advanced stage of drafting, the document was subject to further discussion and shared with the competent Division V of the MASE Directorate General for Environmental Assessments and with all the Regions and Autonomous Provinces, to whom it had been transmitted on 12 June 2023.

Following this consultation, the Autonomous Province of Trento, the Region of Tuscany and the Region of Campania submitted contributions and comments.

# 2. ENVIRONMENTAL CONDITIONS IN EUROPEAN AND NATIONAL REGULATIONS

## 2.1. European regulations and guidelines

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the environmental impacts of certain public and private projects, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (hereinafter EIA Directive) in Article 8-bis, paragraph 1 provides that:

*'Any decision granting an authorisation shall include at least the following information:*

> *(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);*
>
> *(b) the potential **environmental conditions**, to be provided with the decision, a description of the characteristics of the project and/or the measures envisaged to **avoid, prevent or reduce** and, if possible, **mitigate** significant adverse environmental impacts, and, where appropriate, a description of the **monitoring measures**.'*

Exclusively in this provision, the EIA Directive mentions 'environmental conditions' as a (potential) element of the decision *to grant an authorisation,* in the case where the EIA is integrated into the project authorisation procedures, a specific case in Italy regulated by Art. 27-bis of Legislative Decree 152/2006 or in the Provvedimento Autorizzatorio Unico Regionale (Single Regional Authorisation Provision) - PAUR.

The EIA Directive in Art. 2(2) also provides that the EIA may be conducted as an autonomous and separate decision-making procedure from the authorisation procedure. This procedure in Italy is governed by Articles 23-27 of Legislative Decree 152/2006, i.e. for procedures under state jurisdiction. Also in this case, the environmental conditions laid down in the reasoned conclusion, which is equivalent to the EIA decision under national regulations, are binding (requirement of Art. 8-bis, para. 1) and must be included in the subsequent authorisation decision to ensure compliance.

The EIA Directive does not define the environmental conditions, nor are there further indications about their purpose and content in other European Commission guideline documents and, in particular, in the 'Guidelines for the Preparation of the Environmental Impact Assessment (Directive 2011/92/EU, as amended by Directive 2014/52/EU)'[4] which deal extensively with the regulatory changes introduced by the 2014 Directive. The latter merely describe how the reasoned decision, including environmental conditions, can be incorporated into the authorisation, as mentioned above.

It should be noted, however, that the EIA decision, unlike the EIA screening decision discussed below, can include all possible measures with different objectives and gradations, deemed necessary to effectively counteract environmental impacts (avoid, prevent or reduce) or, as a last resort and in the worst case, mitigate them.

The EIA Directive (Article 4) and the European Commission's guidance document 'Screening Guidelines (Directive 2011/92/EU, as amended by Directive 2014/52/EU)'[5] do not identify or define environmental conditions as part of the competent authority's *determination* as to whether or not the project should undergo the EIA procedure following EIA *screening*.

In addition, and for an effective comparison with the national framework, it is important to recall the provisions of Article 4(5)(b) of the EIA Directive in the case of a negative screening outcome (i.e. exclusion from the EIA):

[4] https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/b7451988-d869-4fee-80de-0935695f67f2/details?download=true

[5] https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/a9f8a19a-fba5-440f-abf2-29d3f9ed7a63/details

*"(b) where it is determined that an environmental impact assessment is not required, specify the main reasons why such an assessment is not required in relation to the relevant criteria listed in Annex III, and, where proposed by the developer, specify any project characteristics and/or measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment"*.

According to the European framework, the decision not to subject the project to an EIA is not conditional on compliance with specific environmental conditions, although, but only if proposed by the proposer, it may include *measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment*.

A "traffic light" approach, therefore, where the decision of an exclusion from an EIA is without specific conditions, notwithstanding the potential recommendations that the proposer himself may, optionally, propose as part of the information provided to the competent authority (Article 4, para. 4 of the EIA Directive, last sentence[6]).

The absence of environmental conditions results from the very nature of the screening process itself, which is a streamlined and expeditious procedure aimed at ascertaining that the proposed project, with potential features and measures to avoid or prevent significant negative environmental impacts, can be with certainty excluded from a more complete and thorough assessment (the EIA procedure). On the other hand, as is still often the case in national practice, screening takes the form, in essence, of a full-blown EIA, with very significant additions required, or with equally significant environmental conditions associated with the favourable decision of exclusion from the EIA. Not only does this practice entail unjustified burdens (time and costs), but it would, within the screening rationale, constitute a negative outcome for exclusion from the EIA.

The aforementioned European Commission Screening Guidelines point out that this provision only refers to measures to "avoid or prevent" significant adverse effects and does not include the possibility of "reduction" and "mitigation", as well as possible monitoring measures, as these conditions are solely associated with the EIA decision: this substantial difference between the two procedures is therefore clear and unequivocal.

With screening, the information provided by the proposer as to how the project can be structured to avoid or prevent potential significant impacts can certainly influence the outcome of the assessment. If, in fact, the proposer follows a specific path in the design of the project, to ensure that potential impacts can be avoided or prevented *ex ante,* this may lead to greater and more concrete certainty of their actual absence, thus influencing the decision of the competent authority. In some Member States, this practice is described as a 'tailor-made' approach for the purpose of avoiding unnecessary EIA procedures for projects that do not have a significant environmental impact.

An example of this 'tailor-made' approach is provided in Box 26 of the Screening Guidelines, which describes the digital model used in Denmark for intensive livestock projects whereby the proposer enters data into a spreadsheet in order to obtain a clear indication of whether an EIA is necessary for the proposed project, and modifies the input data to check if whether particular design elements might have an influence on whether the project could be excluded from an EIA; another example is the approach used in Flanders which is based on a prior discussion between the proposer and the competent authority.

It should also be noted that screening does not include monitoring measures, which are defined in the European Commission's Guidelines as "*Procedures for the systematic monitoring of significant adverse environmental impacts resulting from the construction and execution of a project and for the identification of unforeseen significant adverse effects to enable appropriate corrective action* to be taken" because these

[6] Where Member States decide to ask for a decision on the projects listed in Annex II, the developer provides information on the characteristics of the project and its likely significant impacts on the environment. The detailed list of information to be provided is set out in Annex II.A. The developer shall take into account, where appropriate, the results of other relevant and available environmental impact assessments which have been carried out under European Union legislation other than this Directive. The developer may also provide a description of the characteristics of the project and/or the measures planned to avoid or prevent what might otherwise be significant adverse environmental impacts.

identify the presence of significant adverse environmental impacts incompatible with a decision for EIA exclusion.

## 2.2. National regulations and guidelines

With the entry into force of the amendments to EIA regulations introduced by Legislative Decree 104/2017, environmental conditions have a specific definition in Article 5 (1), (o-ter) and (o-quater):

- *environmental condition of the EIA screening decision: binding requirement,* ***if requested by the proposer****, regarding the characteristics of the project or the measures to* ***avoid or prevent*** *significant and negative environmental impacts, possibly associated with a negative EIA screening decision*
- *environmental condition of the EIA decision: binding requirement that may be associated with the EIA regulation which defines the guidelines to be followed in the subsequent design development phases of the works to ensure the application of environmental criteria to contain and limit significant and negative environmental impacts or to increase the environmental performance of the project, as well as the requirements for the realisation of the project or for the execution of related activities, or the measures established to* ***avoid, prevent, reduce and, if possible, mitigate*** *the significant and negative environmental impacts and, where appropriate, the* ***monitoring measures***

Consistent with the European framework (see Chapter 2.1), the legislator clearly distinguishes the different purposes of the environmental conditions in EIA and EIA screening procedures. However, in the transposition of Article 4(5)(b) of the EIA Directive (screening outcome) mentioned above, there is a subtle, but not insignificant, difference in the terms used to indicate the option for the proposer to "*propose*" (term used in the EIA Directive) or "*request*" (term used in the national framework) potential measures to avoid or prevent significant and adverse environmental impacts.

The expression "if requested by the developer" can only anticipate the measures proposed by the proposer, forming an integral part of the project proposal, and by these measures potential environmental impacts can be avoided, prevented, or contained within a residual non-significant level. These proposals, duly assessed during the preliminary investigation, are therefore not to be submitted as environmental conditions in the decision granting exclusion from the EIA, but, where appropriate, they may be referenced within the scope of the decision or in another preliminary document forming an integral part of the decision.

This best practice was found in the analysis of the prescriptive frameworks of regional competence (Chapter 3, Point 2) wherein the environmental conditions in the prescriptive framework of the EIA screening decisions are absent, considering that the project, as described in the preliminary environmental study, including the measures envisaged to avoid or prevent significant negative impacts, can be exempted from the EIA procedure.

The “purposeful” approach, although still optional, indicates a concrete and proactive commitment by the developer to 'package' a project that already provides for adequate measures to counteract the occurrence of environmental impacts and is, moreover, re-proposed in point 5 of Annex IV-bis in Part Two of Legislative Decree 152/2006[7].

On the other hand, both in the definition of the environmental condition of the EIA screening decision and in Art. 19, para. 7, last sentence[8], as amended by Legislative Decree 76/2020 converted into Law 120/2020, the proactive approach of the developer appears substantially frustrated and reduced to a mere 'request' subject to the assessment of the competent authority, with little, if any, scope for collaboration, in a procedural phase that is still not effectively coordinated with the decision-making phase.

[7] *The Preliminary Environmental Study takes into account, where appropriate, results available from other relevant assessments of environmental impacts based on European, national and regional legislation and may contain a description of the project characteristics and/or measures envisaged to avoid or prevent what might otherwise be significant and adverse environmental impacts.*

[8] *For the purposes of the first sentence, the competent authority shall deliver either a positive or negative decision on the environmental conditions request formulated by the developer within a thirty-day period, excluding any further discussion or proposal for modification.*

To date, Ministerial Decree 308/2015 represents the only guidance document that has been issued on the matter and, as already stated in the introduction, in addition to constituting a guideline for decisions of state competence, it has also been taken in as a reference in various regional contexts.

The Decree arises from the results of the analysis of prescriptive frameworks carried out on a significant number of decisions of state competence issued between 2000-2010, carried out by the Directorate for Environmental Assessments of the Ministry of the Environment with the support of the Institute for Environmental Protection and Research[9].

In view of the main critical issues encountered, represented by:

- the complexity in the formulation and/or content (the prescription provides for different and not easily correlated actions, which are to be carried out in different time frames and phases);
- the vagueness and ambiguity of the content (the generic description of the requirement and the unclear wording may lead to a misinterpretation of its objectives and how it is to be implemented);
- the difficulty of implementation (the requirement involves third parties which condition the implementation of the requirement by the developer),

the need that arises is to define the essential elements of each requirement to facilitate the proposer in the implementation phase (timeframe and activities to be carried out) and the auditor during the compliance verification phase.

Without re-iterating the well-known elements of Ministerial Decree 308/2015, the analysis paid particular attention to the methodological indications set out in Point 1 of the Annex of the above decree, which are general formal and substantive principles, in addition to being fundamental prerequisites to robustly tackle the critical issues encountered to date.

Ministerial Decree 308/2015, anticipating the substantial reform of Art. 28 enacted under Legislative Decree 104/2017, represented a fundamental tool to make the requirements (now, environmental conditions) homogeneous, robustly implementable and verifiable and provides to this day a valid guideline document that, however, where necessary and appropriate, can be improved and adjusted not only in relation to regulatory change but also with regard to the operational experience gained over the years.

[9] https://www.isprambiente.gov.it/files/via/Linee_guida_quadri_prescrittivi.pdf

## 3. ANALYSIS OF THE PRESCRIPTIVE FRAMEWORKS

As outlined in the introduction, a representative number of EIA screening and EIA decisions at state, regional and provincial level (from 2018 to 2022) were obtained and are shown in Table 1 below.

| Competent authority | No. of screening decisions | No. of EIA/PAUR decisions | Total number of decisions | Project macro-types |
|---|---|---|---|---|
| Abruzzo | 2 | 3 | 5 | Energy Ind. (Renewable Sources - RS), mineral water, waste, food ind. |
| Basilicata | 2 | 1 | 3 | Energy Ind. (RS), waste |
| Calabria | 1 | 4 | 5 | Agriculture, waterway projects, quarries, waste, transport |
| Campania | 3 | 2 | 5 | Energy Ind. (RS), waste, waterway projects |
| Emilia-Romagna | 5 | 6 | 11 | Energy Ind. (RS), waterway projects, coastal works, agriculture, quarries, waste, other projects, groundwater exploitation |
| Friuli-Venezia Giulia | 3 | 2 | 5 | Energy Ind. (RS), waterway projects, agriculture |
| Lazio | 2 | 3 | 5 | Energy Ind. (RS), waste, water purification |
| Liguria | 3 | 3 | 6 | Waste, water purification, coastal works, transport |
| Lombardia and Provinces | 4 | 3 | 7 | Waste, agriculture, industrial plants, quarries |
| Marche and Provinces | 6 | 6 | 12 | Energy Ind. (RS), waste, waterway projects coastal works, agriculture |
| Molise | 3 | 4 | 7 | Energy Ind. (RS), waste |
| P.A. Bolzano | 4 | - | 4 | Quarries, car parks, skiing facilities |
| P.A. Trento | 5 | 5 | 10 | Skiing facilities, waterway projects, waste, textile industry, water purification |
| Piemonte and Provinces | 12 | 8 | 20 | Transport, water purification, urban development, waste, Energy Ind. (RES), quarries |
| Puglia | - | 6 | 6 | Transport, agriculture |
| Sardegna | 3 | 4 | 7 | Energy Ind. (RS), waste, industrial imp., waterway projects |
| Sicilia | 3 | 2 | 5 | Energy Ind. (RS), quarries, waterway projects |
| Toscana | 5 | 5 | 10 | Transport, coastal works, waste, purification, Energy Ind. (RS), quarries, |
| Umbria | | 5 | 5 | Energy Ind. (RS), quarries, waste |
| Valle d'Aosta | 2 | | 2 | Waterway projects, mineral water |
| Veneto and Provinces | 8 | 6 | 14 | Energy Ind. (RS), quarries, agriculture, transport, waste |
| State (Ministry of Environament and Energy Security) | 5 | 7 | 12 | Energy Ind., Energy Ind. (RS), transport, ports, aqueducts |
| **TOTAL** | **81** | **85** | **166** | |

For each EIA and EIA screening decision the individual environmental conditions included in the prescriptive framework were analysed to verify their consistency with Ministerial Decree 308/2015, from both a substantial and a formal point of view.

The following aspects of each environmental condition were analysed:

- Type of project (new/change);
- Sector (e.g. waste, Renewable Energy, quarries, etc.);
- Date of the decision (year);
- No. of environmental conditions in the decision;
- Overall formal consistency with MD 308/2015 (YES/NO/partial);
- Consistency with the general principles of the prescriptive frameworks (Annex to MD 308/2015, point 1);
- Scope of application of the environmental conditions (Annex to MD 308/2015, Table 1, point 4);
- Deadline for initiating compliance verification (Annex to MD 308/2015, Table 1, point 6);
- Supervisory body and bodies involved (Annex to MD 308/2015, Table 1, points 7, 8);
- Recommendations (YES/NO).

A qualitative-quantitative analysis of the various aspects (parameters) considered was then carried out and a graphical representation was realised for those aspects considered most significant/indicative, to allow a clear and effective representation of the analysis conducted on the sample.

The outcomes of the analysis are described below, wherein both critical issues and best practices emerged, which were then taken into account to formulate proposals for updating the MD 308/2015 (Chapter 4).

## 1. Type of decision (EIA Screening, EIA)

The starting point was the type of decisions analysed. As can be seen from the graph in Figure 1, both EIA Screening (49%) and EIA (51%) decisions were analysed in a balanced manner. This is of relevance in relation to the varying relevance of environmental conditions in the EIA and in the EIA Screening as regulated by current legislation (see Chapter 2.2).

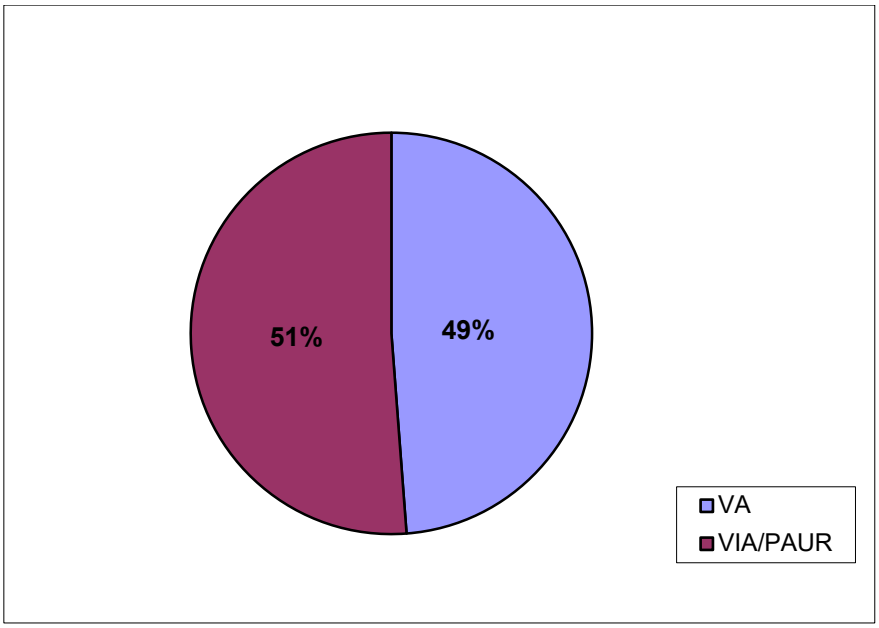


**Figure 1 - Percentage distribution of the decisions analysed (EIA and EIA screening)**

## 2. Number of environmental conditions (e.c.)

The number of environmental conditions in the decisions was differentiated by type of procedures. In Figure 2 the number of e.c. in the EIA decisions is shown and in Figure 3 the number of e.c. in EIA screening decisions is shown.

The following ranges have been identified for graphical representation: 0 e.c., 1-5 e.c., 6-10 e.c., 11-15 e.c., >15 e.c.

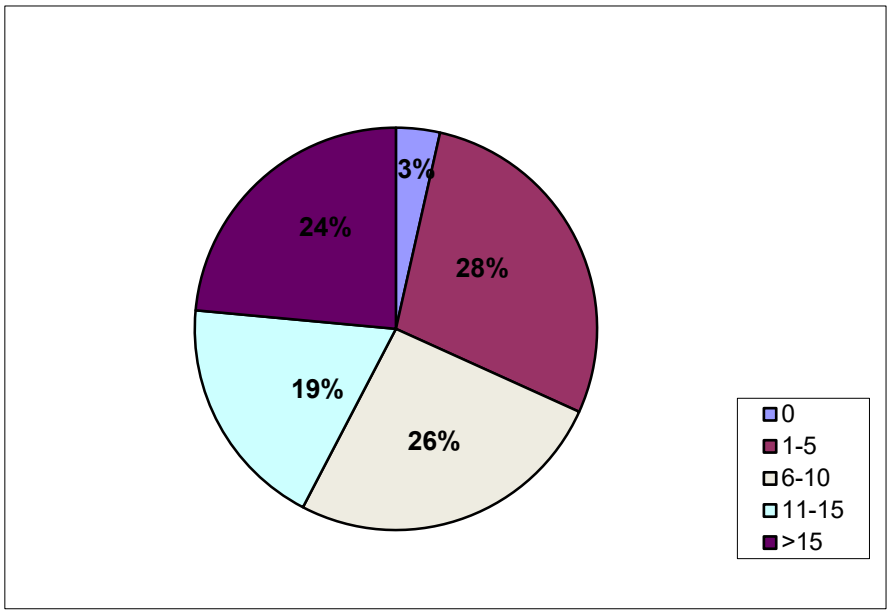


**Figure 2 - Number of environmental conditions in EIA decisions**

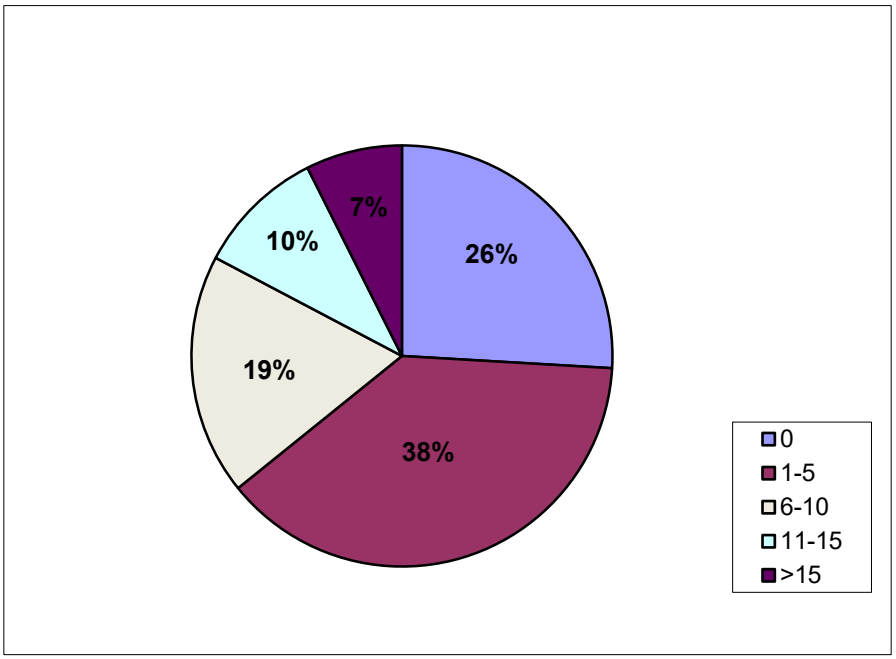


**Figure 3 - Number of environmental conditions in EIA screening decisions**

Looking at the graph in Figure 2, it can be seen that the number of environmental conditions is still significant in EIA decisions, where the percentage above 10 is 48%.

On the other hand, Figure 3 shows a significant reduction in the number of environmental conditions in EIA screening decisions compared to EIA decision.

Some regions, as a best practice, do not include e.c. in the prescriptive framework of the EIA screening decision (26%), considering that the project, as described in the preliminary environmental study, which includes measures to avoid or prevent significant negative impacts, can be excluded from the EIA procedure. In addition, if the e.c. "requested" by the developer represent "legal" requirements, they are not included in the prescriptive framework but, in some cases, are at best referred to as "recommendations" in so far as they relate to obligations to be observed after the issuance of the decision, which are in any case mandatory for the developer.

### 3. Consistency with the general principles of prescriptive frameworks (Annex to MD 308/2015, point 1)

This aspect was very significant for the proposal to update the MD 308/2015, as it provided guidance on the formal and substantial consistency of the analysed e.c. with respect to the general principles stated in Point 1 of the Annex to MD 308/2015.

The pie graph of Figure 4, shows the percentage breakdown of e.c. that are not consistent with the 20 general principles listed in point 1 of the Annex to Ministerial Decree 308/2015.

In bar graph Figure 5 the same percentages are shown, and which make it even clearer which principles are the most critical with the highest percentages of inconsistency with the aforementioned general principles.

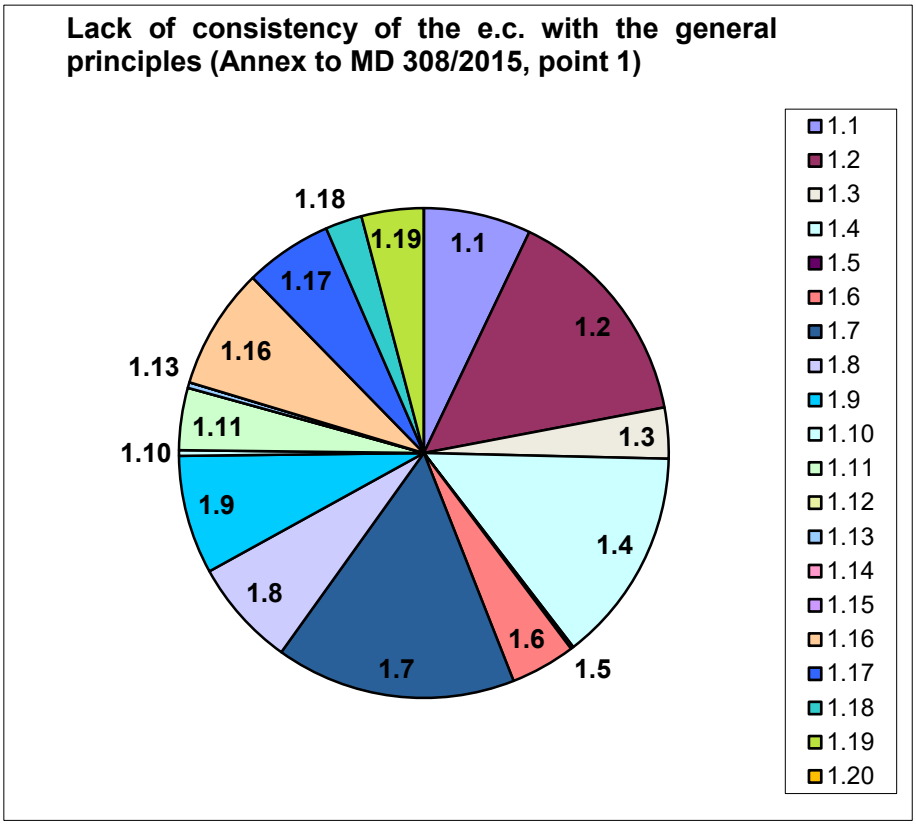


**Figure 4 - Percentage distribution of e.c. found to be inconsistent with the general principles (Annex to MD 308/2015, point 1)**

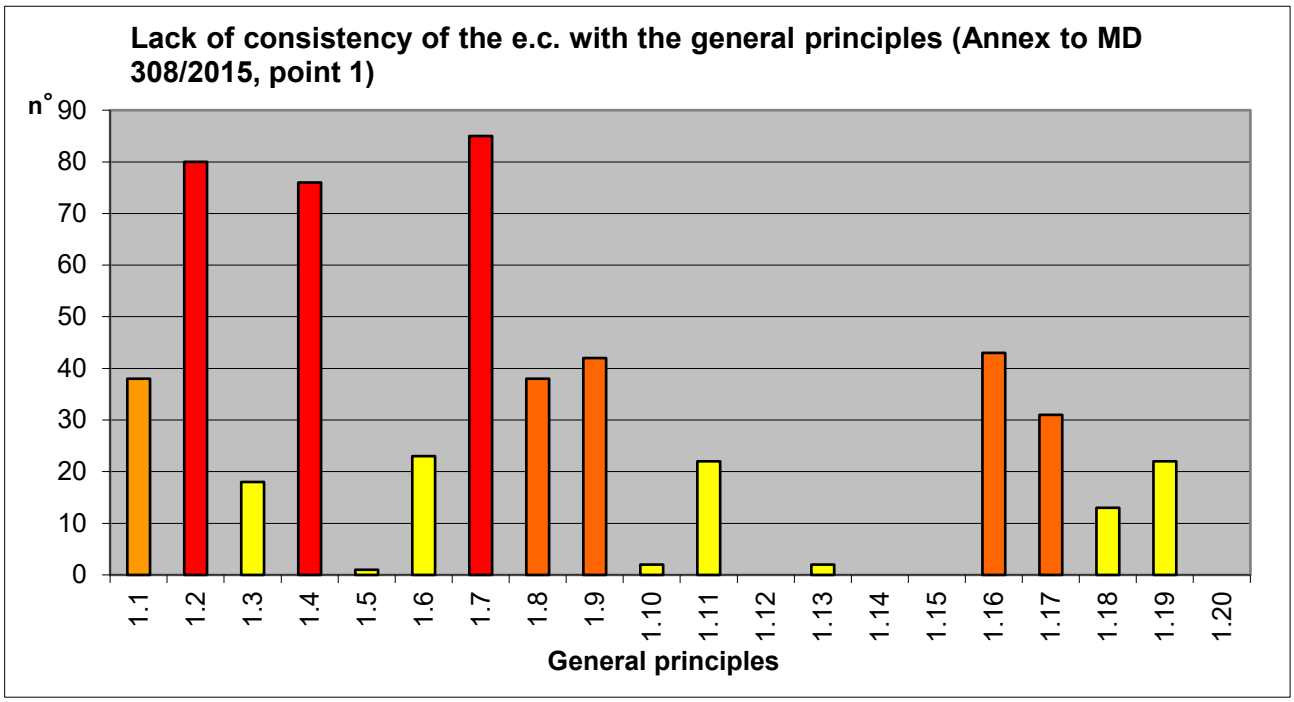


**Figure 5 - Percentage distribution of e.c found to be inconsistent with the general principles (Annex to MD 308/2015, point 1)**

The bar graph in Figure 5 shows, in red, the most critical principles with percentages above 70% (points 1.2, 1.4, 1.7). It shows those of medium criticality, in orange, with percentages above 30% (1.1, 1.8, 1.9, 1.16, 1.17), and in yellow it shows those not significantly critical, with percentages below 30% (1.3, 1.6, 1.10, 1.11, 1.13, 1.18, 1.19).

Outlined below the general principles of point 1 of the Annex to Ministerial Decree 308/2015, aggregated in order of criticality based on the analysis carried out.

Highly critical principles (>70%)

- 1.2. *The prescription must clearly indicate the timeframes, identifying the macro-phase and the implementation phase of the prescription* (see paragraph 3).
- 1.4. *The prescriptive framework must be broken down into 'scope of application' (see paragraph 2), grouping the prescriptions under the same point (e.g. ANTE-OPERAM - Construction Phase - Air; one prescription may have several scopes of application).*
- 1.7. *The 'legal' requirements must be placed in the part of the decision that precedes the final disposition (i.e. 'VIEWED, 'CONSIDERED', 'ASSESSED', 'ACKNOWLEDGED', etc.) and not within the prescriptive framework*.

Medium critical principles (> 30% - < 70%)

- 1.1. *The prescriptive framework must be organised according to the timeframe for the implementation of the prescription in relation to the implementation of the work*.
- 1.8. *The prescription must clearly indicate the actions to be carried out and how they are to be implemented*.
- 1.9. *Prescriptions that require deepening of contents of the Environmental Impact Study and/or other related impact analysis tools, and/or of the Project, must be adequately justified and applicable to project implementation phases subsequent to the phases covered by the EIA decision as defined in Table 3*.
- 1.16. *The prescription must clearly identify the supervisory body responsible for verifying its compliance, and no more than one supervisory body may be involved in a single prescription; it is understood that, if*

*one of the two concertant Ministries assumes the role of the body involved, the expression of the relevant opinion becomes mandatory and binding for the supervisory body*.

- 1.17. *The prescription must clearly identify any bodies involved, specifying their role and activities, avoiding the use of generic terms such as 'local authorities' or 'competent administrations' and, at the same time, it must be verified that these subjects are able to perform the required activities*.

Low critical principles (< 30%)

- 1.3. *Prescriptions must be numbered from 1 a to 'n' (for sub-points, use the letters a, b, c, etc.)*.
- 1.5. *The prescriptive framework must contain the provisions on the construction, operation and decommissioning of the works, as well as those related to any malfunctioning of the works (article 26, paragraph 5 of Legislative Decree 152/2006 as amended)*.
- 1.6. *The reasons for the prescriptions should not be mentioned in the prescriptive framework but should be explained within the opinion or decision.*
- *1.10. For prescriptions concerning environmental monitoring activities, and where it is deemed necessary to publicise the results, it must explicitly specify that the reports/documents are to be drafted in non-technical language*.
- 1.11. *The overall prescriptive framework must not contain overlaps, inconsistencies or duplications between the requirements identified by the Ministry of the Environment and Protection of Land and Sea, the Ministry of Cultural Heritage and Activities and Tourism, the Autonomous Regions and Provinces, or other subjects; the overall coherence of prescriptive frameworks must also be ensured in cases of coordinated or integrated procedures (e.g. EIA-IEA, EIA-Appropriate Assessment, EIA-SEA)*.
- 1.13. *The prescriptive framework for co-ordinated EIA-IEA procedures must be organised with a clear distinction between requirements for the EIA procedure and requirements for the IEA procedure*.
- 1.18. *Prescriptions for which the verification of compliance procedure is not envisaged must be clearly identified*.
- 1.19. *In the EIA decision, the framework of the verifications of compliance should be organised by grouping the prescriptions issued by the different administrations into macro-phases*.

It should also be pointed out that in the analysis of the prescriptive frameworks, some principles were not found, or at least not to a significant extent for the purposes of this document, for various possible reasons outlined below:

- 1.12. *The prescriptive framework concerning the protection of cultural heritage falls within the exclusive competence of the Ministry of Cultural Heritage and Tourism as well as the Special Statute Regions or Autonomous Provinces whose legal system provides for their exclusive competence on the matter. As far as the landscape is concerned, wherein environmental components and historical, cultural and perceptive values interpenetrate, the Ministry of Cultural Heritage and Tourism or the Special Statute Regions or Autonomous Provinces above mentioned, shall be responsible for the prescriptions concerning these values*. This principle, which focusses on the state competence or on cases under an autonomous authority in the matter, has never been included in decisions of regional competence, but instead has always been present in decisions under state competence;
- 1.14. *The coordination or substitution of authorisations, agreements, concessions, licences, opinions, no objections (pursuant to Article 26, paragraph 4 of Legislative Decree 152/2006 as amended) must be included in the part of the decision preceding the final disposition (i.e.). 'VIEWED', 'CONSIDERED', 'ASSESSED', 'ACKNOWLEDGED', etc.)*. This principle has never been found in both decisions of regional and state competence because Article 26, paragraph 4, under Legislative Decree 104/2017 was replaced by another provision which does not concern the procedural coordination between EIA and authorisations, and has significantly modified due to the effect of Articles 27 and 27-bis of Legislative Decree 152/2006. With regard to this principle and to the principle mentioned in 1.13 concerning the

prescriptive framework in the coordinated EIA-IEA procedures, mention should also be made of the elements recently introduced by article 19, para. 1 of Legislative Decree 24 February 2023, no. 13 converted with amendments by Law no. 41 of 21 April 2023 on 'Urgent provisions for the implementation of the National Recovery and Resilience Plan (NRRP) and the National Plan of Complementary Investments to the PNRR (NPC), as well as for the implementation of cohesion policies and the Common Agricultural Policy' on EIA-IEA integration for procedures under state competence. For the purposes of rationalising and streamlining administrative action, may optionally be requested by the developer by a single application, accompanied by EIA and IEA documentation, whereas the assessment activity is placed in charge of a mixed team, composed of members of the respective Commissions. Nothing, however, is envisaged with regard to the procedure process, time frames and content of the final decision and the related prescriptive framework. In the absence of further provisions or operational practices, one can only assume the uniqueness of the final decision.

- 1.15. *Only references to effective acts may be used in the prescriptive framework; the reference to actions which have no legal impacts when the environmental compatibility decision was issued cannot be used as it conditions the effectiveness of that decision*. This principle, in terms of inconsistency, does not appear in both state and regional decisions. This leads to the assumption that the actions that may be listed in the e.c. refer to effective actions that have legal implications when the decision is issued.
- 1.20. *The supervisory body and the bodies involved cannot coincide with the developer, even if the latter is a public entity*. This principle has never appeared in either measures under regional or state authority, as this is a very particular scenario, where compliance, in any case, seems to be established on the absence of conflict between the authorities indicated in the principle.

## 4. Formal consistency with MD 308/2015 - Table 1 Minimum elements of a requirement

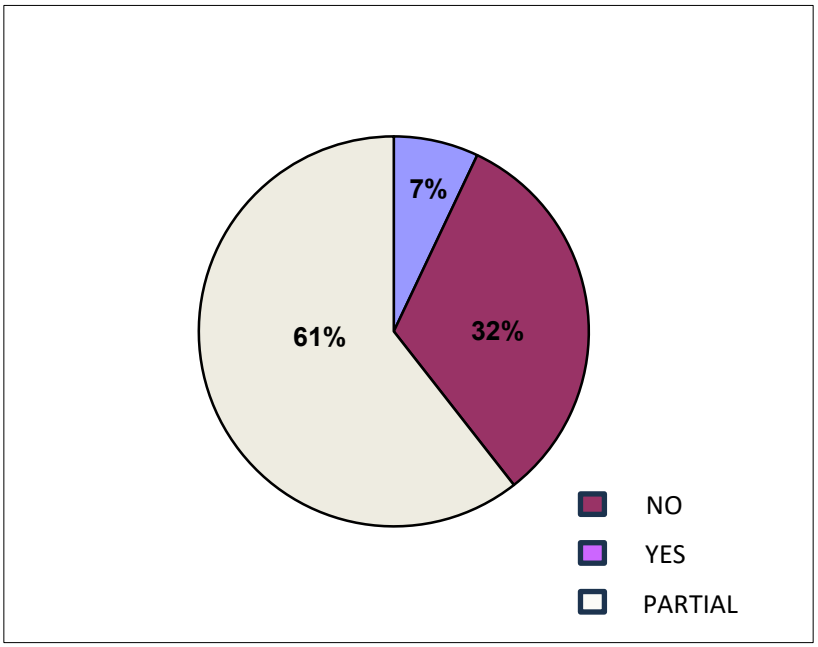


**Figure 6 - Formal consistency of the e.c. with Table 1 (point 2 of the annex to MD 308/2015) "Minimum elements of a requirement"**

As is evident from the graph shown in Figure 6, only a very small percentage of e.c. is consistent with the e.c. that represent the minimum elements indicated in Table 1 (point 2 of the Annex to Ministerial Decree 308/2015), while there is mostly partial consistency (61%) in addition to a significant percentage of overall non-consistency (32%).

The overall inconsistency can be attributed to several aspects. In some cases, in the EIA/PAUR and EA measures under regional authority, the e.c. are merely listed as text, without mentioning other information,

which are fundamental for the correct implementation and subsequent verification of compliance, as shown in the aforementioned Table 1.

In a great many cases, information is only partly reported, with the lack of indications being more frequent regarding:

- the timeframe for the implementation and initiation of the compliance audit;
- the scope of application;
- the party identified for compliance verification.

These critical issues are analysed individually in the following graphs.

## 5. Deadline for starting compliance verification (MD 308/2015, Table 1, point 6)

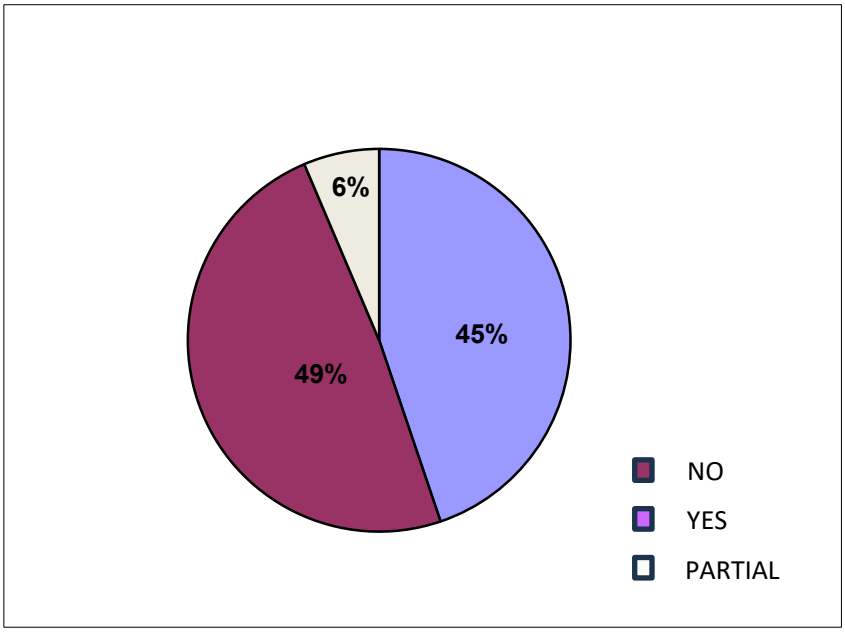


**Figure 7 - Percentage distribution of e.c. showing the deadline for the start of compliance verification (Annex to MD 308/2015, Table 1, point 6)**

The graph in Figure 7 shows that in about half of the measures analysed (49%), the timeframe for the initiation of compliance verification by the proposer is not indicated. This critical issue had, moreover, already emerged from the analysis concerning consistency with the general principles of the Annex to Ministerial Decree 308/2015, in relation to the principle in point 1.2 concerning the indication of the timeframes divided into macro-phases and phases as shown in Table 3 of Ministerial Decree 308/2015 (see Figures 4 and 5). In most cases, only the macro-phase and not the phase itself is indicated, and furthermore, in some cases, it was found that the deadline for the start of the compliance verification is not indicated but postponed to subsequent, non-explicit 'agreements' between the proposer and other parties.

## 6. Supervisory Authority and bodies involved (MD 308/2015, Table 1, points 7, 8)

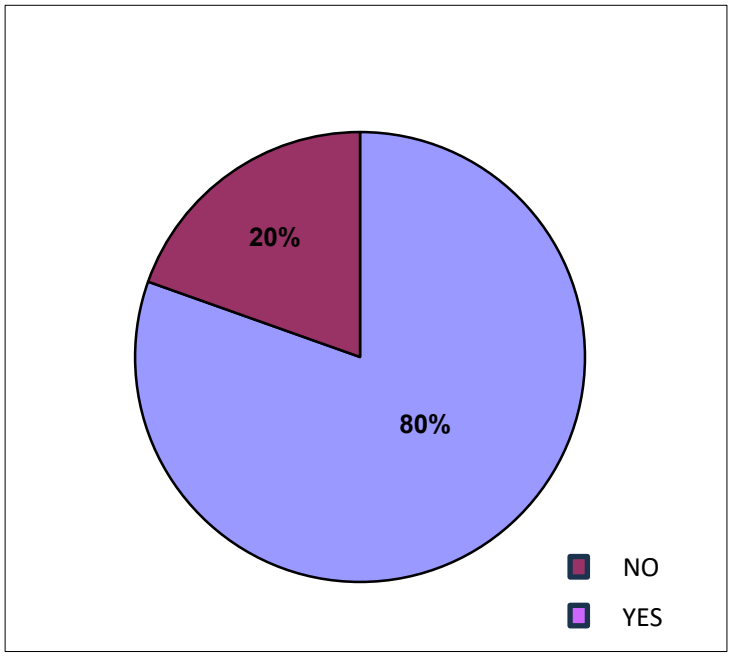


**Figure 8 - Specification of the supervisory authority and the subjects involved (MD 308/2015, Table 1, points 7 and 8)**

Figure 8 shows the percentage of the e.c. that do or do not have any information concerning the supervisory body and, if applicable, the body involved.

For 80% of the e.c. this information is indicated, but the analysis concerning consistency with the principles of the Annex to Ministerial Decree 308/2015 also revealed a critical issue in the application of the general principles of points 1.16 and 1.17 (see Figures 4 and 5) where lack of information about the supervisory authority and the body involved exceeds 30% of the cases analysed.

The scenarios relating to the supervisory authority are:

- indication of more than one supervisory authority for the same e.c.;
- the decision states that each competent authority is obliged to supervise the environmental conditions within its competence without any further specific indications;
- the supervisory authority is indicated as the 'verifying body with possible support from another body' or 'also availing of the support of another body'.

The lack of-information about of the body involved in most of the prescriptive frameworks analysed can be attributed to the amendment of Article 28 of Legislative Decree 152/2006 by Legislative Decree 104/2017, which provides the possibility to rely on other subjects.

## 7. Recommendations

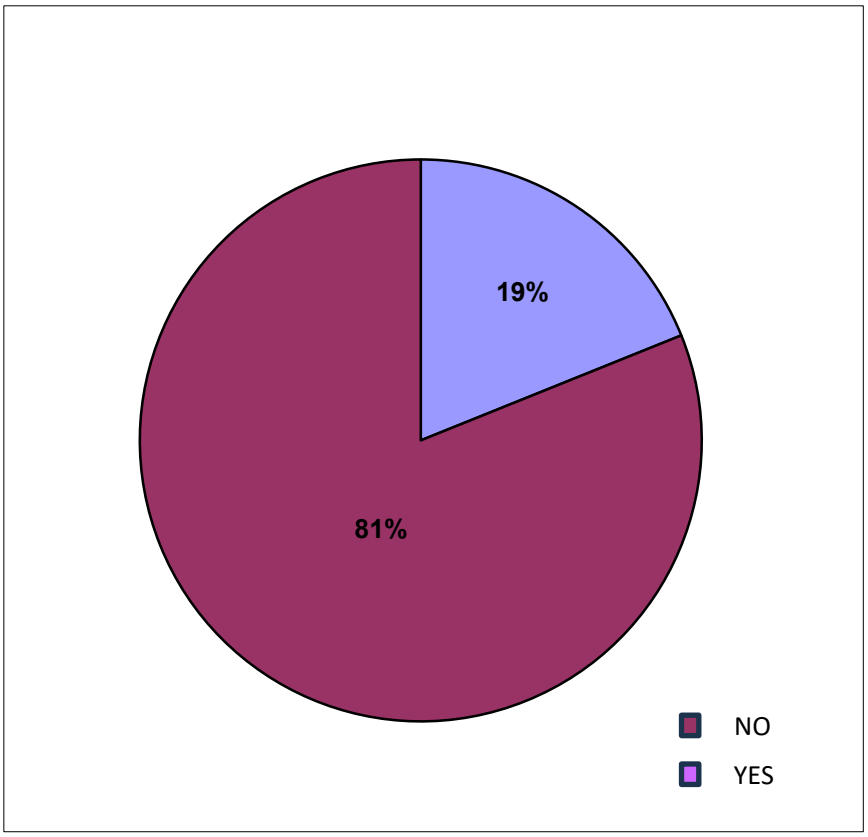


**Figure 9 - Recommendations in the prescriptive frameworks**

Finally, Figure 9 shows the percentage of prescriptive frameworks that include, or do not include, recommendations in a separate form from the e.c. and therefore non-binding for the requirements laid down in Article 28 of Legislative Decree 152/2006. This percentage is very low (19%) while, as already noted in the analysis of consistency with the general principles of the prescriptive frameworks (see point 3 of this Chapter), what should be reported as recommendations, as, for instance, they refer to "legal" requirements or general indications for the adoption of best practice (e.g. management of construction activities, maintenances, etc.), are reported as environmental conditions, implying not only a procedural burden, but also significant difficulties in carrying out the verification of compliance by the competent authority or by the subject it can rely on.

Although not very frequent, at a regional level there are, however, recommendations listed separately from environmental conditions (mainly represented by 'legal' requirements or best practice), which are not subject to the requirements of Article 28 of Legislative Decree 152/2006.

## 3.1. Summary of the main critical issues emerged

Table 2 below provides a summary of the main critical issues that have emerged based on the analysis of the prescriptive frameworks outlined so far.

| Consistency with MD 308/2015 | Critical issues |
|---|---|
| Number of e.c. in the prescriptive frameworks | High number of e.c. in EIA/PAUR decisions |
| Deadline for starting compliance verification (MD 308/2015, Table 1, point 6) | No timetable is given for the implementation and start-up of the Compliance Verification<br>Lack of indications on the implementation/compliance verification phase<br>The deadline for launching the compliance verification is delegated to other subjects |
| Supervisory body and bodies involved (MD 308/2015, Table 1, points 7, 8) | More than one supervisory body are indicated for the same e.c.<br>Each Competent Authority is required to supervise the e.c. of its own competence<br>Lack of clarity in the role of actors involved in the compliance verification<br>Lack of clarity in the definition of the actions to be carried out by the developer and how the compliance verification is to be implemented by the competent authority |
| Scope of application of environmental conditions (MD 308/2015, Table 1, point 4) | No indication of scope of application |
| Other | E.c. textually listed without information regarding the implementation and the compliance verification (Table 1 of MD 308/2015)<br>Recommendations and/or 'legal' requirements indicated as e.c. (including those pursuant to Article 19, paragraph 7 bis, Legislative Decree 152/2006)<br>EIS (Environmental Impact Study)/PIS (Preliminary Impact Study) In-depth information and/or significant design changes reported as e.c.<br>Commitment/inconsistency between e.c. related to EIA and e.c. related to other authorisations (PAUR) |

Critical elements that have emerged forming the basis for proposals to update MD 308/2015 in the following Chapter 4.

Finally, it should be noted that:

- over the time period analysed (2018-2022), it is possible to highlight a a downward trend in the number of environmental conditions, specifically relating to EIA screening decisions, both under regional and state competence;
- for regions that delegated EIA competences to provinces and/or municipalities, there was a considerable divergence in approach and practice; moreover, in many cases, on the websites of the competent local authorities the decisions could not be found, thus limiting the analysis carried out.

# 4. PROPOSALS FOR UPDATING MD 308/2015

## 4.1. General proposals

The updating of the principles and guidelines of Ministerial Decree 308/2015 seems appropriate to foster greater homogeneity and consistency in the formulation of prescriptive frameworks at national and regional level.

It is therefore hoped that the decree also constitutes a guideline for the Regions and Autonomous Provinces, in compliance with the already consolidated best practices and the laws and/or regulations governing the matter that already encompass the principles and guidelines of Ministerial Decree 308/2015 tailored to the specificities of the regional legal system, as well as taking into account the specific nature of regional procedures (PAUR ex art. 27-bis of Legislative Decree 152/2006, PAUAR (art. 27 ter).

It is proposed that the scope of the Ministerial Decree be also extended to include EIA screening decisions.

Updating Ministerial Decree 308/2015 will entail re-wording of the text of the decree (recitals and Article 1) and the adaptation to the current legislation as well as the rationale forming the basis of the new decree, which will fully replace the decree currently in force, which will consequently be repealed.

A formal reorganisation of the Annex to the decree is proposed, as follows:

1. Methodological indications for the preparation of the prescriptive framework
2. Reference terminologies
3. Minimum elements of the prescription.

## 4.2. Proposals for updating Point 1 of the Annex to MD 308/2015

The proposals for updating the general principles, set out below in their original wording, based on the analyses conducted, are listed below.

As highlighted in the following points, many of the principles are still of fundamental importance even though the analyses show that they are very frequently disregarded. For these principles, therefore, it is necessary to confirm their inclusion in the list under point 1 of Annex to MD 308/2015 with possible changes in the wording, also in relation to regulatory updates that have occurred.

On the other hand, some principles are no longer relevant under the legislation in force or are not very effective and/or complex to implement, even though they are not significant elements for the purposes of clarity and effectiveness of the environmental conditions.

For the above, it is therefore proposed they be removed from the list in point 1 of the annex to MD 308/2015 or substantially re-worded.

- **Point 1.1 and Point 1.4**

| |
|---|
| 1.1 - The prescriptive *framework must be organised according to the timing of the implementation of the prescription in relation to the implementation of the work*. |
| 1.4 - *The prescriptive framework must be broken down into 'scope of application' (see paragraph 2), grouping the prescriptions under the same point (e.g. ANTE-OPERAM - Construction Phase - Air; one prescriptions may have several scopes of application)*. |

The combined indications of principles 1.1 and 1.4 do not have any practical application. While agreeing with the logic aimed at facilitating the developer in organising the compliance elements to be implemented within a time frame, the formulation of the conditions as proposed can be complex and redundant, especially when the same condition is required to be implemented in several macro-phases/phases.

Without prejudice to the other indications concerning the timing and formal articulation of the environmental condition, it is proposed to eliminate these principles, which will also allow the competent authority greater flexibility and autonomy in drafting them.

- **Point 1.2**

> *The prescription must clearly indicate the timeframes, identifying the macro-phase and the implementation phase of the prescription.*

Principle of fundamental importance for the clarity in the implementation timeframe of the condition. The following wording is proposed, consistent with point 6. of Table 3 in Chapter 4.3.

> *The environmental condition must clearly indicate the deadline by which the verification of compliance must be initiated, with reference to the macro-phase and the implementation phase of the work*.

- **Point 1.3**

> *Prescriptions must be numbered from 1 a to 'n' (for sub-points, use the letters a, b, c, etc.).*

This principle is necessary to guarantee a formal order, also in the subsequent monitoring phases pursuant to Article 28 of Legislative Decree 152/2006. The validity and relative wording is confirmed, replacing the term 'requirement' with the term 'environmental condition'.

> *Environmental conditions must be numbered from 1 a to 'n'. In the case of further articulation of the condition, use the letters a, b, c, etc. (e.g. 1 a), 1 b), etc.*

- **Point 1.5**

> *The prescriptive framework must contain the provisions on the construction, operation and decommissioning of the works, as well as related to any malfunctioning of the works (article 26, paragraph 5 of Legislative Decree 152/2006 as amended).*

Article 26 has been entirely redrafted following the amendments introduced by Legislative Decree 104/2017. It is proposed to reword it for consistency with paragraph 4 of article 25:

> *The prescriptive framework may contain all the environmental conditions indicated in Article 25(4) of Legislative Decree 152/2006 (construction, operation, decommissioning phases and any malfunctioning).*

- **Point 1.6**

> *The reasons for the prescriptions should not be mentioned in the prescriptive framework but should be explained within the opinion or decision.*

This principle is of fundamental importance to avoid overburdening the text of the environmental condition; the following wording is proposed:

> *The reasons for the environmental condition, as well as its purpose, do not have to be stated in the text of the environmental condition, but have to be explained in the decision or in another preparatory document that is an integral part of the decision*.

- **Point 1.7**

> *The 'legal' requirements must be placed in the part of the decision that precedes the final disposition (i.e. 'VIEWED', 'CONSIDERED', 'ASSESSED', 'ACKNOWLEDGED', etc.) and not within the prescriptive framework.*

This principle is necessary to avoid unnecessary burdening of the prescriptive framework and the subsequent fulfilments pursuant to Article 28 of Legislative Decree 152/2006. This indication appears particularly relevant for EIA screening decisions whose authorisation process takes place downstream of the decision, and for EIA decisions that are not Single Environmental Provision or Single Regional Authorisation Provision pursuant to Articles 27 and 27-bis of Legislative Decree 152/2006.

This principle is necessary to avoid unnecessary burdening of the prescriptive framework and the subsequent fulfilments pursuant to Article 28 of Legislative Decree 152/2006. The indication appears particularly relevant in the measures of verification of subjectivity to EIA, whose authorisation process is carried out downstream of the measure, and for EIA measures that are not configured as Single Environmental Measures or as Single Regional Authorisation Measures ex art. 27 and 27-bis of Legislative Decree 152/2006

The 'legal' requirements that must be obtained at a later stage, in the case of EIA screening or EIA decisions of state competence, falls under the responsibility of other competent authorities and under the full responsibility of the developer.

In order to reinforce this principle, it may be useful for these fulfilments, if deemed appropriate by the competent authority, to be referred to in the decision or in another document that forms an integral part of the decision, or to be set out in a separate section of the prescriptive framework, as part of the "recommendations" (see Chapter 3, point 7) and not subject to the obligations of Article 28 of Legislative Decree 152/2006. A similar procedure may be applied to further obligations (activities, operations, procedures specific to the project being assessed) for which the competent authority deems it appropriate not to resort to the procedure under Article 28 of Legislative Decree 152/2006. The following wording is proposed:

> The 'legal' requirements shall not be applied to environmental conditions subject to fulfilments of Article 28 of Legislative Decree 152/2006, as well as further fulfilments for which the competent authority deems it appropriate not to resort to the compliance verification procedure. These fulfilments may be referred to in the decision, or in another document forming an integral part of the decision, or in a separate section of the prescriptive framework specifically named (e.g. "Recommendations").

- **Point 1.8**

> *The prescription must clearly indicate the actions to be carried out and how they are to be implemented.*

Principle necessary to ensure proper implementation of the e.c.by the developer. In fact, the absence of clear and explicit indications on how the developer must comply with the e.c., including the type and content of the documentation to be submitted for compliance verification procedure, occurred very frequently.

It should be noted that best practices emerged in the analysis with regard to the developer's implementation of the environmental condition as well as to the competent authority's compliance verification in cases where these activities are not easily practicable (e.g. "photographic reports", or "inspection visits"), which are very effective especially for environmental conditions that are difficult to verify based on documentation, both during construction and operation phases. Consequently, in order for the developer to be able to attest the correct fulfilment of the environmental condition and for the competent authority to be able to verify its correct implementation (e.g. activities during construction

phase for the reduction of atmospheric emissions and noise), it seems appropriate to reformulate the text in a more incisive manner, as proposed below:

> *The environmental condition must clearly indicate the actions to be carried out by the developer and how they will be implemented, as well as how the developer can attest the correct compliance to the competent authority*.

- **Point 1.9**

> *Prescriptions that require deepening of contents of the Environmental Impact Study and/or other related impact analysis tools, and/or of the Project, must be adequately justified and applicable to project implementation phases subsequent to the phases covered by the EIA decision as defined in Table 3*

This principle is still valid today and has been identified as critical, as a high percentage of e.c. have been found that refer to in-depth examination of the submitted documentation, which therefore prefigure the lack of elements necessary for a complete assessment of environmental impacts. As is well known, the legislation in force provides for specific phases to request clarifications or integrations within the framework of the procedure and, therefore, only in these situations is it appropriate to arrange for the necessary in-depth studies that cannot be delayed until after the assessment. This aspect appears even more relevant in the context of EIA screening decision. It seems appropriate to reformulate the text as follows:

> *Environmental conditions that require an in-depth examination of the contents of the Environmental Impact Study, of the Preliminary Environmental Study or of the characteristics of the project that are significant for environmental purposes must be adequately justified in the decision and in any case refer, where relevant, to project phases subsequent to the one on the basis of which the EIA decision or the EIA screening decision is issued.*

- **Point 1.10**

> *For prescriptions concerning environmental monitoring activities, and where it is deemed necessary to publicise the results, it must explicitly specify that the reports/documents are to be drafted in non-technical language.*

The results of environmental monitoring, according to Art. 28(8), must be the subject of 'appropriate information on the website of the competent authority'. Therefore, public information is not optional but mandatory. There is no provision in the legislation for using "non-technical language" to inform the public, although it is desirable that, at the very least, a summary of the results is prepared so that it is understandable even to 'non-professionals'. It seems appropriate to reword the text as follows:

> *The environmental conditions relating to environmental monitoring must make explicit how the developer has also to comply with public information obligations (e.g. periodic reports, analytical certificates, etc.).*

- **Point 1.11**

> *The overall prescriptive framework must not contain overlaps, inconsistencies or duplications between the requirements identified by the Ministry of the Environment and Protection of Land and Sea, the Ministry of Cultural Heritage and Activities and Tourism, the Autonomous Regions and Provinces, or other subjects; the overall coherence of prescriptive frameworks must also be ensured in cases of coordinated or integrated procedures (e.g. EIA-IEA, EIA-Appropriate Assessment, EIA-SEA).*

The principle was designed to ensure non-ambiguity and consistency of the e.c. within the overall prescriptive framework, and nevertheless designed solely in relation to decisions of state competence. Even in the case of "unique" decisions of regional competence (PAUR) or of state competence (PUA), the principle

remains valid according to which the e.c. relating to environmental compatibility of the project (EIA) must not contain overlaps, inconsistencies or duplications with the e.c. identified by other subjects such as the Ministry of Culture (concerting with the Ministry of the Environment) or by other subjects in charge of issuing specific opinions/authorisations integrated into the PAUR or PUA (e.g. IEA). It is proposed rewording the text as follows:

> *The overall prescriptive framework must not contain overlaps, inconsistencies or duplications between the environmental conditions identified by the EIA competent authority and those identified by other subjects (e.g. Regions and Autonomous Provinces in EIA decisions of state competence), whether concerting (e.g. Ministry of Culture in EIA decisions of state competence) or responsible for issuing opinions, authorisations, agreements, concessions, licences, concerts, nulla osta and consents, regardless of name, necessary for the realisation and operation of the project.*

- **Point 1.12**

> *The prescriptive framework concerning the protection of cultural heritage falls within the exclusive competence of the Ministry of Cultural Heritage and Tourism as well as the Special Statute Regions or Autonomous Provinces whose legal system provides for their exclusive competence on the matter. As far as the landscape is concerned, wherein environmental components and historical, cultural and perceptive values interpenetrate, the Ministry of Cultural Heritage and Tourism or the Special Statute Regions or Autonomous Provinces above mentioned, shall be responsible for the prescriptions concerning these values*

The principle only applies to EIA decisions under state competence whose adoption is provided for after obtaining the agreement with the Ministry of Culture . It is proposed to insert this clarification by rewording and simplifying the text as follows:

> *For EIA decisions under state competence, environmental conditions relating to the protection of the cultural heritage and landscape, which involve environmental, historical, cultural and perceptive values, come under the exclusive competence of the Ministry of Culture as well as of the Special Statute Regions or Autonomous Provinces whose legal system provides for the exclusive competence on this matter.*

- **Point 1.13**

> *The prescriptive framework for co-ordinated EIA-IEA procedures must be organised with a clear distinction between requirements for the EIA procedure and requirements for the IEA procedure.*

The EIA-IEA coordination pursuant to Article 10, paragraphs 1 and 2 no longer applies following the amendments introduced by Legislative Decree 104/2017. This coordination was, however, reintroduced into the system, albeit in terms that were not entirely unequivocal only for procedures under state competence, with Art. 19(1) of Legislative Decree 13/2023 converted into Law 41/2023 (see above under Chapter 3.3). Therefore, it is proposed to reword the text as follows:

> *In EIA-IEA measures of state competence, adopted pursuant to Art. 19(1) of Legislative Decree 13/2023 converted into Law 41/2023, the prescriptive framework must be structured with a clear distinction between environmental conditions relating to the EIA procedure and prescriptions relating to the IEA procedure.*

- **Point 1.14**

> *The coordination or substitution of authorisations, agreements, concessions, licences, opinions, no objections (pursuant to Article 26, paragraph 4 of Legislative Decree 152/2006 and subsequent amendments) must be included in the part of the decision preceding the final disposition (i.e. VIEWED', 'CONSIDERED', 'ASSESSED', 'ACKNOWLEDGED', etc.).*

Article 26 has been entirely redrafted following the amendments introduced by Legislative Decree 104/2017. In particular, Paragraph 4, which provided that the EIA decision replaced or coordinated all authorisations, agreements, concessions, licences, opinions and consents, regardless of name, in relation to environmental matters, which were necessary for the realisation and operation of the works or plant, was abolished. It is therefore proposed to abolish the principle.

- **Point 1.15**

> *Only references to effective acts may be used in the prescriptive framework; the reference to actions which have no legal impacts when the environmental compatibility decision was issued cannot be used as it conditions the effectiveness of that decision*.

Although this principle was never found in the analysis conducted, it is nevertheless worthwhile to confirm its usefulness and validity. Solely, from a formal point of view, the amendment proposed is as follows:

> *For environmental conditions, only references to effective acts may be used; the reference to acts that do not yet produce legal effects at the time of issue of the EIA decision may not be used as it conditions the effectiveness of that decision*.

- **Point 1.16**

> *The prescription must clearly identify the supervisory body responsible for verifying compliance, and no more than one supervisory body may be involved in a single prescription; it is understood that, if one of the two concertant Ministries assumes the role of the body involved, the expression of the relevant opinion becomes obligatory and binding for the supervisory body*.

Article 28 has been completely replaced by Legislative Decree 104/2017 and provides, in paragraph 2, that the competent authority, as defined by Article 5, paragraph 1, letter p) of Legislative Decree 152/2006[10] is solely responsible for the compliance verification procedure in cooperation with the Ministry of Culture in its areas of competence, for EIA decisions under state competence (see principle 1.12). The term 'supervisory body' under the current wording of the aforementioned paragraph 2 is therefore equivalent to the competent authority. As the competence for verifying compliance with the e.c. is established by law, it is proposed abolishing the principle.

- **Point 1.17**

> *The prescription must clearly identify any bodies involved, specifying their role and activities, avoiding the use of generic terms such as 'local authorities' or 'competent administrations' and, at the same time, it must be verified that these entities are able to perform the required activities.*

Article 28 has been completely replaced by Legislative Decree 104/2017 and provides that the competent authority, as already defined in Point 1.16, may avail of other bodies to verify the compliance with the environmental conditions, whilst retaining sole ownership of the procedure. The term 'body involved' in the current wording of the aforementioned Paragraph 2 of Article 28 is not matched at all, as it only identifies

[10] *The public administration responsible for the implementation of the EIA screening decision the preparation of the reasoned opinion, in the case of assessment of plans and programmes, and the adoption of EIA decisions, in the case of projects, or the issuance of the integrated environmental authorisation or the decision, regardless of name, authorising the activity.*

different entities that the competent authority may use for compliance verification activities. It is proposed rewording the text as follows:

> *The environmental condition must clearly identify the body that the competent authority intends to use or may potentially use for compliance verification, in any, with proven technical capabilities and is in a position to carry our the required activities on the basis of their specific institutional competences.*

- **Point 1.18**

> *Prescriptions for which the verification of compliance procedure is not envisaged must be clearly identified*.

This principle is still valid today and has been included in the proposed rewording of principle 1.7. It is therefore proposed to abolish it.

- **Point 1.19**

> *In the EIA decision, the framework of the verification of compliance should be organised by grouping the prescriptions issued by the different administrations into macro-phases.*

While agreeing with the logic aimed at facilitating the proposer in implementing compliances within a time frame (macro-phases), the principle seems to introduce further complexity into the wording of the prescriptive framework. As with principles 1.1 and 1.4, and with a view to simplification, and without prejudice to the other instructions on timing and the formal articulation of the environmental condition, it is proposed removing it.

- **Point 1.20**

> *The supervisory body and the bodies involved cannot coincide with the developer, even if the latter is a public entity.*

As reported in Chapter 3, this principle ensures the absence of conflictual situations. This is confirmed as valid and the following new wording, limited to the terms used, is proposed:

> *The competent authority and the entity it uses cannot be the same as the developer, even if the latter is a public entity*.

Furthermore, the following additional general principle is also proposed; a principle which emerged from the analysis and from the discussion with the General Directorate Environmental Assessment of the Ministry of Environment and Energy Security and the competent regional/local authorities.

> Design solutions that are significantly different from those submitted by the developer and underlying the Environmental Impact Study cannot be subject to environmental conditions unless adequate documentation is acquired during the preliminary investigation phase to allow for a full assessment of the environmental impacts. Otherwise, any alternative project proposals will have to undergo a new environmental assessment procedure.

### 4.3. Proposals for updating Point 2 of the Annex to MD 308/2015

As already indicated in Chapter 3.1, it is proposed that Point 2 of the Annex be indicated as Point 3, preceded by 'Reference Terminologies', which will then become Point 2.

Table 1 will then be referred to as Table 3. Below is the table that maintains the same structure as that contained in Ministerial Decree 308/2015, modified only with regard to certain terminologies and content descriptions.

**TABLE 3 - Minimum content of the environmental condition**

| No. | Content | Description |
|---|---|---|
| 1 | Macrophase | Macrophase is the phase when the environmental condition is to be implemented (use the terminology in Table 1) |
| 2 | Phase | Phase when the environmental condition is to be implemented (use the terminology in Table 2) |
| 3 | Environmental condition number | Sequential number of the environmental condition (e.g. 1, 2.a, 2.b) |
| 4 | Scope of application | Scope of the environmental condition:<br>➢ design aspects<br>➢ management aspects<br>➢ environmental factors:<br>o atmosphere<br>o water environment<br>o soil and subsoil<br>o ionising and non-ionising radiation<br>o noise and vibrations<br>o biodiversity<br>o human health<br>o landscape and cultural heritage.<br>➢ mitigation/compensation<br>➢ environmental monitoring<br>➢ other aspects<br>The same environmental condition can refer to more than one scope. |
| 5 | Subject of environmental condition | Text of the environmental condition (concise and effective, it must contain a detailed description of the activities to be carried out as well as the manner in which the developer will certify implementation for the compliance verification stage; purposes and other general aspects will have to be included in the text of the decision) |
| 6 | Deadline for starting the Compliance Verification procedure | Deadline for the Proposer to submit the request for the start of the compliance procedure (use the terminology in Table 2) |
| 7 | Compliance verifier | Boby used by the Competent Authority for the Compliance Verification, in the event that the activity is not carried out directly by the Competent Authority, which in any case retains exclusive ownership of the procedure (a single entity with proven technical capabilities must be indicated). |

### 4.4. Proposals for updating Point 3 of the Annex to MD 308/2015

As already indicated in Chapter 3.1 and 3.3. it is proposed that Point 3 be indicated as Point 2, preceding the 'Minimum content of the environmental condition' which will then be indicated as Point 3. Table 2 will then be referred to as Table 1 and Table 3 will then be referred to as Table 2.

Below are the two Tables that retain the same structure as those contained in Ministerial Decree 308/2015, only modified with regard to certain terminologies used and content descriptions. In the update, the provisions on design under Legislative Decree no. 36 of 31 March 2023, 'Public Contracts Code in implementation of Article 1 of Law no. 78 of 21 June 2022, delegating the Government on public contracts' have also been taken into account.

**TABLE 1 - Macrophases**

| No. | Macrophase | Description |
|---|---|---|
| **1** | ANTE-OPERAM | Period including the phases preceding the commencement of works and construction activities (e.g. executive design, acquisition of authorisations) |
| **2** | IN PROGRESS | Period including the construction phases of the work |
| **3** | POST-OPERAM | Period including the operation and decommissioning phases of the work |

**TABLE 2 - Phases**

| | | No. | Phase | Description |
|---|---|---|---|---|
| **MACROPHASES** | ANTE-OPERAM | 1 | Preliminary phase to executive design | Phase prior to executive design |
| | | 2 | Executive design phase | Preparation of the executive project (prior to approval of the executive project by the competent authority) |
| | | 3 | Pre-construction phase | Phase preceding the start of construction activities |
| | WORK IN PROGRESS | 4 | Construction phase | Setting up the construction site and carrying out the work |
| | | 5 | Phase of construction site dismantlement and restoration of the areas affected by the works | Upon completion of the work, during the removal and dismantling of the construction site |
| | POST-OPERAM | 6 | Pre-commissioning phase | Before the commissioning of the work |
| | | 7 | Operation phase | Operation of the work |
| | | 8 | Decommissioning phase | Setting up the site and decommissioning the work |

# Competenze e Reti per l'integrazione Ambientale per il Miglioramento delle Organizzazioni della PA

Edition 2023

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